

Maryland Register

Issue Date: September 9, 2011

Volume 38 • Issue 19 • Pages 1119—1180

IN THIS ISSUE

Governor
Open Meetings Compliance
Board
Judiciary
Regulations
Errata
Special Documents
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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before August 22, 2011, 5 p.m.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 August 22, 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
- Attorney General's Opinions in full text
- Open Meetings Compliance Board Opinions in full text
- State Ethics Commission Opinions in full text
- Court Rules
- District Court Administrative Memoranda
- Courts of Appeal Hearing Calendars
- Agency Hearing and Meeting Notices
- Synopses of Bills Introduced and Enacted by the General Assembly
- Other documents considered to be in the public interest

CITATION TO THE MARYLAND REGISTER

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

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

CODE OF MARYLAND REGULATIONS (COMAR)

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

CITATION TO COMAR REGULATIONS

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

DOCUMENTS INCORPORATED BY REFERENCE

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 The Cumulative Table of COMAR Regulations Adopted, Amended or Repealed, found online, also identifies each regulation incorporating a document.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

HOW TO RESEARCH REGULATIONS

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

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

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

Maryland Register (ISSN 0360-2834). Postmaster: Send address changes and other mail to: Maryland Register, State House, Annapolis, Maryland 21401. Tel. 410-260-3876; Fax 410-280-5647. Published biweekly, with cumulative indexes published quarterly, by the State of Maryland, Division of State Documents, State House, Annapolis, Maryland 21401. The subscription rate for the Maryland Register is \$225 per year (first class mail). All subscriptions post-paid to points in the U.S. periodicals postage paid at Annapolis, Maryland and additional mailing offices.

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, and Subscription Manager; **Tami Cathell**, Help Desk, COMAR and Maryland Register Online.

Front cover: State House, Annapolis, MD, built 1772—79.

Illustrations by Carolyn Anderson, Dept. of General Services

Note: All products purchased are for individual use only. Resale or other compensated transfer of the information in printed or electronic form is a prohibited commercial purpose (see State Government Article, §7-206.2, Annotated Code of Maryland). By purchasing a product, the buyer agrees that the purchase is for individual use only and will not sell or give the product to another individual or entity.

Contents

1121

Closing Dates for the Maryland Register

Schedule of Closing Dates and Issue Dates for the Maryland Register	1123
---	------

COMAR Research Aids

Table of Pending Proposals	1124
----------------------------------	------

Index of COMAR Titles Affected in This Issue

COMAR Title Number and Name	Page
03 Comptroller of the Treasury	1150
08 Department of Natural Resources	1143, 1150
09 Department of Labor, Licensing, and Regulation ...	1145, 1147
10 Department of Health and Mental Hygiene ..	1146, 1147, 1158
11 Department of Transportation	1146
14 Independent Agencies	1167
15 Department of Agriculture	1148
26 Department of the Environment	1148
30 Maryland Institute for Emergency Medical Services Systems (MIEMSS)	1172
31 Maryland Insurance Administration	1148

PERSONS WITH DISABILITIES

Individuals with disabilities who desire assistance in using the publications and services of the Division of State Documents are encouraged to call (410) 974-2486, or (800) 633-9657, or FAX to (410) 974-2546, or through Maryland Relay.

The Governor

EXECUTIVE ORDER 01.01.2011.14.....	1127
EXECUTIVE ORDER 01.01.2011.15.....	1127
EXECUTIVE ORDER 01.01.2011.16.....	1128

Open Meetings Compliance Board

OPINIONS.....	1129
OPINIONS.....	1132
OPINIONS.....	1135
OPINIONS.....	1136
OPINIONS.....	1139

The Judiciary

COURT OF APPEALS OF MARYLAND SCHEDULE	1142
---	------

Emergency Action on Regulations

08 DEPARTMENT OF NATURAL RESOURCES	
FISHERIES SERVICE	
Oysters	1143
Shellfish — General.....	1143
Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure	1145
09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION	
RACING COMMISSION	
Thoroughbred Rules	1145
10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE	
BOARD OF PHYSICIANS	
Delegation of Duties by a Licensed Physician — Physician Assistant.....	1146

BOARD OF NURSING — ELECTROLOGY PRACTICE COMMITTEE	
Continuing Education.....	1146
Fees	1146
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)	
Local Agency	1146
11 DEPARTMENT OF TRANSPORTATION	
MOTOR VEHICLE ADMINISTRATION — ADMINISTRATIVE PROCEDURES	
Motor Vehicle Fees	1146
Refusal to Renew or Transfer a Vehicle Registration and Refusal to Renew a Driver's License for Failure to Pay Undisputed Taxes and Unemployment Insurance Contributions.....	1146
MOTOR VEHICLE ADMINISTRATION — VEHICLE REGISTRATION	
Vehicle Trade-In Allowance	1146

Final Action on Regulations

09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION	
COMMISSIONER OF FINANCIAL REGULATION	
State Collection Agency Licensing Board — Fees.....	1147
10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE	
BOARD OF NURSING	
Delegation of Nursing Functions.....	1147
BOARD OF PHARMACY	
Inpatient Institutional Pharmacy.....	1147
BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS	
Licensure and Continuing Education.....	1147
15 DEPARTMENT OF AGRICULTURE	
MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION	
Guidelines for the Maryland Agricultural Land Preservation Program	1148
26 DEPARTMENT OF THE ENVIRONMENT	
AIR QUALITY	
Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations	1148
RADIATION MANAGEMENT	
Radiation Protection	1148
31 MARYLAND INSURANCE ADMINISTRATION	
HEALTH GENERAL	
Assignment of Benefits to Nonpreferred Providers.....	1148

Proposed Action on Regulations

03 COMPTROLLER OF THE TREASURY	
ALCOHOL AND TOBACCO TAX	
Tobacco Tax.....	1150
08 DEPARTMENT OF NATURAL RESOURCES	
BOATING	
Definitions.....	1150
Certificate of Boat Number	1151
Boat Dealer License	1153
Certificate of Title	1154
Security Interest Recordation	1156
Documented Vessels	1156

Contents

1122

FORESTS AND PARKS	
Licensed Forest Products Operator	1157
10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE	
PROCEDURES	
Nursing Facility Quality Assessment.....	1158
MEDICAL CARE PROGRAMS	
Hospital Services	1159
Hospital Services	1160
Nursing Facility Services.....	1160
DANGEROUS DEVICES AND SUBSTANCES	
Prohibition of Bisphenol-A in Child Care Articles	1162
Controlled Dangerous Substances	1163
BOARD OF DENTAL EXAMINERS	
Temporary Licenses for Volunteer Dentists and Dental Hygienists and Temporary Dental Clinic Permits.....	1164
14 INDEPENDENT AGENCIES	
WORKERS' COMPENSATION COMMISSION	
Procedural Regulations.....	1167
MARYLAND ENVIRONMENTAL SERVICE	
Designation of Service Regions.....	1168
Human Resources	1168
Human Resources System	1169
Procurement.....	1170
20 PUBLIC SERVICE COMMISSION	
SERVICE SUPPLIED BY ELECTRIC COMPANIES	
General	1170
Contact Voltage Survey Requirement and Reporting (In Memory of Deanna Camille Green)	1170
30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)	
EMS OPERATIONAL PROGRAMS	
Protocol Development	1172

Special Documents

DEPARTMENT OF THE ENVIRONMENT	
SUSQUEHANNA RIVER BASIN COMMISSION	
Projects Approved for Consumptive Uses of Water	1174
DEPARTMENT OF HEALTH AND MENTAL HYGIENE	
IN THE MATTER OF STIMULANTS KNOWN AS BATH SALTS BEFORE THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE	
Findings and Order	1176

General Notices

BOARD OF ARCHITECTS	
Public Meeting	1178
ATHLETIC COMMISSION	
Public Meeting.....	1178
ADVISORY COUNCIL ON CEMETERY OPERATIONS	
Public Meeting.....	1178
BOARD OF COSMETOLOGISTS	
Public Meeting.....	1178
CRIMINAL JUSTICE INFORMATION ADVISORY BOARD	
Public Hearing	1178
COMMISSION ON CRIMINAL SENTENCING POLICY	
Public Meeting.....	1178
OFFICE OF THE DEAF AND HARD OF HEARING/MARYLAND ADVISORY COUNCIL ON THE DEAF AND HARD OF HEARING	
Public Meeting.....	1178
MARYLAND STATE BOARD OF EDUCATION	
Public Meeting.....	1178

BOARD OF MASTER ELECTRICIANS	
Public Meeting	1178
ELEVATOR SAFETY REVIEW BOARD	
Public Meeting	1178
MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)	
Public Meeting	1178
Public Meeting	1179
BOARD OF EXAMINING ENGINEERS	
Public Meeting	1179
DEPARTMENT OF THE ENVIRONMENT/AIR AND RADIATION MANAGEMENT ADMINISTRATION	
Notice of Public Hearing on Air Quality Plan	1179
DEPARTMENT OF HEALTH AND MENTAL HYGIENE	
Public Meeting	1179
DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MARYLAND BOARD OF PHYSICIANS	
Public Meeting	1179
BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)	
Public Meeting	1179
BOARD OF EXAMINERS OF LANDSCAPE ARCHITECTS	
Public Meeting	1179
MARYLAND STATE LOTTERY COMMISSION	
Public Meeting	1179
MARYLAND HEALTH CARE COMMISSION	
Public Meeting	1179
MARYLAND PUBLIC BROADCASTING COMMISSION	
Public Meeting	1180
MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE	
Public Meeting	1180
BOARD OF MORTICIANS AND FUNERAL DIRECTORS	
Public Meeting	1180
BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS	
Public Meeting on Regulations	1180
BOARD OF EXAMINERS IN OPTOMETRY	
Public Meeting	1180
BOARD OF PODIATRIC MEDICAL EXAMINERS	
Public Meeting	1180
Public Meeting	1180
Public Meeting	1180
BOARD OF PUBLIC ACCOUNTANCY	
Public Meeting	1180
PUBLIC SCHOOL LABOR RELATIONS BOARD	
Public Meeting	1180
RACING COMMISSION	
Public Meeting	1180
MARYLAND TRANSPORTATION AUTHORITY	
Public Meeting	1180
BOARD OF WATERWORKS AND WASTE SYSTEMS OPERATORS	
Public Meeting	1180

Contents

CLOSING DATES and ISSUE DATES through JANUARY 27, 2012

COMAR Online

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

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

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

Availability of Monthly List of Maryland Documents

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

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

Issue Date	Emergency and Proposed Regulations 5:00 p.m.	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
September 23**	September 2	September 14	September 12
October 7	September 19	September 28	September 26
October 21**	October 3	October 12	October 7
November 4	October 17	October 26	October 24
November 18**	October 31	November 8	November 4
December 2**	November 14	November 18	November 16
December 16	November 28	December 7	December 5
December 30	December 12	December 21	December 19
January 13**	December 23	January 4	December 30
January 27	January 9	January 18	January 16

* 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.

Subtitle 09 (2nd Volume)

- 10.09.02.07 • 38:18 Md. R. 1084 (8-26-11) (ibr)
- 10.09.03.01,.03—,05,.05-1,.06,.07 • 38:16 Md. R. 955 (7-29-11)
- 10.09.04.01,.03 • 38:9 Md. R. 555 (4-22-11)
- 10.09.06.09 • 38:19 Md. R. 1159 (9-9-11)
- 10.09.06.15,.15-1 • 38:19 Md. R. 1160 (9-9-11)
- 10.09.07.08 • 38:17 Md. R. 1028 (8-12-11)
- 10.09.10.01,.03,.15 • 38:14 Md. R. 802 (7-1-11)
- 10.09.10.07,.08,.09,.10,.11-1,.11-2,.16 • 38:19 Md. R. 1160 (9-9-11)
- 10.09.10.07-1 • 38:15 Md. R. 902 (7-15-11)
- 10.09.17.06 • 38:18 Md. R. 1084 (8-26-11) (ibr)
- 10.09.20.01,.04—,06 • 38:16 Md. R. 961 (7-29-11)
- 10.09.24.13 • 38:3 Md. R. 180 (1-28-11)
38:14 Md. R. 800 (7-1-11)
- 10.09.50.07 • 38:18 Md. R. 1084 (8-26-11) (ibr)
- 10.09.53.07 • 38:17 Md. R. 1029 (8-12-11)
38:18 Md. R. 1108 (8-26-11) (err)
- 10.09.54.33 • 38:17 Md. R. 1030 (8-12-11)
- 10.09.55.29 • 38:17 Md. R. 1031 (8-12-11)
- 10.09.56.22 • 38:17 Md. R. 1033 (8-12-11)
- 10.09.81.01—,07 • 37:20 Md. R. 1409 (09-24-10)

Subtitles 10 — 22 (3rd Volume)

- 10.10.01.03 • 37:25 Md. R. 1745 (12-3-10)
- 10.10.03.02 • 37:25 Md. R. 1745 (12-3-10)
- 10.10.06.02 • 37:25 Md. R. 1745 (12-3-10)
- 10.15.07.01 • 38:18 Md. R. 1086 (8-26-11) (ibr)
- 10.19.01.01—,05 • 38:19 Md. R. 1162 (9-9-11)
- 10.19.03.13 • 38:19 Md. R. 1163 (9-9-11)
- 10.21.22.07 • 38:15 Md. R. 902 (7-15-11)

Subtitles 23 — 36 (4th Volume)

- 10.24.05.04 • 38:16 Md. R. 962 (7-29-11)
- 10.25.08.01—,06 • 38:16 Md. R. 962 (7-29-11)
- 10.25.16.01—,07 • 38:16 Md. R. 964 (7-29-11)
- 10.26.01.03 • 38:16 Md. R. 968 (7-29-11)
- 10.26.02.07 • 38:16 Md. R. 968 (7-29-11)
- 10.27.12.03 • 38:16 Md. R. 968 (7-29-11)
- 10.32.03.01—,16 • 38:14 Md. R. 803 (7-1-11)
- 10.34.28.01,.02,.04—,12 • 36:25 Md. R. 1965 (12-4-09)
- 10.34.28.01,.02,.04—,14 • 38:2 Md. R. 93 (1-14-11)
- 10.34.35.01—,10 • 38:17 Md. R. 1034 (8-12-11)

Subtitles 37—59 (5th Volume)

- 10.44.21.01,.02,.04,.05,.10,.11 • 38:11 Md. R. 674 (5-20-11)
38:18 Md. R. 1086 (8-26-11)
- 10.44.30.01—,05 • 38:14 Md. R. 812 (7-1-11)
- 10.44.33.01—,06 • 38:19 Md. R. 1164 (9-9-11)
- 10.53.04.03 • 38:16 Md. R. 969 (7-29-11)
- 10.53.12.01 • 38:16 Md. R. 969 (7-29-11)
- 10.54.02.18 • 38:16 Md. R. 970 (7-29-11)

11 DEPARTMENT OF TRANSPORTATION

- 11.11.05.02 • 38:18 Md. R. 1087 (8-26-11)
- 11.11.05.03 • 38:15 Md. R. 903 (7-15-11)
- 11.11.15.01—,06 • 38:18 Md. R. 1087 (8-26-11)
- 11.15.16.05 • 38:15 Md. R. 903 (7-15-11)
- 11.15.33.06 • 38:18 Md. R. 1087 (8-26-11)

12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

- 12.02.28.01—,23 • 37:24 Md. R. 1674 (11-19-10)
- 12.10.01.04—,06,.08,.09,.14—,17,
.19—,27 • 38:15 Md. R. 904 (7-15-11)
- 12.10.04.01—,31 • 38:15 Md. R. 904 (7-15-11)
- 12.10.05.01 • 38:15 Md. R. 904 (7-15-11)
- 12.10.06.01—,16 • 38:15 Md. R. 904 (7-15-11)

13A STATE BOARD OF EDUCATION

- 13A.01.02.05 • 38:14 Md. R. 814 (7-1-11)
- 13A.06.01.01—,03 • 38:12 Md. R. 723 (6-3-11)
- 13A.06.02.01—,05 • 38:16 Md. R. 971 (7-29-11)
- 13A.07.04.01,.01-1,.05,.06 • 37:16 Md. R. 1082 (7-30-10) (ibr)
- 13A.12.02.27 • 38:14 Md. R. 815 (7-1-11)
- 13A.12.03.02,.03,.11 • 38:17 Md. R. 1038 (8-12-11)

13B MARYLAND HIGHER EDUCATION COMMISSION

- 13B.02.01.04,.05,.07,.08 • 38:14 Md. R. 815 (7-1-11)
- 13B.02.02.04,.06 • 38:14 Md. R. 815 (7-1-11)
- 13B.02.03.02-1 • 38:14 Md. R. 815 (7-1-11)
- 13B.02.04.03 • 38:14 Md. R. 815 (7-1-11)

14 INDEPENDENT AGENCIES

- 14.01.10.13 • 38:17 Md. R. 1039 (8-12-11)
- 14.09.01.01,.19 • 38:19 Md. R. 1167 (9-9-11)
- 14.09.03.01,.04,.09 • 38:3 Md. R. 207 (1-28-11)
- 14.22.02.02 • 38:18 Md. R. 1090 (8-26-11)
- 14.27.01.01 • 38:19 Md. R. 1168 (9-9-11)
- 14.27.02.12 • 38:19 Md. R. 1168 (9-9-11)
- 14.27.02.16 • 38:19 Md. R. 1169 (9-9-11)
- 14.27.03.11 • 38:19 Md. R. 1170 (9-9-11)
- 14.32.05.02 • 37:1 Md. R. 33 (1-4-10)
37:15 Md. R. 1020 (7-16-10)

17 DEPARTMENT OF BUDGET AND MANAGEMENT

- 17.04.13.01,.03 • 38:16 Md. R. 973 (7-29-11)

20 PUBLIC SERVICE COMMISSION

- 20.50.01.03 • 38:19 Md. R. 1170 (9-9-11)
- 20.50.01.03,.05 • 38:5 Md. R. 332 (2-25-11)
- 20.50.10.05 • 38:5 Md. R. 332 (2-25-11)
- 20.50.11.01—,06 • 38:19 Md. R. 1170 (9-9-11)

22 STATE RETIREMENT AND PENSION SYSTEM

- 22.01.14.01—,03 • 38:14 Md. R. 818 (7-1-11)
- 22.07.02.04 • 38:14 Md. R. 819 (7-1-11)

23 BOARD OF PUBLIC WORKS

- 23.03.02.03,.05,.13,.28,.29 • 38:18 Md. R. 1096 (8-26-11)
- 23.03.03.04 • 38:18 Md. R. 1096 (8-26-11)

PENDING PROPOSALS

1126

26 DEPARTMENT OF THE ENVIRONMENT

Subtitles 08 — 12 (Part 2)

26.11.19.11 • 38:9 Md. R. 565 (4-22-11)
26.11.19.27-1 • 38:18 Md. R. 1099 (8-26-11)

Subtitles 13—18 (Part 3)

26.17.01.01 • 37:19 Md. R. 1329 (9-10-10) (err)
26.17.01.01—.11 • 37:18 Md. R. 1244 (8-27-10) (ibr)
38:18 Md. R. 1101 (8-26-11) (ibr)

29 MARYLAND STATE POLICE

29.05.01.01,.16 • 38:18 Md. R. 1105 (8-26-11)
29.06.06.01—.07 • 36:20 Md. R. 1554 (9-25-09)

30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

30.03.05.02 • 38:19 Md. R. 1172 (9-9-11)
30.04.02.12 • 38:15 Md. R. 922 (7-15-11)
30.04.03.17 • 38:15 Md. R. 922 (7-15-11)
30.04.04.15 • 38:15 Md. R. 922 (7-15-11)
30.06.03.01 • 38:18 Md. R. 1106 (8-26-11)
30.08.02.03,.04,.07,.10 • 38:15 Md. R. 922 (7-15-11)
30.08.17.01—.19 • 38:15 Md. R. 924 (7-15-11)

31 MARYLAND INSURANCE ADMINISTRATION

31.04.17.13 • 38:15 Md. R. 929 (7-15-11)
31.09.14.01—.05 • 38:18 Md. R. 1106 (8-26-11)
31.12.08.04 • 38:17 Md. R. 1039 (8-12-11)

The Governor

EXECUTIVE ORDER 01.01.2011.14

Declaration of Emergency

WHEREAS, Maryland is subject to a great variety of hazard events or disasters, including those involving geographic and weather related events;

WHEREAS, Having been advised and informed by the Maryland Emergency Management Agency that as a result of the impending occurrence of Hurricane Irene, there is a need for special preparedness and response for which resources may be requested;

WHEREAS, Hurricane Irene is currently a category three hurricane moving towards the East Coast of the United States, and the Federal Emergency Management Agency has urged all residents in East Coast states to take steps now to prepare their families and businesses for hurricanes, severe weather, flash floods, and other disasters;

WHEREAS, Although the precise path of Hurricane Irene is uncertain, the entire State of Maryland must take steps to prepare for potential destruction and minimize the threat to public safety and the lives of all Marylanders who may find themselves in the path of Hurricane Irene;

WHEREAS, There is a need to take protective actions to protect the lives and property of impacted citizens especially in and around Ocean City and the Lower Eastern Shore of Maryland from the potentially disastrous effects of Hurricane Irene;

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

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

WHEREAS, In order to implement the emergency powers of the Governor, a declaration of emergency by the Governor is necessary.

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 THE STATE OF 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 25th day of August, 2011.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[11-19-45]

EXECUTIVE ORDER 01.01.2011.15

Emergency Hurricane Efforts — Vehicle Size and Weight Limits

WHEREAS, A state of emergency has been declared due to the impending arrival of Hurricane Irene in Maryland;

WHEREAS, The delivery of supplies and equipment to areas that may be stricken by this storm is vital to the preservation of life and property;

WHEREAS, The facilitated movement of these supplies and equipment is in the best interest of the citizens of Maryland;

WHEREAS, Having been advised and informed by the Maryland Emergency Management Agency that there is the anticipation of severe weather, possible flooding and subsequent power outages, that an emergency exists in the State of Maryland and that resources may be requested;

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, HEREBY ORDER THE FOLLOWING RELIEF FOR WEIGHT LIMITATIONS FOR VEHICLES TRANSPORTING EQUIPMENT OR SUPPLIES DIRECTLY RELATED TO HURRICANE EMERGENCY RELIEF EFFORTS.

1. Vehicles Transporting equipment or supplies directly related to hurricane emergency relief are allowed a 15% tolerance above any weight limited imposed by statute. Said tolerance shall be the only tolerance applicable to the vehicle. Vehicles exceeding this tolerance and carrying a non-divisible load shall obtain a hauling permit as required. No vehicle shall exceed any tire manufacturer's maximum load capacity rating.

2. The Administrator, Maryland State Highway Administration, or the Administrator's designee may temporarily waive or modify hauling permit restrictions and conditions deemed safe and appropriate to facilitate relief efforts.

3. Carriers and drivers operating under the provisions of this declaration must adhere to all roadway restrictions of the Maryland State Highway Administration, Maryland Transportation Authority and local jurisdictions regarding roadway and bridge size and weight limitations.

4. Pursuant to the Code of Federal Regulations, 49 CFR Part 390.23, carriers and drivers of commercial motor vehicles transporting commodities related to storm relief efforts (e.g. heating oil, propane, gasoline, etc) and drivers of utility vehicles shall be relieved from the Hours of Service (HOS) requirements of 49 CFR part 395, as adopted under Section 25-111, of the Maryland Transportation Article. This waiver does not relieve any carrier or operator from the requirements of 49 CFR part 392.3, relating to operating a commercial motor vehicle while fatigued.

5. Nothing in this declaration relieves the carrier or driver of responsibility for the safe operation of the vehicle.

6. The provisions of this Order are not applicable to any part of the Interstate Highway System. Such relief is strictly under the purview of and must be independently declared by the appropriate federal agency. Any declaration so made and receiving concurrence by the Maryland Secretary of Transportation shall become a part of this Order.

1128

7. This Order shall remain in effect until modified or rescinded by the Governor.

Given Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 26th Day of August, 2011.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN MCDONOUGH
Secretary of State

[11-19-46]

EXECUTIVE ORDER 01.01.2011.16

Evacuation of McCready Memorial Hospital and Alice B. Tawes Nursing Home

WHEREAS, Hurricane Irene is expected to make landfall in Maryland on August 27 or August 28, 2011;

WHEREAS, McCready Memorial Hospital and Alice B. Tawes Nursing Home, both at 201 Hall Highway is Crisfield, Maryland, are located in the path that Hurricane Irene is expected to travel and could sustain serious damage in the hurricane;

WHEREAS, The Maryland Institute for Emergency Medical Services Systems ("MIEMSS") has determined that the potential for damage to McCready Memorial Hospital and Alice B. Tawes Nursing Home puts at serious risk the health and safety of patients and residents in those facilities;

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, PURSUANT TO § 14-107(D)(II) OF THE PUBLIC SAFETY ARTICLE OF THE MARYLAND CODE, FINDING IT NECESSARY TO PROTECT PUBLIC HEALTH, WELFARE AND SAFETY, HEREBY ORDER THAT MCREADY MEMORIAL HOSPITAL AND ALICE B. TAWES NURSING NOME, WORKING IN COORDINATION WITH, AND AT THE DIRECTION OF, MIEMSS AND THE SECRETARY OF HEALTH AND MENTAL HYGIENE, SHALL ON THIS DATE ENSURE THE SAFE EVACUATION OF ALL RESIDENTS AND PATIENTS FROM THEIR FACILITIES IN CRISFIELD, MARYLAND. THIS ORDER DOES NOT AFFECT THE ABILITY OF THE HOSPITAL TO OPERATE AN EMERGENCY DEPARTMENT.

Given Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 26th day of August, 2011.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[11-19-47]

Open Meetings Compliance Board

OPINIONS

June 27, 2011

Complainant:

Mr. Craig O'Donnell

Respondent:

Carroll County Commissioners

We have considered the complaint of Mr. Craig O'Donnell ("Complainant") that the County Commissioners of Carroll County ("Commissioners") violated the Open Meetings Act (the "Act") with respect to fourteen closed meetings in January and February 2011 and with respect to various general practices relating to meetings.

We shall recite the facts and state our conclusions as we go along.

I

Discussion

A. Allegations that the Commissioners should post their minutes on their website.

The Act requires only that a public body make its minutes "open to public inspection during ordinary business hours." §10-509(d) of the State Government Article ("SG"). Complainant does not allege that he was denied the right to inspect minutes, and we therefore find no violation of the Act in this regard.

B. Use of chief of staff's signature on closing statements.

Complainant alleges that the Commissioners' chief of staff signs closing statements for the presiding officer. The Commissioners state that they have granted their chief of staff authority to execute documents on their behalf, and they describe this practice as "perfectly legal." They further explain that all of the Commissioners are newly elected and that their Clerk is newly appointed.

The Act assigns to the public body's presiding officer, and to no one else, the duty to "conduct a recorded vote on the closing of the session" and "make a written statement of the reason for closing the meeting, including a citation of the authority [under SG§10-508], and a listing of the topics to be discussed." SG §10-508(d)(2). While the Act does not require the presiding officer to sign the closing statement, that officer's signature serves to prove his or her adoption of a statement prepared by staff and thus would demonstrate compliance with SG §10-508(d)(2).

Here, whatever the authority of the chief of staff to sign documents for the presiding officer, his signature does not demonstrate that the presiding officer complied with SG §10-508(d)(2). In fact, we cannot ascertain from the closing statements provided to us whether the presiding officer played any role in preparing them. It is important for public bodies to view the closing statement as an accountability tool, 4 *OMCB Opinions* 188, 196 (2005), not merely a technicality. Under §10-508 (b), a public body meeting in a session closed under a §10-508(a) exception must not discuss matters exceeding that exception and the topics disclosed on the closing statement. The Act's requirement that the presiding officer complete the closing statement before the public body meets in closed session enables that officer to limit the members' discussion to those topics and the scope of that exception. A presiding officer who has not prepared, or has not adopted a pre-prepared, closing statement, may have difficulty fulfilling that function, especially if he or she has not brought the closing statement to the closed session for reference.

We encourage this newly-elected body to view their votes to close a session on stated grounds as a promise to the public to discuss only the stated topics, and the closing statement as an aid to fulfilling that

promise. Neither the presiding officer's duty to make the closing statement nor the members' duty to confine their closed-session discussions to the listed topics may be delegated to staff. The presiding officer's signature on the closing statement, while not expressly required by the Act, publicly establishes both that officer's undertaking as to the permissible parameters of the discussion and the public body's compliance with the written statement requirement.

C. Allegations that the closing statements do not provide the information required by the Act.

Complainant alleges that the Commissioners' closing statements do not contain the information required by SG §10-508(d). The Commissioners state that they will provide more information in the future. We shall use the fourteen closing statements in question as a means of providing prospective advice to this recently-elected body.

The Commissioners' closing statements were prepared on the form closing statement provided as Appendix C to the Attorney General's *Open Meetings Act Manual*. That form corresponds to the SG §10-508(d) requirement that the closing statement include three pieces of information: (1) a citation to the SG §10-508(a) exception relied on for closing the meeting; (2) the reason for closing the meeting; and (3) the topics to be discussed. Under "Statutory Authority," the form provides a checklist of the fourteen exceptions. It contains a heading for "Topics to be discussed" and a heading for "Reasons for closing," both with blanks to be filled in by the presiding officer.

Of the fourteen closing statements at issue here, five contain no citation to an exception. All five list "Administrative" as the reason for closing the session. The closing procedures set forth in §10-508(d) do not apply to a public body's exercise of an administrative function. The only provision of the Act that applies to the exercise of that function is §10-503(c), which provides:

If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body's next meeting shall include:

(1) a statement of the date, time, place, and persons present at the administrative function meeting; and

(2) a phrase or subject identifying the subject matter discussed at the administrative function meeting.

We therefore find that the lack of information on these five closing statements themselves does not violate SG §10-508. Whether the subjects discussed were truly administrative poses a different question, which we shall address in Section I.D of this opinion.

Four closing statements cite the exception provided by SG §10-508(a)(1) for the discussion of personnel matters. Three state "Personnel" under the "Reason for closing" heading and contain no entry under the "Topics to be discussed" heading; the fourth contains no entry under either heading. As the Commissioners now recognize, these closing statements do not comply with §10-508(d).

At a minimum, a closing statement claiming the personnel matters exception should provide enough information to inform the public that the discussion does indeed fall within the exception. The topic to be discussed or reason for closing should thus show that the discussion will involve the personal attributes or performance of specific individuals and will not instead involve broader policy, which would be implicated when anyone in the position would be affected by the action being considered and which would therefore not fall within the exception. 3 *OMCB Opinions* 335, 337 (2003). Further, a public body should disclose on the closing statement as much information as it can without revealing the information that the

Act permits the public body to keep confidential. See 1 *OMCB Opinions* 16, 17 (1992) (stating that the Act does not require the public body to disclose information that would compromise the confidentiality of a discussion properly falling within an exception). We encourage the Commissioners to view the closing statement as a mechanism which, when used properly, can serve to protect them against unwarranted suspicions that they are privately conducting business which the law requires them to conduct publicly.

Two closing statements claim the exception provided by SG §10-508(a)(4) for the consideration of “a preliminary matter that concerns the proposal for a business ... to locate, expand, or remain in the State.” Both state “Economic development” as the reason for closing and provide no other information. We have not stated a generally-applicable rule for how much information must be provided by a public body claiming this exception, because the information that the public body can disclose without compromising the confidentiality of the discussion will vary with the circumstances. For instance, a public body will likely be able to disclose more information about a discussion involving a proposal by a business which has publicized its intention to negotiate incentives with that public body than about a business which has insisted on strict confidentiality even as to its identity. We can say, however, that “economic development” is insufficient: that phrase did not demonstrate that the Commissioners closed the meeting to discuss a particular business’s or organization’s proposal to locate, expand, or remain in the County.

Two closing statements claim the exception provided by SG §10-508(a)(10) for the discussion “of public security, if the public body determines that public discussion would constitute a risk to the public or public security....” The reason given for the closing on each is simply “public safety.” Again, the closing statement must reflect the requirements of the claimed exception. This exception required the Commissioners to find preliminarily that public discussion of the topic would constitute a risk to the public or public security.

One closing statement claims the exception provided by SG §10-508(a)(3) for the consideration of “the acquisition of property for a public purpose....” It gives “land acquisition” as the reason for closing and states no topic to be discussed. The repetition of the language of the statutory exception, without more, does not satisfy the Act. 1 *OMCB Opinions* 191, 193 (1996). Again, the amount of information that can be disclosed will vary with the situation. *Id.* The presiding officer should exercise his or her discretion as to how much information can be divulged without prejudicing the public body’s ability to negotiate the terms of the specific acquisition.

We commend the Commissioners for undertaking to provide sufficient detail on future closing statements.

D. Allegations that the closed session discussions either did not involve the exercise of an administrative function or did not fall within the scope of the exception cited for the closing.

Five meetings were closed to discuss matters the Commissioners termed “administrative”; nine were closed under various exceptions under §10-508.

The five administrative sessions. The five sessions held to discuss “administrative” matters were described in closing statements and minutes of the open meetings as (1) a session on “record retention and data protection,” involving a discussion of the “county’s computer system’s security measures and firewalls”; (2) a session at which the Commissioners “[were] presented with the Ethics Commission yearly report, approved Memorial Day flags, a request for cell towers setbacks to be developed and an update on the boilers in the County Office building”; (3) a session at which the Commissioners “were presented with Letters of Congratulations and Boards and Commissions appointment/reappointment letters for

Board signature”; (4) a session at which the chief of staff “shared...the Monocacy Scenic River Advisory Board Report [...discussed the Maryland Association of Counties (MACo) “Buddy System [...]” ... shared a response from the Board of Education regarding the Free and Reduced Meal Program [...and noted the March 8th budget session date”; and (5) a session at which the chief of staff “met with the Board to discuss organizational processes to facilitate the goals of the ... Commissioners] and where “[v]arious forms of requests for meetings and actions by the Board were discussed.”

For the principles governing our determination of which of these subjects involved the exercise of an administrative function as defined by SG §§ 10-502 (b) and hence excluded from the open-meeting requirement of the Act under §10-503, we refer all parties to our opinion in 3 *OMCB Opinions* 105 (2001).¹ There, as here, a complainant alleged that the Carroll County Commissioners were holding closed meetings on topics required by the Act to be discussed publicly, and the Commissioners, as here, responded that Carroll County lacks an executive and that they were performing their executive, now termed “administrative,” function in those meetings. *Id.* There, we concluded:

Although the County Commissioners, in their role as the executive for Carroll County government, have some latitude to hold closed meetings that are simply not covered by the Open Meetings Act, in certain respects the Commissioners have overstepped the bounds of the “executive function” exclusion from the Act.

We then “attempt[ed] to provide general guidance about compliance with the Act, under the difficult circumstances facing a public body with dual government functions.” *Id.*

Here, we conclude that the Commissioners were acting in their executive capacity, and thus performing their administrative function, in certain respects, but that they likely overstepped the bounds of the administrative function exclusion in others.

The Commissioners exercised executive (or administrative) functions insofar as they met merely to sign letters implementing decisions made earlier, to discuss County equipment, including computer systems and the boiler, to discuss a program included in the Commissioners’ membership in the Maryland Association of Counties, and to discuss the use of forms, if those forms merely implemented existing policies or rules. The imparting of information about the date of the budget session likely also involved the “executive function phase of budget preparation.” *Id.* at 109. These matters involved the Commissioners’ administration of County government. See 1 *OMCB Opinions* 23, 27 (1993) (finding, in a county without an executive, that the commissioners’ receipt of a briefing about cuts in State aid involved the administration of the county government and thus fell within the exclusion); see also 1 *OMCB Opinions* 233, 236 (1997) (finding that commissioners’ discussions about procedures involved the “administ[r]ation of existing law through their internal operating methods”).

The applicability of the administrative exclusion to the other topics is less clear. We have stated that “information-gathering at the earliest stages of policy formation is part of the ‘consideration ... of public business’” under SG §10-502(g). *Id.* We encourage the Commissioners to review the guidance we gave in 3 *OMCB Opinions*, *supra*, at 113, where we declined to apply the administrative exclusion to staff briefings, including events at which staff “made sure the Commissioners are aware of the contents of their packets.” *Id.* After reiterating our conclusion in prior cases that “briefings exactly like this are part of the Act’s openness mandate,” we stated that “line-drawing between the mere provision of

¹ That complaint involved 16 meetings.

information and the advancing of a point of view is often difficult at best.” *Id.*

We again decline to declare that the receipt of information from staff is in itself an administrative function. We are also unable to conclude from the information before us that the discussion of these remaining topics fell within the exclusion. With respect to the second session, we do not know whether the Commissioners “were presented with” a copy of the annual Ethics Commission report in furtherance of an administrative responsibility or as an initial step in policy formulation. We do not know whether the Commissioners were presented with every listed item, including “approved Memorial Day flags,” or whether they “approved” the flags and the succeeding items. In any event, one of those items, whether the Commissioners approved it or were simply presented with it, was “a request for cell towers setbacks to be developed.” Under SG §10-503(b)(2), a public body meeting to consider a “zoning matter” is not exercising an administrative function excluded from the Act. The Commissioners’ receipt of this request in a closed session likely violated the Act.

With respect to the fourth session, we do not know whether the briefing by the chief of staff on the Monocacy Scenic River Advisory Board Report, the Board of Education response regarding the Free and Reduced Meal Program, and the use of organizational processes to “facilitate [the Commissioners’] goals” constituted “information-gathering.” If the communications with the Board of Education involved “the particulars of how the school board is implementing a previously adopted budget,” that discussion could constitute an exercise of the administrative function. 1 *OMCB Opinions* 23, 24 (1993).

From the information available to us, we find it likely that mingled into the Commissioners’ administrative functions meetings was the receipt of information on matters required to be discussed in public, especially with regard to the request for setbacks. We encourage the Commissioners to meet publicly in case of doubt on whether a function is administrative.

The four sessions closed under the “personnel matters” exception. As set forth in Section I.3 above, SG §10-508(a)(1) permits a public body to close a meeting in order to discuss personnel matters involving the personal attributes or performance of specific individuals, but not involving matters implicated when anyone in the position would be affected by the action being considered. 3 *OMCB Opinions, supra*, at 337. The closed-session minutes provided to us show that the commissioners properly closed all four sessions in order to discuss the qualifications and appointments of specific individuals for specific positions. In the fourth session, however, the Commissioners also “divided the [Department] Directors’ responsibilities.” If that discussion involved, and was inseparable from, a discussion of the attributes of the new appointees, then it fell within the exception. If, on the other hand, the Commissioners’ division of responsibilities was in the nature of a job classification, applicable to the positions without regard to any individual’s attributes or performance, the Act required that discussion to be held in public.

The two sessions closed under the “business location” exception. Two closing statements claim the exception provided by SG §10-508(a)(4) for the consideration of “a preliminary matter that concerns the proposal for a business ... to locate, expand, or remain in the State.” The closed-session minutes provided to us show that the first involved the retention of an identified business in the County; the second pertained to ongoing discussions with that business. These topics fell within the exception.

The two sessions closed under the “public security” exception. Two closing statements claim the exception provided by SG §10-508(a)(10) for the discussion “of public security, if the public body determines that public discussion would constitute a risk to the public or public security....” At the first, the Commissioners discussed the

relocation of the 911 center, a topic that could include not only the new address of the center, which Complainant maintains is public, but also other logistical matters that would fall within the exception. The Commissioners’ response confirms that the “public safety implications and security of the existing and possible new facilities were discussed.” The discussions thus fell within the exclusion.

The session closed under the “land acquisition” exception. SG §10-508(a)(3) provides an exception for the consideration of “the acquisition of property for a public purpose....” Complainant alleges that the open-session minutes demonstrate the inapplicability of this exception; they refer to an approval to the Agricultural Land Preservation program “to move forward on the second option” and to the Department of Recreation and Parks “to move forward on exploring alternate locations.” Carroll County’s agricultural preservation program acquires easements, and we consider this acquisition of an interest in real property to fall within the exception.

E. Allegations that the summaries of the closed sessions do not provide the information required by the Act.

SG §10-509 (c)(2) requires a public body which has met in a session closed under SG §10-508 to include in the minutes of its next regular session a “statement of the time, place, and purpose of the closed session” and a “listing of the topics of discussion, persons present, and each action taken during the session,” among other things. Complainant alleges that the Commissioners’ summaries do not specify the duration of the sessions and are uninformative.

With respect to duration, we construe the requirement that the public body specify the “time” of the closed session to refer to the time the session was convened; had the Legislature intended “duration,” it could have so specified. We note that the term “time” also appears in §10-506(b), requiring that public notice of a meeting specify the “date, time, and place” of the meeting. We therefore find that the Commissioners’ failure to specify the duration of the closed session did not violate the Act.

With respect to the adequacy of the information in the summaries, we refer to, and need not repeat, our explanation of the controlling principles in 3 *OMCB Opinions* 173, 178-79 (2002), where we also addressed a complaint that the Carroll County Commissioners’ summaries had violated SG §10-509 (c)(2). Boiled down, those principles require “a meaningful description of the topics discussed” and do not require information that would compromise the confidentiality of the session. *Id.* We commend the Commissioners’ undertaking to provide more detail in the future, and we note that the Commissioners have provided additional detail in their response.

F. Allegation that the Commissioners violated the Act by meeting in an administrative session before the publicly-noticed open session on February 1, 2011 and that the motion to close the open meeting was deficient.

The only provision of the Act that applies to the Commissioners’ exercise of their administrative function is §10-503 (c), which only applies when they close a public session for that purpose. The Commissioners thus were not required to complete §10-508 closing statements for the administrative session they held before their public meeting.

Complainant alleges that the videotape of the Commissioners does not reflect an adequate motion to close the open meeting on February 1, 2011. The minutes do reflect a motion to close the meeting, and, as Complainant points out, the minutes, not the videotape, are the official record. The adequacy of the Commissioners’ various closing statements is discussed above.

G. Allegation that the Commissioners did not comply with the Act on January 18, 2011, when the Mt. Airy Town Council “met informally” with them to “work together on developing the Harrison Leishear property.”

Complainant alleges that no minutes were kept; the County has provided them. This allegation appears to be moot.

H. Allegations that the Commissioners’ meetings with their department heads, or “cabinet,” are subject to the Act.

We addressed this precise issue at length in 3 *OMCB Opinions* 105, *supra*, and refer all parties to that Opinion. The short answer is that the Commissioners might be exercising their administrative function when meeting in a quorum to discuss budget preparation matters, but that the development of other policy or legislation must be done in the open unless an exception has been properly invoked. *Id.* at 110-111. While the Commissioners correctly observe that the Act exempts the local equivalents of the Governor’s Cabinet from the definition of “public body,” *see* SG §10-502 (h)(3), that exemption does not extend to the Commissioners themselves when they meet as a quorum with the Department heads to discuss matters required by the Act to be discussed in public.

I. Allegations that the closed session summaries do not reflect the presence of the chief of staff.

The governing principles do not require much discussion. A summary of a closed session must include a list of the “persons present.” SG §10-509 (c)(2). Sometimes, identifying a person by name would compromise the confidentiality of the session, as when the public body is interviewing candidates for a position or speaking with representatives of a business seeking to locate in the jurisdiction. *See, e.g., 5 OMCB Opinions* 86, 92 (2006). In such cases, the public body should identify the persons generically. *Id.* The Act does not permit the public body to omit their presence altogether. *Id.*

Here, the summary of the second closed session on January 20, 2011 reflects the presence of the Commissioners and the fact that they “were presented with” documents to sign. The summary does not refer to the person doing the presenting. When the Commissioners close an open meeting to convene an administrative session, §10-509(c)(2) applies, and the summary should list everyone present. When an administrative session is instead a separate session, the Act does not apply. The fact that the chief of staff signed closing statements does not establish that he attended the subsequent closed sessions, but, if he did, the Act required the Commissioners to list him in the summary.

**II
Conclusion**

We conclude that the Commissioners violated the Open Meetings Act by failing to include meaningful information on their closing statements on the topics to be discussed and the reasons for closing. We further conclude that they likely discussed matters in closed session that exceeded the scope of the administrative exclusion, particularly their receipt of a request for a land-use regulation. We commend their undertaking to provide additional information on future closing statements and summaries of closed sessions and encourage their presiding officer to review and sign closing statements.

OPEN MEETINGS COMPLIANCE BOARD
Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales

[11-19-20]

OPINIONS

June 27, 2011

Complainant:
Mr. Peter J. Heck

Respondent:
Town of Rock Hall

We have considered the complaint of Mr. Peter J. Heck (“Complainant”), a reporter for the Kent County News, that the Town of Rock Hall (“Town”) violated the Open Meetings Act (the “Act”) with respect to meetings held on February 8, 2011, and March 7, 2011, and with respect to its minutes.

For the reasons stated below, we conclude that the Town violated the Act in some of the ways alleged by the Complainant. The facts and the parties’ allegations are set forth in the discussion.

**I
Discussion**

A. The February 8, 2011 meeting

Complainant alleges that the Town moved its regular February 10, 2011, meeting to February 8, 2011 without giving adequate public notice of the change. Complainant states that the Kent County News (“the newspaper”) covers the Town’s regular meeting every month and is the only media organization providing ongoing coverage of the Town Council; that the Town’s website lists the schedule for its regular meetings; that the Town’s longstanding practice has been to notify the newspaper of changes in its meeting dates by telephone or at the preceding meeting; that the Town did not do so in this case; and that a reporter traveled to Rock Hall on February 10, 2011, to attend the regular meeting and found the Town building closed.

The Town states that it posts its meetings on a bulletin board next to the Town office and has done so for 30 years; that it changed the meeting date to avoid a conflict with a mayors’ convention in Annapolis; that it posted the February 8, 2011, meeting “on or about” February 4, 2011; that the use of a bulletin board is an acceptable means of giving notice; and that the Act did not require it to notify the newspaper directly. The Town also states that the reporter who covers its meetings should have known that it always posts its meeting dates on the bulletin board. The reporter in question denies any knowledge of that practice and states that, in any event, the Town should use additional means of giving public notice. We infer from the Town’s silence on the subject of the website that the Town did not also post the change there.

The Act requires public bodies to give “reasonable advance notice” of meetings subject to the Act. Section 10-506(a) of the State Government Article (“SG”). Public bodies have “considerable flexibility in terms of the method of giving notice.” 4 *OMCB Opinions* 88, 98 (2004). That flexibility, however, is conditional:

One option under the statute is to post notice at a convenient public location at or near the location of the meeting “if the public body previously has given notice that this method will be used.” §10-506(c)(3) [of the State Government Article]. Posting a notice is easy and convenient for a public body. But it is only a lawful means of notice if interested persons have previously been told where to look.

Id. Section 10-506(c), subparts (3) and (4), additionally permit a public body to give notice on an Internet website ordinarily used by the public body to provide information to the public and “by any other reasonable method” – but, in both cases, only if the public body has previously given the public notice of the method to be used.

Accordingly, in determining the sufficiency of public notice under the Act, we have looked to whether the method was “consistent with any previous announcement about use of [that method].” 4 *OMCB Opinions* at 98.

When a public body has had to call a meeting on short notice because of unexpected developments, it must “provide the best public notice feasible under the circumstances.” 1 *OMCB Opinions* 38, 39 (1993). We have agreed with the guidance of the Attorney General that “[i]f events require the prompt convening of a previously unscheduled meeting, the public body would be well-advised to provide telephone notice to reporters who are reasonably thought to be interested and a written notice should be placed in the customary public place as quickly as possible.” *Id.*, citing Office of the Attorney General, *Open Meetings Act Manual* 15 (1992).

Here, the problem is not that the Town posted the change on its bulletin board, but that the Town, without notice and without any apparent emergency, stopped using its three other methods when it decided to convene its monthly meeting two days early. Even assuming that the Town did not know about the scheduling conflict in time to announce the change at its previous regular meeting (a fact we do not know), it was feasible for the Town to contact the newspaper which regularly covers its meetings. It may also have been feasible for the Town to post the change on its website. We therefore conclude that the Town did not provide the best public notice feasible under the circumstances and thereby violated the Act.²

We do not mean that a public body may not use a bulletin board,³ or that a public body must always contact the media, or that a public body must undertake extreme and onerous measures to track down every interested member of the public. Rather, we simply apply our earlier-stated rule that a public body which, on short notice, advances the date of a previously-scheduled and announced meeting must provide “the best public notice feasible under the circumstances.” See 1 *OMCB Opinions*, *supra*, at 39. A sudden schedule change will often necessitate the use of more methods than the minimum permissible for regularly-scheduled meetings. Particularly, a public body which notifies the public of regular meeting dates on a website should not assume that people will continuously go to a building to check a bulletin board for changes.

We encourage the Town to continue to use a combination of methods of providing notice to the public and to look upon the public notice requirement not as a mere technicality, but, consistently with the Legislature’s intent, as a means of “increas[ing] the faith of the public in government.” SG §10-501(b)(2). Put another way, a public body’s decision to re-schedule a meeting, when combined with minimal efforts to publicize the change, is unlikely to create the impression that the public body wishes to operate in the open.

We further encourage the Town to specify on its posted notices the date of the posting so that it may establish that date with more particularity than provided here by its reference to a posting “on or about” the Friday before its Tuesday meeting.

B. The March 7, 2011 meeting

Complainant alleges that the Town Council held a meeting on March 7, 2011, without providing adequate notice. The Town responds that the meeting “was a special public meeting convened ... for the purposes of discussing bids for exterminators to remedy a termite infestation in the Town office building and discussing a

² We have given the Town the benefit of the doubt by treating this meeting as one necessitated by unexpected developments. The Town moved this regular meeting up by two days because of a convention in Annapolis, and it describes its regular meetings as opportunities to “report on matters of public concern to the Town’s citizens.” These facts do not suggest urgency.

³ However, the public notice requirement is not satisfied by a notice on a bulletin board which is inaccessible to people who cannot inspect it during business hours. 1 *OMCB Opinions* 186, 189 (1996).

matter relative to a Planning and Zoning meeting scheduled for March 9.” The Town states that it posted a notice of the meeting on the bulletin board on March 3, 2011. As with the February 8, 2011 meeting, we do not know when the Council decided to hold this meeting, but, for the reasons stated above with respect to that meeting, we find that the Council did not provide the best notice feasible under the circumstances.

C. Minutes – timetable for approval

Complainant alleges that the Town Council conducts two types of meetings each month and keeps minutes for each event, but then only approves the minutes of each meeting at the next meeting of that type. Specifically, the regular meeting minutes are approved only at the next regular meeting and the workshop meeting minutes are approved at the next workshop meeting. Complainant asserts that the Council should approve minutes at its next meeting, whether regular or workshop.

The Town responds that the two types of meetings serve different purposes: regular Council meetings fulfill the function of informing the public on matters of public concern, while workshop meetings provide the Mayor and Council “an opportunity to deliberate on matters of public concern.” The Town further states that the publishing and approval process for each type of meeting is generally complete within 30 days of the event. The Town has not submitted information on whether it is practicable to provide minutes earlier.

On the date of the meetings in question, the Act provided, “As soon as practicable after a public body meets, it shall have written minutes of its session prepared.”⁴ SG §10-509 (b). This requirement “permits a public body to take a reasonable amount of time to review draft minutes for accuracy and to approve the minutes...” 2 *OMCB Opinions* 87,88 (1999). The Act “does not impose a rigid time limit.” *Id.* We have found routine delays of several months to be unreasonable, *id.* at 89, and we have found a delay of “a mere ten days” not unreasonable. 3 *OMCB Opinions* 85, 90 (2001).

The Town’s website shows that the Mayor and Council hold workshop meetings and meet as the Utilities Commission on the same evening, 10 days before each regular meeting. For example, in April 2011, the Mayor and Council held both their Utilities Commission and workshop meetings on April 4, 2011, and their regular meeting on April 14, 2011. That month, Town staff would have had eight business days, including the day of the regular meeting, in which to prepare the workshop minutes for approval at the regular meeting, and then less than three weeks in which to prepare the regular minutes for approval at the workshop meeting. We do not believe that the Act requires the Town to adhere to such a rigid time limit, and we therefore find that the Town has not violated SG §10-509 (b).

D. Minutes - posting on website

Complainant also complains that the workshop minutes are posted on the Town’s website only as a section of, and under the link for, the “Utility Commission” minutes. He states that posting the workshop minutes under that link is misleading and that the workshop and regular minutes should be posted in one place.

The Act does not require a public body to post its minutes on a website, and we therefore do not find any violation of the Act in this regard. While the navigability of a website may indeed relate to open government, and, as noted above, may particularly bear on public notice issues, we have no authority to address it in this context. Accordingly, we encourage journalists, who often have exposure to a broad variety of public bodies’ websites, to bring their concerns and suggestions to the public body in question and to the Joint Committee

⁴ As of June 1, 2011, the Act provides for two exceptions to the written minutes requirement; neither is relevant here.

on Transparency and Open Government, created this year by SG §2-10A-14.

E. Minutes – identification of members voting

Complainant alleges that the Town’s minutes do not record the votes of each member. By way of illustration, he quotes minutes reflecting that “four Councilmembers voted Aye,” and “one Councilmember voted Nay” on a vote concerning sprinkler systems in residences. The question is whether that information satisfied the Act’s requirement that minutes “reflect ... each vote that was recorded.” SG §10-509(c). We have addressed SG §10-509(c) generally, see 6 *OMCB Opinions* 164, 168 (2009), and we have applied the requirement in SG §10-509(c)(2) that minutes record the vote of each member as to closing a session, see 1 *OMCB Opinions* 201, 204 (1997), but we have not addressed this question.

Few courts have discussed whether holding a “recorded vote” means recording the names and votes of each member of the public body participating in the vote. The historical use of the term suggests that while the members’ votes are taken separately, only the totals of the “ayes” and “nays” need be recorded. See, e.g., *People ex rel. Zeno v. Illinois State Board of Dental Examiners*, 278 Ill. 144, 148 (Ill. 1917) (describing a bill as having been “passed by a constitutional majority of the house, the recorded vote being, yeas 121, nays none”); see also *State ex rel. Reed v. Smith*, 15 Ore. 98, 104-105 (Or. 1887) (reciting, “[t]he president put the question to vote viva voce, and there was a sound of ayes and a sound of noes, but no call was made for a recorded vote by ayes and noes, nor for a division and special count of votes”). The context in which the term is used, however, is important, as illustrated by a California court’s discussion of whether statutes requiring a city legislature to hold a “recorded majority vote” required it to memorialize each participating member’s vote. Noting that the statutes were “silent concerning the degree of specificity with which such a [recorded vote] must be set out in the minutes,” the court explained the usual meaning of the term as follows:

The lay meaning of the verb “record” in the context of voting is essentially to cast a vote in such manner that it is duly counted. (See 13 *Oxford English Dict.* (2d ed. 1989) p. 362 [“to give (a verdict or vote)”].) In the context of parliamentary procedure, however, “recorded vote” appears to be a term of art meaning a *method of voting* that requires each member to distinctly register his or her vote, or at least the fact that he or she voted. It is contrasted to, among other methods, a *viva voce* (live voice) vote, in which the votes of individual members often cannot be distinguished. [citation omitted].

City of King City v. Community Bank of Central California, 131 Cal. App. 4th 913, 940-941, n. 18, 32 Cal. Rptr. 3d 384 (Cal. App. 6th Dist. 2005). The court then looked to legislative purpose:

The requirement of a “recorded vote” ... is no doubt intended to ensure some measure of accountability on the part of local legislators who approve (or refuse to approve) expenditures of public funds. (See generally *Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 520 [64 Cal. Rptr. 2d 143], quoting *Dry Creek Valley Assn., Inc. v. Board of Supervisors* (1977) 67 Cal. App. 3d 839, 844 [135 Cal. Rptr. 726] [“There is a strong public policy ‘that members of public legislative bodies take a position, and vote, on issues brought before them’ [.]”].) Arguably this objective is adequately served if members vote distinguishably at an

open meeting, where interested parties may take note of their individual positions. However, it might be supposed that the objective of accountability is better served by requiring not only that votes be taken in a manner disclosing which members voted, but that the vote of each member be set down in a record accessible to the public. (See generally 5 McQuillen, *Law of Municipal Corporations* (3d ed. 2004) *Municipal Records*, §14:5, pp. 15–16.)

Id., 131 Cal. App. 4th at 941 (brackets in the original). The court held that it could not resolve the issue on the record before it. *Id.*

We agree with the *King City* court’s statement that “the objective of accountability is better served by requiring not only that votes be taken in a manner disclosing which members voted, but that the vote of each member be set down in a record accessible to the public.” And, the objective of accountability, merely implicit in the California statutes, is expressly stated in Maryland’s Open Meetings Act. The legislative policy of the Act states the following principle:

The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.

SG §10-501(b). The Act additionally makes clear that its goal of “accountability” applies not just to a public body, but to individual public officers: “It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances ... citizens be allowed to observe ... the performance of public officials.” SG §10-501(a). We would therefore tend to interpret SG §10-509 to require a public body which has conducted a recorded vote to specify the individual votes in its written minutes.

Our interpretation of SG §10-509 (c) is buttressed by the 2011 amendment to the Act, which took effect on June 1, 2011, after this complaint was filed. Under the new SG §10-509(b)(2)(ii), a public body voting on legislation may now substitute for its written minutes of the vote a prompt listing on the internet of “the individual votes taken by each member of the public body who participates in the voting...” The information included in such an internet posting is now “deemed to be the minutes of the open session.” SG §10-509(b)(3). No language in the statute suggests that the General Assembly intended to permit a public body to include less information in written minutes than in minutes issued in the form of an internet posting. Thus, for votes on legislation, the General Assembly expects the public to be able to discern from the minutes, whether written or in the form of the substitute internet posting, how each member voted.

In sum, consistently with the 2011 amendment to the Act, we conclude that when a public body is required by other law or its own procedures to conduct a recorded vote on a matter, the minutes should inform the public how each member voted. Given the prior ambiguity of the Act’s reference to “each vote that was recorded,” we are not inclined to state that the Town violated the Act before the effective date of the amendment to SG §10-509.

II Conclusion

We conclude that the Town violated the Act by not giving adequate public notice of two meetings and that while perhaps the Town did not violate the Act with respect to the minutes addressed here, the recent amendment to the Act now makes clear that a public

body’s minutes should reflect the individual votes of each member participating in a recorded vote.

OPEN MEETINGS COMPLIANCE BOARD
 Elizabeth L. Nilson, Esquire
 Courtney J. McKeldin
 Julio A. Morales

[11-19-21]

OPINIONS

July 13, 2011

Complainants:

Nicholas Maravell
 Victoria Cowles

Respondent:

Montgomery County Board of Education

We have considered the allegations of Nicholas Maravell and Victoria Cowles (“Complainants”) that the Montgomery County Board of Education (“County Board”) violated the Open Meetings Act (“the Act”) by discussing in a closed meeting or meetings a proposal to lease property to Montgomery County. We conclude that the County Board violated the Act in a number of ways.

**I
 The Parties’ Contentions**

Complainants allege that the Montgomery County Board of Education improperly closed a meeting to discuss the lease of the Brickyard Middle School (“Brickyard”) site and also did not comply with the Act with respect to its March 28, 2011 Report of Closed Session.

The County Board responds that the discussion of the lease of the Brickyard site to Montgomery County was an administrative function and therefore not subject to the requirements of the Open Meetings Act. Alternatively, the County Board asserts that the discussion of the Brickyard lease in the closed session fits into the exception provided in §10-508(a)(7)⁵ which states that “a public body may meet in closed session or adjourn an open session to a closed session only to ... consult with counsel to obtain legal advice.”⁶

**II
 Facts**

For the facts, we look to the written resolutions adopted by the County Board as its basis for closing the March 8 meetings, its March 28 report of those closed meetings, the sworn affidavit of the County Board’s legal counsel, and the minutes of the closed meetings, which we shall keep confidential.

Listed on the agenda for the March 8, 2011 meeting of the County Board was Item 4.2.5 “Lease Agreement – Brickyard Road Site,”

⁵ Unless specified otherwise, all statutory references are to the State Government Article, Annotated Code of Maryland.

⁶ In 7 *OMCB Opinions* 208 (2011), we addressed a complaint that also arose from the County Board’s consideration of the lease of the Brickyard site. That complaint alleged that the County Board violated the Act by improperly using exception §10-508(a)(3), the acquisition of real property, when closing a session to discuss the site. The County Board responded that §10-508(a)(3) was applicable and alternatively that the discussion was an administrative function not subject to the Act. We found that the County Board violated the Act because its discussion of the lease constituted neither the “acquisition” of real property nor the exercise of an administrative function.

which was a proposed action for the approval of a lease of the Brickyard property to Montgomery County. Also on the agenda for that meeting was Item 1.1 “Resolution for Closed Session.” That resolution, by which the County Board resolved to “discuss matters relating to the use of real property for a public purpose and matters directly related thereto, as permitted under Section 10-508(a)(3) of the *State Government Article*,” was adopted unanimously.⁷ Two closed meetings were held on March 8. The first closed meeting was held from 9:05 to 9:55 a.m. and the second from 1:50 to 2:50 p.m.

The previous day, on March 7, legal counsel to the County Board was contacted by staff and asked to attend the closed meeting scheduled for the afternoon of March 8. The March 28 “Report of Closed Sessions” evidences that counsel was in attendance at the closed afternoon session. In his affidavit, counsel states:

The discussion [in the afternoon meeting] pertained to legal issues relating to the expiring lease and the proposed lease with Montgomery County. I gave advice relating to these matters. The only discussion related to legal questions. There was no planning by the Board or discussion of “how to address the community’s concerns,” beyond those that were legal in nature.

The March 28 “Report of Closed Sessions” summarizes the Board’s discussions at the March 8 closed meetings. The summary notes that the Board “discussed matters relating to the use of real property for a public purpose and matters directly related thereto, as permitted under Section 10-508(a)(3) of the *State Government Article*.” The closed session minutes reiterate this language, reflect the presence of counsel, and refer to the discussion as “an administrative function.”

**III
 Discussion**

We begin with the County Board’s contention that discussion of the lease was an administrative function. The Act does not apply to “a public body when it is carrying out an administrative function.” State Government Article (“SG”) §10-503 (a)(1). The Act defines “administrative function” as “the administration of a law of the State, a law of a political subdivision of the State, or a rule, regulation, or bylaw of a public body.” SG §10-502 (b)(1). The County Board views its discussion of the disposition of the Brickyard lease as the administration of §4-114 of the Education Article (“ED”), which states that “all property granted, conveyed, devised, or bequeathed for the use of a particular public school or school system...shall be held in trust for the benefit of the school or school system by the appropriate county board...” This argument fails to consider the rest of the definition of “administrative function.” The Act specifies five exclusive functions which are exceptions to an administrative function. One of those excepted functions is the “quasi-legislative function,” See SG §10-502(b)(2), which the Act defines as “the process or act of...approving, disapproving, or amending a contract.” SG §10-502 (j). The County Board’s discussions about leasing the Brickyard property were part of the process of approving the lease contract and were, therefore, quasi-legislative and not administrative functions.

The County Board now states that its citations to §10-508(a)(3) in the March 8 Resolution for Closed Sessions and the March 28 Report of Closed Sessions were incorrect and that the meetings were, in fact, lawfully closed according to §10-508(a)(7), the exception for consultation with counsel to obtain legal advice. We have explained that “the statutory reference must reflect the specific provision(s)

⁷ As we stated in 7 *OMCB Opinions* 208 (2011), the exception is limited to matters relating to the *acquisition* of real property, and the County Board’s substitution of the word “use” is incorrect.

under §10-508(a) in order that the public can evaluate the stated reason against the applicable statutory provision.” 7 *OMCB Opinions* 36, 40 (2010). A public body “may not advance, after the fact, an exception that was not properly presented and voted on at the time of a closing of a session.” 1 *OMBC Opinions* 71, 78 (1994). The County Board thus violated the Act by not providing an accurate citation to the authority in its Resolution for Closed Sessions and Report of Closed Sessions.

Had the County Board claimed the legal counsel exception, the discussion may have fallen within it. In this regard, we rely on counsel’s affidavit, not the minutes of the closed session. Those minutes are worded so generally as to convey no meaningful information about the scope of the discussion. As for any meeting governed by the Act, minutes for a closed meeting must be kept. 7 *OMCB Opinions* 5, 6 (2010). They also must convey meaningful information. See SG §10-509(c) (requiring, at a minimum, that minutes reflect each item that the public body considered, the action taken on each item, and each recorded vote); see also 6 *OMCB Opinions* 164, 168-9 (2009) (stating “that each item considered is to be described in sufficient detail so that a member of the public... can gain an appreciation of the issue”).

Like the closed-session minutes, the County Board’s closing statement and summary of the closed meeting included only boilerplate language. We have held that, while a public body need not disclose a level of detail about a topic to be discussed in closed session that would undermine the confidentiality permitted by the Act, “saying nothing beyond the statutory language deprives the public of information to which it is entitled.” 5 *OMCB Opinions* 160, 163 (2007) (quoting 4 *OMCB Opinions* 114, 118 (2005)). Accordingly, we also find that the County Board violated the Act by failing to provide adequate information in its closed-session minutes, closing statement, and closed-session summary.

IV Conclusion

The County Board’s citation to SG §10-508(a)(3) was incorrect, and the County Board’s reference to an exception for matters pertaining to the “use” of real property was inaccurate. We conclude that the County Board violated the Open Meetings Act when it convened a closed session on the basis of a closing resolution that did not meet the requirements of SG §10-508(d)(2), when it discussed matters exceeding the scope of the exception it claimed, when it did not prepare meaningful minutes of its closed session, and when it did not include meaningful information about the session in the minutes of its subsequent open meeting. See 7 *OMCB Opinions* 208 (2011) (addressing the County Board’s version of the exception). The administrative exclusion did not apply.

OPEN MEETINGS COMPLIANCE BOARD
Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales, Esquire

*Paul J. Norton, intern in the office of the Attorney General, contributed significantly to the drafting of this opinion.

[11-19-22]

OPINIONS

July 13, 2011

Complainant:

Michael S. Warshaw, Esq.

Respondent:

Maryland Commission on Kidney Disease

We have considered the allegations of Michael S. Warshaw, Esq. (“Complainant”) that the Commission on Kidney Disease (“Commission”) violated the Open Meetings Act (“the Act”) with respect to its closed meetings and that the minutes of those closed sessions should be “made available to the public.”

For the reasons stated below, we conclude that the Commission violated the Act by discussing in closed sessions matters not within the statute the Commission cited as authority before holding those closed sessions, or, put another way, by citing as authority for the closed sessions a statute having no bearing on the discussions. We further find that the Commission did not comply with the Act’s requirements for closing a meeting.⁸

I Background

The Kidney Disease Program (“Program”), a program in the Department of Health and Mental Hygiene (“DHMH”), was established by statute “for the purpose of providing kidney disease treatment for qualified individuals who elect to enroll in the Program and agree to pay [certain] fees....” Health-General Article (“HG”) § 13-301. The Commission, also established by statute, HG § 13-304, is a body composed of twelve members appointed by the Governor. HG § 13-305 –306. The parties do not dispute the Commission’s status as a public body subject to the Act.

The Commission’s many statutory functions include setting generally-applicable standards pertaining to the patients and the dialysis and transplant centers (“centers”) participating in the Program. The Commission “adopt[s] physical and medical standards for the operation of dialysis and transplant centers,” “adopt[s] reasonable medical standards for acceptance of an individual for treatment,” evaluates the Program annually, and institutes and supervises education programs relating to chronic kidney disease. HG §§ 13-307 –308. The Secretary of DHMH must operate the Program “within the rules, regulations, and standards that the Commission and [DHMH] adopt...” HG § 13-309(1); see also HG § 13-311. The Commission sets the fees the centers pay into the Kidney Disease Fund “as an additional requirement for annual certification.” The Commission administers that fund to cover the direct costs of fulfilling its statutory duties. HG § 13-310.1.

The Commission’s functions also include addressing matters concerning individual centers and patients. First, “[t]he Commission, through the Department, shall certify the ... centers once the standards have been met as set forth in this subtitle.” COMAR 10.30.01.07. A center denied certification appeals to the Commission, not to DHMH. *Id.*; see also COMAR 10.30.01.10. The Commission also surveys the centers and reviews their policies on discharging patients and managing abusive and dangerous patients and methods of implementing the policy. COMAR 10.30.01.05 (D). The Commission investigates and considers “complaints received from

⁸ We do not address the parties’ contentions about the requirements of the Public Information Act, because we are only authorized to consider alleged violations of the Open Meetings Act. § 10-502.4 of the State Government Article (“SG”); see also 5 *OMCB Opinions* 102, 103, n.2 (2007) (explaining Compliance Board’s lack of authority to require disclosure of a file bearing on complaint made to the Board of Examiners of Psychologists).

patients, providers, anonymous persons, and other interested parties including family members.” HG § 13-308.

The Commission states that it meets quarterly, first in a session open to the public. After conducting general business at that session, the Commission conducts a vote to meet in closed session. The Commission states that it “provides a brief written statement, which is included in the minutes of its next public session, captioned ‘Closed Session.’” The Commission further states that it conducts its administrative function in its closed sessions, which it then summarizes in its open minutes. The summaries in the minutes provided to us by Complainant state:

Closed session: Pursuant to Maryland State Government Annotated “10-508,” on a motion made by [the Chairman], the Commission unanimously voted to close its meeting on [date] at [time], for the purpose of complying with the Maryland Medical Practice Act that prevents public disclosures about particular proceedings or matters.

The Commission thus apparently intends that this statement serve both as its closed-session statement and its closed-session summary.

The Commission has provided us with redacted minutes of various closed sessions. Under SG § 10-502.5(c), we maintain the confidentiality of sealed minutes provided to us by a public body. We therefore shall only describe these minutes generally, and as the need arises, in the discussion.

II Discussion

A. Did the Commission’s closed-session discussions fall within the administrative exclusion to the Act?

The Commission states: “[t]he Commission is a medical review committee, as defined by HO [Health Occupations] Article § 1-401, and is exempt from the Act when it recesses to carry-out its administrative function of discussing confidential certification matters at an investigatory stage pending before the Commission.” This assertion implicates two separate grounds for holding a closed meeting under the Act: first, that the public body is performing an administrative function to which the Act does not apply; and, second, that a public body may close a meeting when it has properly claimed an exception under § 10-508, including the exception provided by SG § 10-508(a)(13) to comply with a specific statute. In this section, we discuss only the question of whether the Commission was performing an administrative function in its closed sessions.

The “administrative function” exclusion claimed by the Commission applies when the discussion in question meets three conditions. First, the discussion must not involve any of the activities set forth in SG § 10-503 (b), because the Act applies to those activities no matter what function the public body is performing. 1 *OMCB Opinions* 13, 14 (1992). One such activity is the consideration of “granting a license or permit.” SG § 10-503(b)(1); *see also* 1 *OMCB Opinions* at 14 (stating that, even if a county electrical board’s discussions about a particular person’s registration examination were administrative in nature, SG § 10-503 (b) (1) “nevertheless makes the Act applicable”).

We conclude that the Commission’s “certification” of a center to provide reimbursable services to Program recipients is the “granting [of] a license or permit” to that center to provide those services. To the extent that the Commission, not DHMH, is the entity granting a certification, as suggested by the fact that a center may appeal a denial to the Commission, the Commission’s discussions about

whether to grant a certification to a certain center are not exempt from the Act under the “administrative function” exclusion.⁹

Second, to fall within the administrative exclusion, the discussion must involve the administration of an existing law, or a rule, regulation, or bylaw of a public body. SH § 10-502(b)(1); *see also* 5 *OMCB Opinions* 42, 44 (2006). That condition requires that “there ... be an identifiable prior law to be administered, and [that] the public body holding the meeting must be vested with legal responsibility for its administration.” *Id.*

The third condition clarifies the meaning of “administer” by excluding five activities from the definition of “administrative function.” *See* § 10-502(b)(2). One such non-administrative function is the “advisory” function”; another is the “quasi-legislative” function. *Id.* The “advisory function” means “the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility by ... law” or under such a delegation by public bodies exercising administrative and the non-administrative functions. SG § 10-502(c). The “quasi-legislative function” includes the process of adopting or changing “a rule, regulation, or bylaw that has the force of law.” SG § 10-502(j)(1). In short, discussions about prospective policies and recommendations of future actions on subjects of public concern very seldom, if ever, qualify for the administrative function exclusion. *See, e.g.,* 65 *Opinions of the Attorney General* 396, 407 (1980) (concluding that the Open Meetings Act applied to the Thoroughbred Racing Board’s award of racing dates under the applicable statutes, but not to its discussions on whether to allow racing on Sundays).

Here, the Commission’s minutes suggest that it held closed-session discussions pertaining to its policies on its surveys, standardization in training of center staff, the roles and responsibilities of the centers’ licensed staff and administrators, post-transplant care, Commission responses to media reports, discharge documentation, positions to take on proposed legislation, and home dialysis guidelines. We find that the Commission’s consideration of those matters constituted an exercise of its advisory function of studying matters of public concern and within its statutory purview. To the extent that the Commission was addressing those matters as part of a process of adopting regulations, those discussions also were quasi-legislative in nature. Either way, the Commission’s discussion of these topics did not entail the administration of “existing law” and could not be shielded from the public under the administrative function exclusion.

⁹ The United States District Court for the District of Maryland, interpreting a federal regulation which referred to state “licensure requirements,” stated:

Certification is a condition precedent to reimbursement under the State Kidney Disease Program, but not to lawful operation of a dialysis facility which does not receive such reimbursement from the State. This court concludes that HEW’s position that such certification is not a “licensure requirement” within the meaning of its regulations is neither an unreasonable interpretation of the regulations nor inconsistent with the [controlling] statute....

Mid Atlantic Nephrology Center, Ltd. v. Califano, 433 F. Supp. 23, 34 (D. Md. 1977)(footnotes omitted). Here, however, we interpret the Open Meetings Act, not the federal regulation at issue in *Mid Atlantic Nephrology*, and we do so mindful of the fact that the Act requires a public body to discuss public business in open session “except as otherwise expressly provided...” SG § 10-505. As observed in the Attorney General’s *Open Meetings Act Manual*, p. 2-15 (7th ed., 2010), the Act does not contain an exception for occupational licensing proceedings, but the exceptions set forth in SG 10-508 would enable a public body to shield certain confidential licensing information from the public.

The Commission's discussions about patient complaints, however, did fall within the administrative exclusion, because the Commission was fulfilling its own statutory duty to receive and investigate complaints against dialysis and transplant centers in accordance with pre-existing standards. *See 5 OMCB Opinions* 102, 104 (2007) (finding that the Psychology Board, when addressing a complaint, was applying the existing law about the grounds for discipline and administering its statutory duty to "receive and investigate complaints"); *see also 1 OMCB Opinions, supra*, at 14 (finding that a county board of electrical examiners was fulfilling its administrative function when addressing complaints against electricians).

It may also be useful for us to address a function within the Commission's purview, but not necessarily performed in the closed sessions at issue here. As a general matter, the Commission's discussions on what recommendations to make to DHMH under a delegation by DHMH or by law would fall within the definition of an "advisory function," and thus outside of the definition of an "administrative function." For instance, under COMAR 10.30.01.10, the Commission "may ... recommend to the Secretary to revoke or suspend payments to a dialysis facility or transplant center" and may review the Secretary's "revocation or proposed revocation of certification and make an independent recommendation to the Secretary." Because the power to take those actions is vested in the Secretary, and not in the Commission, the exclusion would not apply. *See 5 OMCB Opinions* 60,66 (2006) (finding that an advisory commission charged with making recommendations was not performing an administrative function because the "legal responsibility" for applying the statute rested with Secretary of Transportation).

Whether the Commission is a "medical review committee" is not determinative of whether it was performing an administrative function in its closed meetings; although the "medical review" statutes pertain to the Commission's status, the Commission is not charged with administering them. That assertion, had it been properly claimed when the meetings were closed, would have gone instead to the exceptions set forth in SG § 10-508, and we discuss it next.

B. Did the exception claimed by the Commission pursuant to SG § 10-508(a)(13) apply to the discussions of the matters governed by the Act?

When the Act applies to a public body's consideration of a particular matter, a public body must discuss that matter publicly unless (a), one of the fourteen exceptions in SG § 10-508 applies, and (b), the public body has properly claimed that exception when voting to close the meeting. SG §§ 10-505, 10-508. Here, the Commission claimed the exception provided by SG § 10-508(a)(13) to "comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter..."¹⁰ The Commission's minutes cite "the Medical Practice Act," Title 14 of the Health Occupations Article ("HO"), as that "specific statutory ... requirement." In its response to Complainant's complaint, however, the Commission relies on a different statute, HO § 1-401, and states that its "references to the Medical Practice Act and its privilege for nondisclosure of records ... should be taken to mean the Medical Review Committee privilege for nondisclosure of confidential medical review committee documents generated by the Commission in the course of performing its investigative administrative functions as a medical review

committee." The Commission thus seems to have changed the basis on which it claims the exception provided by SG § 10-508(a)(13).

Under the Open Meetings Act, a public body meeting in a session closed under a § 10-508(a) exception must not discuss matters exceeding the exception claimed on the closing statement. § 10-508(b). The applicability of any other exception is thus irrelevant. We have explained:

The Act requires a public body to vote on the invocation of specific exceptions and its presiding officer to identify them in writing. These requirements seek to produce a public body's thoughtful consideration whether the reasonably anticipated discussion fits within the cited exceptions. Exceptions are not to be invoked without a bona fide basis.

3 OMCB Opinions 345, 348 (2003). Furthermore, a public body's rote and uninformative claim of an exception deprives the public, whether that public actually attends a meeting or participates by reading the closing documents later, of a meaningful opportunity to hold the members of the public body accountable for the decision to exclude the public. *See 1 OMCB Opinions* 191, 193 (1996) ("Members of a public body are accountable for their decision to hold a closed session, and part of their accountability is to make that decision before the public that is about to be excluded."). For these reasons, we have stated that a public body "may not advance, after the fact, an exception that was not properly presented and voted on at the time of a closing of a session." *1 OMCB Opinions* 73, 78 (1994). In this case, the public body's citation to an inapplicable statute led also to the unfortunate result of putting a member of the public to the trouble of addressing that statute at length.

In short, a public body's statement of its basis for closing a meeting has consequences and is not to be treated as a mere formality. We find that the Commission violated the Act by discussing in closed meetings matters not required to be confidential under the authority its members then announced as the basis for excluding the public.

With respect to the Commission's claim that it could properly have closed the meeting under the statutes governing medical review committees, we encourage the Commission to carefully evaluate, before it cites those statutes on a closing statement and when it is considering whether to unseal minutes of past meetings, whether those very precise statutes provide to the Commission the blanket confidentiality it claims for the many other functions it performs. We note that the Commission claims medical-review committee status under HO 1-401(a)(3) and (b)(1), as a "regulatory board established by State ... law to license, certify, or discipline any provider of health care..."¹¹ Particularly, we encourage the Commission to consider whether the confidentiality attached to medical-review proceedings about specific patients or providers extends to the Commission's discussions about its broadly-applicable policies and standards and its positions on legislation.

C. Did the Commission comply with the Act's procedures for closing a meeting to the public?

The Commission's closing procedures did not comply with the Act: it apparently did not complete closing statements before meeting in closed session, as required by SG § 10-508(d), and its descriptions of the actions taken in closed session do not contain the information required by SG § 10-509(c)(2) and SG § 10-503 (c).

¹⁰ We infer the Commission's reliance on this particular exception from its reference to the Medical Practices Act. As discussed in Part C, the Commission's general citation to § 10-508 does not have the specificity required by § 10-508(d)(2)(ii).

¹¹ Complainant suggests that HO § 1-401 applies only to committees reviewing "individual practitioners." HO § 1-401(a)(3) defines "provider of health care" as "any person who is licensed by law to provide health care to individuals." Under HO § 1-201(h), the term "person" includes entities.

The Commission states that it will “consider adopting a form of statement for closing a meeting similar to that presented in Appendix C of the Attorney General’s [*Open Meetings Act*] Manual.” The form presented in Appendix C corresponds to the SG § 10-508(d) requirement that the closing statement include three pieces of information: (1) a citation to the SG § 10-508(a) exception relied on for closing the meeting; (2) the reason for closing the meeting; and (3) the topics to be discussed. Merely parroting the words of the particular exception on a closing statement does not satisfy § 10-508(d); instead, the presiding officer completing the form must provide meaningful information that apprises the public of the reason for closing the meeting without compromising the confidentiality of the session. 7 *OMCB Opinions* 131, 135 (2011). That same standard applies to the summary of the open session that is to be provided in the minutes of the subsequent open session. *Id.* Although the use of Appendix C for a closing statement is not mandatory, the completion of a statement containing that information is. The Commission should adopt that form or one similar to it, not merely consider such an action. The practices reflected in the minutes provided to us violate the Act.

We recognize that this public body addresses many issues involving the discussion of confidential medical information. Nonetheless, it is subject to the Open Meetings Act. Accordingly, before the Commission meets in closed session on matters not within the administrative function exclusion, its presiding officer must complete or sign a closing statement including the information required by the Act and must hold a public vote to close on the basis of the statutes and matters set forth in that statement. When the Commission closes a public session in order to exercise its administrative function, it must make the disclosures required by SG § 10-503(c); when it closes a meeting under SG § 10-508, it must make the disclosures required by SG § 10-509(c)(2). These disclosures must be meaningful and accurate.

III Conclusion

The Commission, implicitly recognizing that its practices have been deficient, commendably states that it “continues to re-examine its practices and to institute corrective action where necessary.” We encourage this endeavor. Here, an accurate disclosure of the Commission’s basis for closing its meeting and a meaningful written description of the topics to be discussed would have served three purposes: requiring the members to give careful thought to whether the topics to be discussed truly had to be discussed out of the public eye; giving the presiding officer a tangible reminder of the permissible scope of the discussion; and apprising the members of the public, including Complainant, of the basis of the vote to close and of the topics discussed.

OPEN MEETINGS COMPLIANCE BOARD
Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales, Esquire

[11-19-23]

OPINIONS

July 13, 2011

Complainant:
Michele J. Fluss

Respondent:
Coastal and Watershed Resources Advisory Committee

We have considered the complaint of Michele J. Fluss (“Complainant”) that the Coastal and Watershed Resources Advisory Committee (“CWRAC”) violated the Open Meetings Act (“Act”) “by failing to give proper reasonable notice” of its April 22, 2011 meeting.

For the reasons stated below, we find that CWRAC did not violate the Act with respect to its efforts to provide public notice of the April 22, 2011 meeting.

I Facts and contentions

Complainant alleges that CWRAC, an independent advisory committee located in the Maryland Department of Natural Resources (“DNR”), did not give adequate public notice of its April 22, 2011, meeting. Overall, she argues that CWRAC’s methods for giving notice of that meeting were insufficient. Specifically, she argues that CWRAC’s use of an e-mail distribution list was insufficient; that the meeting notice was too hard to find on the DNR website; that the method of posting notice on a website is unreliable and should be supplemented by press releases; that CWRAC deviated from its usual practice of giving notice in a DNR newsletter; and that CWRAC has not implemented the promises it made to us when it responded to the complaint she submitted in 2010.

With respect to CWRAC’s use of e-mail, Complainant states that CWRAC gave notice by e-mail to “a select group of persons ... included on a CWRAC meetings notification list” and that “the majority of individuals named on the list are either a member of a local or state government group or a member of a special interest group.” She states, “Only a few are members of the general public.” CWRAC’s executive secretary, a DNR employee, issued the notice in a form of a brief letter. In it, he informed the recipients of the meeting, attached an agenda and directions to the meeting site, stated that he would send the minutes of the February 25, 2011 meeting shortly, and provided links to certain documents produced by a CWRAC project. Many addresses on the distribution list are either non-governmental or educational. Complainant is on the list and received notice of the meeting. According to Complainant, CWRAC also gave notice by e-mail to the subscribers to an electronic newsletter issued by the DNR’s Chesapeake and Coastal Program (“Coastal Program”), which is one of the entities advised by CWRAC.

With respect to website notice, CWRAC posted a notice of the meeting on DNR’s website. Complainant states that it was difficult to find the link on DNR’s website and that the calendar posted on the website is for 2010. The meeting notice could be located by entering “CWRAC” in the search box and reviewing the results, but it was not posted on CWRAC’s home page. Complainant further asserts that the provision of notice by a website is inherently unreliable and deficient and that CWRAC should issue press releases, as it undertook to do in connection with the complaint we addressed in 2010. See 7 *OMCB Opinions* 18 (2010). CWRAC responds that all of its 2011 meetings dates are now posted on a corrected calendar on the DNR website and that DNR did provide notice to the media. The calendar appears on the Coastal Program’s website, and CWRAC provided DNR’s list of the “press media” to which DNR emails its news briefs. CWRAC states that while DNR typically sends meeting

notices of “calendared meetings” to the press two weeks in advance, the notice of this meeting was sent on April 20 because scheduling issues associated with Good Friday prevented CWRAC from providing notice sooner. April 22 fell on Good Friday, and the meeting was scheduled at a church.

With respect to notice by newsletter, Complainant states that CWRAC customarily gives notice of its meetings in DNR’s monthly electronic newsletter, but did not follow that practice for the April 22 meeting. The Coastal Program did not publish a newsletter in March and issued its April newsletter on April 26.

With respect to Complainant’s prior complaint against CWRAC, she alleged in early 2010 that CWRAC was not providing “reasonable advance public notice” of certain meetings. CWRAC responded that it would “provide notice of CWRAC meetings via news releases sent to representatives of news media throughout the State that regularly report on [DNR’s] activities and [that it would] post notice of the meetings on the calendar on [DNR’s] website.” We gave the following guidance:

Before a public body conducts a meeting that is subject to the Open Meetings Act, “reasonable advance notice” is required. §10-506(a). In terms of the method that notice might be given, the Act allows public bodies such as the CWRAC considerable discretion. As a State entity, notice could be given through the Maryland Register. Notice to representatives of the media who regularly report on activities of the public body or the activities of State government would have satisfied the Act. If the public is aware of the practice, posting notice on a website ordinarily used by the public body to communicate to the public or posting at a convenient public location either at or near the planned session would satisfy the Act. Finally, the Act recognizes that the notice requirement may be satisfied “by any other reasonable method.” §10-506(c). Apparently, any member of the public could have asked the Department of Natural Resources to be added to the list whereby he or she would have received automatic notice by e-mail in advance of CWRAC meetings. Had this practice been accompanied by any other method of giving notice under the Act, it would be a very effective mechanism of communicating with those persons known to have an interest in following CWRAC activities. The deficiency here, however, is that it apparently was the sole practice followed. Anyone who had not known to preregister, or who chose not to preregister, was effectively deprived of any notice in advance of the meetings, resulting in a violation of §10-506(a). As we have previously recognized, when a public body fails to give proper notice in advance of a meeting, the meeting is not in reality an open meeting. 6 *OMCB Opinions* 47, 49 (2008). We acknowledge the Department’s assurances that notice of meetings will be given by additional methods in order to ensure compliance with the Act in the future.

7 *OMCB Opinions, supra*, at 19-20.

II Discussion

The facts we have recited show that CWRAC scheduled the April 22, 2011, meeting on short notice.¹² We have stated:

If a meeting is scheduled on short notice, as sometimes will be required by unexpected developments, the person responsible for the scheduling of the meeting must provide the best public notice feasible under the circumstances.

1 *OMCB Opinions* 38, 39 (1993). That requirement may be fulfilled by delivery of notice to the media which usually cover a public body’s activities. 6 *OMCB Opinions* 32, 33 (2008).

Here, DNR, which apparently coordinates all of the DNR entities’ communications to the press, gave the press notice of the meeting on April 20, 2011. Furthermore, CWRAC’s executive secretary provided notice by e-mail to the people who had shown their interest in CWRAC’s activities by signing up to receive notices and to people who had signed up to receive the Coastal Program newsletter. We find that CWRAC’s use of this combination of methods was sufficient under the Act, comported with the statements CWRAC made when responding to Complainant’s earlier complaint, and complied with the guidance we gave in that matter. Whether it would also have been feasible for CWRAC to modify its page on the DNR website during the week of April 18, 2011, in order to make the notice more prominent is a fact we do not know. We can state, however, that it was not feasible for CWRAC to give notice in the DNR Coastal Program newsletter; the March newsletter was issued before the meeting was scheduled, and the April newsletter was issued after the meeting itself.

It may be useful for us to give some direction on the use of websites to provide public notice. When a public body has a home page, even one maintained by another entity, the public can reasonably expect to find the public body’s meeting notices there, or at least some direction on how to locate those notices. Even now, CWRAC’s events appear on DNR’s searchable events schedule and the calendar on the Chesapeake and Coastal Program webpage, but not on CWRAC’s own website. We commend CWRAC for the thorough content of its notices and encourage it to make that content more accessible by adding instructions or links to the Coastal Program calendar and DNR events schedule.

III Conclusion

We find that while it was difficult to locate the April 22, 2011, meeting notice CWRAC posted on DNR’s website, CWRAC gave the best notice feasible under the circumstances for that particular meeting. We encourage CWRAC to better apprise the public of the fact that it meets periodically by posting on its own home page either

¹² That circumstance does not evidence a violation of the Act, which does not mandate a specific interval between the date of the notice and the date of the meeting. 5 *OMCB Opinions* 83, 84 (2006). “Absent evidence that a public body scheduled a meeting primarily to foil the public’s right to attend and observe,” we usually do not second-guess the public body’s decisions on when to meet. 4 *OMCB Opinions* 51, 56 (2004). We see no such evidence here. First, the information provided to us shows that “[s]cheduling difficulties associated with the Good Friday holiday prevented DNR from posting CWRAC’s April 22, 2011 meeting on the DNR calendar before April 18, 2011.” Second, the executive secretary’s routine provision in the public notices of an agenda and unusually-detailed information on how to get to the meeting place and where to park, together with earlier invitations to members of the public to apply to join the committee, do not suggest a resistance to public participation.

the dates of its meetings or links to the Coastal Program calendar and DNR schedule.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

[11-19-24]

The Judiciary

COURT OF APPEALS OF MARYLAND

SCHEDULE

Thursday, October 6, 2011

Bar Admissions

- Misc. 3 In the Matter of the Application of Richard Jerome Thorne, Jr. for Admission to the Bar of Maryland
- No. 11 Daniel Genies v. State of Maryland
- No. 5 Michelle D'Aoust v. Cindy R. Diamond, Bruce D. Brown, Rosen Hoover, P.A. and Hickory Hills Condominium Association
- No. 21 State of Maryland v. Tavon Armstrong
- No. 13 David Clickner, et ux. v. Magothy River Association, Inc., et al.

Friday, October 7, 2011

- AG 55 Attorney Grievance Commission of Maryland v. Aaron (2010 T.) Gregory Seltzer
- No. 19 Barry K. Downey, et al. v. Nicholas Sharp
- No. 14 State of Maryland v. Leon Thomas Coleman, Jr.
- No. 18 Nicholas A. Piscatelli v. Van Smith, et al.

Tuesday, October 11, 2011:

- AG 21 Attorney Grievance Commission of Maryland v. (2010 T.) Alexander Nnanna Agiliga
- No. 15 Anthony A. Dzikowski v. State of Maryland
- No. 17 Gregory Robinson v. Baltimore Police Department
- No. 20 Elroy Matthews, Jr. v. State of Maryland
- No. 7 Maryland Insurance Commissioner v. Central Acceptance Corporation, et al.

Wednesday, October 12, 2011:

- No. 10 Gary James Smith v. State of Maryland
- No. 16 Deane J. Allen, et al. v. Sharon J. Ritter, Successor Personal Representative of the Estate of Roy Harry Allen
- No. 27 Joseph Mobuary v. State of Maryland
- No. 23 Donald Spangler, et al. v. Peggy McQuitty and Gary McQuitty, as Personal Representatives of the Estate of Dylan McQuitty

On the day of argument, counsel are instructed to register in the Clerk's Office no later than 9:30 a.m. unless otherwise notified.

After October 12, 2011, the Court will recess until November 3, 2011.

BESSIE M. DECKER
Clerk

[11-19-36]

Emergency Action on Regulations

Symbol Key

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

Emergency Regulations

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

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

Notice of Emergency Action

[11-242-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to:

- (1) Regulations **.03**, **.04**, **.06**, and **.16** under **COMAR 08.02.04 Oysters**; and
 (2) Regulation **.02** under **COMAR 08.02.08 Shellfish — General**.

Emergency status began: August 18, 2011.

Emergency status expires: February 14, 2012.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Economic Impact on Small Businesses

The emergency action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Individuals harvesting oysters may have to purchase new containers to comply with the regulations. The magnitude of this impact cannot be determined because the number of containers that need to be purchased is unknown. Many harvesters already have these types of containers. Tag and container manufacturers may benefit from the regulation, but the magnitude is indeterminable.

08.02.04 Oysters

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

.03 Catching Oysters for Commercial Purposes.

A. — D. (text unchanged)

E. *Oysters may only be sold in accordance with COMAR 08.02.08.02.*

.04 Oyster [Containers] Container and Tagging Requirements.

A. *Containers.*

[A.] (1) [Oysters in the shell sold in the State] *Notwithstanding Natural Resources Article, §4-1018(a), Annotated Code of Maryland, oysters harvested from waters of the State except for oysters harvested from an aquaculture lease as described in §A(5) of this*

regulation shall be [measured at the point of initial sale] stored prior to leaving the bar from which they were harvested in [either] a:

[(1)] (a) [A tub specified by Natural Resources Article, §4-1018, Annotated Code of Maryland; or] *Metal oyster tub that does not exceed the following inside dimensions:*

(i) *18 inches top diameter;*

(ii) *16 1/2 inches bottom diameter; and*

(iii) *12 inches height;*

(b) *Rectangular shaped container that does not exceed the following inside dimensions:*

(i) *12 5/8 inches width across the top;*

(ii) *12 inches width across the bottom;*

(iii) *20 inches in length; and*

(iv) *11 3/4 inches height;*

(c) *Round container that does not exceed the following inside dimensions:*

(i) *16 1/2 inches top diameter;*

(ii) *13 1/2 inches bottom diameter; and*

(iii) *14 1/4 inches height; or*

[(2)] (d) [A container or bin] *Container with dimensions approved in writing by the Department[; or], which shall have a volume that is comparable to the containers described in §A(1)(a) — (c) of this regulation, and, upon request, the Department's letter approving the container shall be displayed to any Natural Resources Police officer.*

(2) *A container described in §A(1) of this regulation shall be:*

(a) *Made of a rigid, open mesh;*

(b) *Made of smooth, impervious, corrosion-resistant, and non-toxic materials which will not readily disintegrate or crack;*

(c) *Constructed so that it may be easily cleaned and kept in good repair; and*

(d) *Constructed to allow either one side or one end to be opened to unload or inspect the oysters.*

[(3)] *A basket with a capacity of 1 U.S. standard bushel, provided that the oysters being sold in this basket are not removed from the basket during storage or shipment.]*

[B.] — [C.] (proposed for repeal)

(3) *Oysters stored in accordance with §A(1)(a) and (b) of this regulation may not extend beyond the top of the container.*

(4) *Oysters stored in accordance with §A of this regulation shall remain in the original container until a tag is no longer required on the container in accordance with §B(5) of this regulation.*

(5) *Exceptions.*

(a) *Oysters harvested from a lease in accordance with COMAR 08.02.23:*

(i) *Are exempt from §A(1) — (3) of this regulation; and*

(ii) Shall be placed in any size container prior to leaving the lease from which they were harvested.

(b) Oysters harvested by a skipjack in accordance with Natural Resources Article, §4-1013, Annotated Code of Maryland, are exempt from §A(1) — (3) of this regulation if the oysters on board the vessel have been harvested from only one bar.

B. Tagging.

(1) An individual storing oysters in accordance with §A(1) — (3) of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the bar from which the oysters were harvested.

(2) An individual storing oysters harvested from a leased area in accordance with §A(5) of this regulation shall complete and affix a Department-issued or Department-approved tag to each container of oysters prior to leaving the leased area from which the oysters were harvested.

(3) Except as provided in §B(4) of this regulation, the Department shall issue tags to a licensee authorized to harvest oysters.

(4) An individual harvesting oysters from a lease may use a tag not supplied by the Department if the individual has prior written permission from the Department and each tag contains the following information:

(a) A unique number as directed by the Department;

(b) The statement “State of Maryland Farm Raised Shellfish”;

(c) The harvester’s identification number as assigned by the Department;

(d) The date of harvest;

(e) The lease site;

(f) The type and quantity of shellstock; and

(g) The statement “THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS” in bold capitalized type.

(5) Tags shall:

(a) Be completed legibly in indelible ink; and

(b) Stay affixed to the container until the container is landed and emptied or retagged in accordance with COMAR 10.15.07.01.

(6) In addition to the tagging requirements of this regulation, a person who is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07 shall follow the tagging requirements established by the Department of Health and Mental Hygiene in COMAR 10.15.07.01.

(7) Tags may not be transferred or reused.

.06 Daily Catch Limit.

A. Definition.

(1) In this chapter, the following term has the meaning indicated.

(2) *Term Defined.* “Bushel” means an amount of oysters that would fill a container that meets the requirements of COMAR 08.02.04.04A.

B. Except as provided in Regulation .14 of this chapter or in areas for which a permit has been issued under COMAR 08.02.23.04, the daily catch limits for the taking of oysters from the waters of the State are the following:

[A.] (1) — [C.] (3) (text unchanged)

.16 Recording the Catching and Disposal of Oysters.

A. Shellfish Buy Ticket.

(1) A licensed oyster dealer shall record complete information upon a Shellfish Buy Ticket provided by the Department, for every harvest of oysters that the dealer purchases. The licensed oyster

dealer shall obtain the signature of the harvester on the Shellfish Buy Ticket.

(2) At the time of sale of oysters to a licensed oyster dealer, the harvester shall provide the information necessary to complete the Shellfish Buy Ticket and sign the Shellfish Buy Ticket.

(3) A copy of the Shellfish Buy Ticket shall accompany the conveyance of oysters in bulk from the locations of original purchase to locations of storage, processing, or resale.]

(1) Notwithstanding Natural Resources Article, §4-1007, Annotated Code of Maryland, §A(2) and (3) of this regulation do not apply to the sale or purchase of oysters harvested from a leased area.

(2) When oysters are sold to a buying station:

(a) The seller shall provide the information necessary for the buyer to complete a Department-issued Shellfish Buy Ticket;

(b) The buyer shall complete a Department-issued Shellfish Buy Ticket for every oyster purchase; and

(c) Both the seller and the buyer shall sign the Shellfish Buy Ticket.

(3) When oysters are sold at a location other than a buying station, the seller shall complete and sign a Department-issued Shellfish Buy Ticket.

(4) An individual who harvests oysters from a public oyster bar and places them on a lease shall complete and sign a Department-issued Shellfish Buy Ticket.

[B.] (proposed for repeal)

[C.] B. [Oyster] Shellfish Tax Report.

(1) Except as provided in [§C(2) and (3)] §B(3) of this regulation, [a licensed oyster dealer] when oysters are sold to a buying station, the buyer shall complete each week [an Oyster] a Shellfish Tax Report provided by the Department and by Thursday of each week, send to the Department the Shellfish Buy Ticket, the Oyster [Sales and] Export [Tax] Certificate, and the [Oyster] Shellfish Tax Report for all oysters purchased during the week ending on the previous Saturday.

(2) Except as provided in §B(3) of this regulation, when oysters are sold at a location other than a buying station, the seller shall complete each week a Shellfish Tax Report provided by the Department and by Thursday of each week, send to the Department the Shellfish Buy Ticket, the Oyster Export Certificate, and the Shellfish Tax Report for all oysters sold during the week ending on the previous Saturday.

[(2)] (3) [Licensed oyster dealers] Exceptions.

(a) Individuals whose sales or purchases would require payment of taxes of less than \$25 weekly may submit [oyster tax reports] Shellfish Tax Reports monthly.

[(3)] (b) For the months May through August only one [oyster tax report] Shellfish Tax Report is required[,] to be submitted by September 14.

(c) A person is not required to complete a Shellfish Tax Report if the person provides proof that taxes have already been paid.

(4) [Oyster] Shellfish Tax Reports for the periods described in [§C(1) —(3)] §B(1) —(3) of this regulation, shall be submitted to the Department even though no taxes may be due, unless [a dealer] an individual has received an exemption pursuant to this section. [A dealer] An individual may request an exemption from the requirements of this section by filing at least 30 days before the start of the period for which an exemption is sought, on a form provided, an affidavit with the Department of Natural Resources[,] stating the reasons the [dealer] individual expects to collect no taxes during the period. The exemption will not be effective until the Department has approved in writing the requested exemption. Notwithstanding the issuance of an exemption, if an exempted [dealer] individual during the exemption period purchases any oysters upon which taxes are payable by the [dealer] individual, the [dealer] individual shall

comply with all applicable provisions of this section. The Department in its sole discretion may revoke any exemption granted under this section.

(5) Each Shellfish Buy Ticket and Oyster Sales and Export Tax Certificate shall be submitted with the [Oyster] *Shellfish* Tax Report for which there is any money due the State.

(6) [These forms] *Forms* shall be accompanied by any money due the State for the respective period of time.

C. Oyster Export Certificate.

(1) *When oysters are shipped out of State, the seller shall complete an oyster export certificate for each shipment.*

(2) *A person who ships oysters in the shell out of State shall receive an oyster export certificate for each truck or boatload shipped. The original certificate shall accompany the shipment of oysters out-of-State and shall be available for inspection by officials of the State.*

(3) *A copy of the certificate shall be submitted to the Department with the Shellfish Tax Report and payment of any money due the Department.*

[D.] (proposed for repeal)

[E.] *D. Oyster Harvester Reporting.*

(1) Any [person] *individual* licensed to catch oysters for commercial purposes who has paid the oyster surcharge shall submit an accurate Maryland monthly oyster report in accordance with COMAR 08.02.13.06.

(2) The Department may suspend [a person's] *an individual's* entitlement to catch oysters for commercial purposes for failing to submit an accurate Maryland monthly oyster report in accordance with COMAR 08.02.13.06.

E. Failure to submit reports required by this regulation may result in the suspension or revocation of the individual's license or authorization under Natural Resources Article, §4-701, Annotated Code of Maryland.

08.02.08 Shellfish — General

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

.02 Buying Station.

[A.] — [B.] (proposed for repeal)

A. Definitions.

(1) *Notwithstanding Natural Resources Article, §4-1007, Annotated Code of Maryland, in this subtitle, the following term has the meaning indicated.*

(2) *Term Defined. "Buying station" means a location where a person buys, processes, packs, or otherwise deals in oysters or clams for resale where the person purchasing oysters or clams for resale:*

(a) *Possesses a valid seafood dealer authorization in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and*

(b) *Is licensed and certified by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07.*

B. A person may only sell oysters or clams at a:

(1) *Buying station; or*

(2) *Location other than a buying station if:*

(a) *The person selling the oysters or clams is:*

(i) *Licensed and authorized to the person's own catch in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and*

(ii) *Licensed and certified by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07; and*

(b) *The oysters or clams are sold or served to ultimate consumers, and not for resale.*

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, §4-1210, Annotated Code of Maryland

Notice of Emergency Action

[11-238-F]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulation .09 under COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure.

Emergency status began: August 18, 2011.

Emergency status expires: February 14, 2012.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:18 Md. R. 1081—1082 (August 26, 2011), referenced as [11-238-P].

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 10 RACING COMMISSION

09.10.01 Thoroughbred Rules

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

Notice of Emergency Action

[11-216-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .49 under COMAR 09.10.01 Thoroughbred Rules.

Emergency status began: August 18, 2011.

Emergency status expires: January 18, 2012.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:17 Md. R. 1027 (August 12, 2011), referenced as [11-216-P].

J. MICHAEL HOPKINS
Executive Director
Maryland Racing Commission

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 32 BOARD OF PHYSICIANS

10.32.03 Delegation of Duties by a Licensed Physician — Physician Assistant

Health Occupations Article, §§14-205, 14-306, [15-101, 15-103, 15-203, 15-205, 15-206, 15-301, 15-302, 15-302.1, 15-302.2, 15-302.3, 15-303, 15-307, 15-309, 15-310, and 15-314] and 15-101—15-403, Annotated Code of Maryland

Notice of Emergency Action [11-169-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .01—.04, .08—.12, .15, and .16, the repeal of Regulations .05—.07, .13, and .14, and new Regulations .05—.07, .13, and .14 under **COMAR 10.32.03 Delegation of Duties by a Licensed Physician — Physician Assistant.**

Emergency status began: August 18, 2011.
Emergency status expires: February 14, 2012.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:14 Md. R. 803—812 (July 1, 2011), referenced as [11-169-P].

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

Subtitle 53 BOARD OF NURSING — ELECTROLOGY PRACTICE COMMITTEE

Notice of Emergency Action [11-198-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to:

- (1) Regulation .03 under **COMAR 10.53.04 Continuing Education**; and
(2) Regulation .01 under **COMAR 10.53.12 Fees.**

Emergency status began: August 18, 2011.
Emergency status expires: December 27, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:16 Md. R. 969—970 (July 29, 2011), referenced as [11-198-P].

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

Subtitle 54 SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

10.54.02 Local Agency

Authority: Health-General Article, §§18-107(a) and 18-108, Annotated Code of Maryland

Notice of Emergency Action [11-199-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .18 under **COMAR 10.54.02 Local Agency.**

Emergency status began: July 1, 2011.
Emergency status expires: December 27, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:16 Md. R. 970—971 (July 29, 2011), referenced as [11-199-P].

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

Title 11 DEPARTMENT OF TRANSPORTATION

Notice of Emergency Action [11-233-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to:

- (1) Amendments to Regulation .02 under **COMAR 11.11.05 Motor Vehicle Fees**;
(2) New Regulations .01 — .06 under a new chapter, **COMAR 11.11.15 Refusal to Renew or Transfer a Vehicle Registration and Refusal to Renew a Driver's License for Failure to Pay Undisputed Taxes and Unemployment Insurance Contributions**; and
(3) Amendments to Regulation .06 under **COMAR 11.15.33 Vehicle Trade-In Allowance.**

Emergency status began: August 18, 2011.
Emergency status expires: February 14, 2012.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:18 Md. R. 1087—1089 (August 26, 2011), referenced as [11-233-P].

JOHN T. KUO
Administrator
Motor Vehicle Administration

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 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.13 State Collection Agency Licensing Board — Fees

Authority: Business Regulation Article, Title 7, Subtitle 1, and §§ 7-302 and 7-302.1, Annotated Code of Maryland

Notice of Final Action

[11-172-F]

On August 17, 2011, the State Collection Agency Licensing Board adopted new Regulations .01 and .02 under new chapter, **COMAR 09.03.13 State Collection Agency Licensing Board — Fees**. This action, which was proposed for adoption in 38:14 Md. R. 793—794 (July 1, 2011), has been adopted as proposed.

Effective Date: October 3, 2011.

MARK KAUFMAN
Commissioner of Financial Regulation

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 27 BOARD OF NURSING

10.27.11 Delegation of Nursing Functions

Authority: Health Occupations Article, §8-205(a)(1) and (2), Annotated Code of Maryland

Notice of Final Action

[10-289-F]

On August 29, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .02, .04, and .05 under **COMAR 10.27.11 Delegation of Nursing Functions**. This action, which was proposed for adoption in 37:21 Md. R. 1456 (October 8, 2010), has been adopted as proposed.

Effective Date: September 19, 2011.

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

Subtitle 34 BOARD OF PHARMACY

10.34.03 Inpatient Institutional Pharmacy

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

Notice of Final Action

[11-144-F]

On August 18, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01—.08 and .10—.15, the repeal of existing Regulations .09 and .16—.18, and new Regulations .09 and .16 under **COMAR 10.34.03 Inpatient Institutional Pharmacy**. This action, which was proposed for adoption in 38:12 Md. R. 716—722 (June 3, 2011), has been adopted as proposed.

Effective Date: October 1, 2011.

JOSHUA M. SHARFSTEIN, M.D.
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, and 2-308, Annotated Code of Maryland

Notice of Final Action

[11-136-F]

On August 29, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .06 under **COMAR 10.41.03 Licensure and Continuing Education**. This action, which was proposed for adoption in 38:11 Md. R. 674 (May 20, 2011), has been adopted as proposed.

Effective Date: September 19, 2011.

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

**Title 15
DEPARTMENT OF
AGRICULTURE**

**Subtitle 15 MARYLAND
AGRICULTURAL LAND
PRESERVATION FOUNDATION**

**15.15.01 Guidelines for the Maryland
Agricultural Land Preservation Program**

Authority: Agriculture Article, §§2-504, 2-509, and 2-513, Annotated Code of Maryland

Notice of Final Action
[11-166-F]

On August 17, 2011, the Secretary of Agriculture adopted amendments to Regulations **.01-2** and **.17** under **COMAR 15.15.01 Guidelines for Maryland Agricultural Land Preservation Program**. This action, which was proposed for adoption in 38:14 Md. R. 817 — 818 (July 1, 2011), has been adopted as proposed.
Effective Date: September 19, 2011.

EARL F. HANCE
Secretary of Agriculture

**Title 26
DEPARTMENT OF THE
ENVIRONMENT**

Subtitle 11 AIR QUALITY

**26.11.09 Control of Fuel-Burning Equipment,
Stationary Internal Combustion Engines, and
Certain Fuel-Burning Installations**

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

Notice of Final Action
[11-027-F]

On August 26, 2011, the Secretary of the Environment adopted amendments to Regulations **.01**, **.02**, and **.10** under **COMAR 26.11.09 Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations**. This action, which was proposed for adoption in 38:2 Md. R. 112—114 (January 14, 2011), has been adopted as proposed.
Effective Date: September 19, 2011.

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

**Subtitle 12 RADIATION
MANAGEMENT**

26.12.01 Radiation Protection

Authority: Environment Article, §§8-106, 8-301, and 8-304, Annotated Code of Maryland

Notice of Final Action
[11-171-F-I]

On August 22, 2011, the Secretary of the Environment adopted amendments to Regulation **.01** under **COMAR 26.12.01 Radiation Protection**. This action, which was proposed for adoption in 38:14 Md. R. 820 (July 1, 2011), has been adopted as proposed.
Effective Date: September 19, 2011.

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

**Title 31
MARYLAND INSURANCE
ADMINISTRATION**

Subtitle 10 HEALTH GENERAL

**31.10.41 Assignment of Benefits to Nonpreferred
Providers**

Authority: *Insurance Article*, §§2-109(a)(1), 14-205.2, and 14-205.3, Annotated Code of Maryland

Notice of Final Action
[11-149-F]

On July 19, 2011, the Insurance Commissioner adopted new Regulations **.01** — **.07** under a new chapter, **COMAR 31.10.41 Assignment of Benefits to Nonpreferred Providers**. This action, which was proposed for adoption in 38:12 Md. R. 730 — 732 (June 3, 2011), has been adopted with the nonsubstantive changes shown below.

Effective Date: September 19, 2011.

Attorney General’s Certification

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

Regulation **.03**: In §§B and C, language was combined to avoid redundancy. The reference to “CMS 1500 forms” was removed and replaced with “uniform claims forms” for consistency. The language in §D(1) was omitted to avoid redundancy, and the language in §D(2) was revised for clarity.

Regulation **.04**: In §§B and C, language was combined to avoid redundancy. The language in §D(2) was revised for clarity.

Regulation **.05**: In §C(2), the requirement that a signed disclosure be submitted as an attachment to the uniform claim form at the time the uniform claim form is submitted to the carrier was removed.

Regulation **.07**: The language in §E was omitted as unnecessary, given the information specified in §B.

.03 Assignment of Benefits — On-Call Physicians.

A. (proposed text unchanged)

B. A nonpreferred provider who is an on-call physician and accepts an assignment of benefits under a preferred provider insurance policy shall:

(1) Accept the carrier's allowed amount as payment in full for the covered services provided; ~~[[and]]~~

(2) Collect or attempt to collect from the insured only the monies for the items identified in Insurance Article, §14-205.2(b)(3), Annotated Code of Maryland~~[[.]]~~; and

~~[[C. A nonpreferred provider who is an on-call physician and who accepts an assignment of benefits under a preferred provider insurance policy shall:]]~~

~~[[(1)]] (3) Submit to the carrier the uniform claims form required by COMAR 31.10.11.03 and indicate acceptance of the assignment of benefits in box 27 of the ~~[[CMS 1500 form, or its successor,]]~~ uniform claims form to satisfy the notice requirements under Insurance Article, §14-205.2(a)(3), Annotated Code of Maryland; and~~

~~[[(2)]] (4) Designate CPT code 99026, or its successor, on the uniform claims form.~~

~~[[D.]] C. A carrier shall:~~

~~[[(1) Accept as evidence that a nonpreferred provider who is an on-call physician obtained an assignment of benefits from an insured if the nonpreferred provider submits the uniform claims form required by COMAR 31.10.11.03 and indicates acceptance of the assignment of benefits in box 27 of the CMS 1500 form, or its successor; and~~

~~[[(2) Reimburse]] reimburse a nonpreferred provider who is an on-call physician and who has ~~[[accepted an assignment of benefits]]~~ provided the information specified in §B(3) and (4) of this regulation in accordance with the provisions ~~[[in]]~~ of Insurance Article, §14-205.2(c), Annotated Code of Maryland.~~

.04 Assignment of Benefits — Hospital-Based Physicians.

A. (proposed text unchanged)

B. A nonpreferred provider who is a hospital-based physician and accepts an assignment of benefits under a preferred provider insurance policy shall:

(1) Accept the carrier's allowed amount as payment in full for the covered services provided; ~~[[and]]~~

(2) Collect or attempt to collect from the insured only the monies for the items identified in Insurance Article, §14-205.2(b)(3), Annotated Code of Maryland~~[[.]]~~; and

~~[[C.]] (3) ~~[[A nonpreferred provider who is a hospital-based physician and who accepts an assignment of benefits under a preferred provider insurance policy shall submit]]~~ Submit to the carrier the uniform claims form required by COMAR 31.10.11.03 and indicate acceptance of the assignment of benefits in box 27 of the ~~[[CMS 1500 form, or its successor,]]~~ uniform claims form to satisfy the notice requirements of Insurance Article, §14-205.2(a)(3), Annotated Code of Maryland.~~

~~[[D.]] C. A carrier shall:~~

~~[[(1) Accept as evidence that a nonpreferred provider who is a hospital-based physician has obtained an assignment of benefits from an insured if the nonpreferred provider submits the uniform claims form required by COMAR 31.10.11.03 and indicates acceptance of the assignment of benefits in box 27 of the CMS 1500 form, or its successor; and~~

~~[[(2) Reimburse]] reimburse a nonpreferred provider who is a hospital-based physician and who has ~~[[accepted an assignment of benefits]]~~ provided the information specified in §B(3) of this regulation in accordance with the provisions ~~[[in]]~~ of Insurance Article, §14-205.2(d), Annotated Code of Maryland.~~

.05 Assignment of Benefits — Nonpreferred Providers.

A. — B. (proposed text unchanged)

C. Except as provided in Insurance Article, §14-205.3(g), Annotated Code of Maryland, a carrier that receives a claim for services provided by a nonpreferred provider described in §A of this regulation who accepts an assignment of benefits under a preferred provider insurance policy shall pay the nonpreferred provider directly if the nonpreferred provider:

(1) (proposed text unchanged)

(2) Submits a copy of the signed disclosure set forth in Regulation .06 of this chapter to the carrier ~~[[as an attachment to the uniform claims form adopted by the Commissioner under COMAR 31.10.11.03]].~~

.07 Notice to Insureds by Carriers.

A. — D. (proposed text unchanged)

~~[[E. The carrier may modify the text of the statement required by §B(4) of this regulation to be consistent with the terminology used by the carrier in its nonpreferred provider insurance policy.]]~~

THERESE M. GOLDSMITH
Insurance Commissioner

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 03

COMPTROLLER OF THE TREASURY

Subtitle 02 ALCOHOL AND TOBACCO TAX

03.02.02 Tobacco Tax

Authority: Tax-General Article, §§2-103 and 12-306, Annotated Code of Maryland

Notice of Proposed Action

[11-134-P]

The Comptroller of the Treasury proposes to repeal Regulation .08 under COMAR **03.02.02 Tobacco Tax**.

Statement of Purpose

The purpose of this action is to repeal COMAR 03.02.02.08 because a new law establishing Other Tobacco Products Licenses was passed by the Maryland General Assembly effective May 1, 2011. The current Other Tobacco Products registration, which is the subject of this regulation, has been replaced by the new Other Tobacco Products Licenses effective May 1, 2011.

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 Joanne Tetlow, Esquire, Tax Consultant II, Comptroller of Maryland, 80 Calvert Street, Room 310, Annapolis, MD 21401, or call 410-260-7494, or email to jtetlow@comp.state.md.us, or fax to 410-974-5564. Comments will be accepted through August 15, 2011. A public hearing has not been scheduled.

PETER FRANCHOT
Comptroller of the Treasury

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 04 BOATING

08.04.01 Definitions

Authority: Natural Resources Article, §§8-704(b) and (b-1), and 8-712, Annotated Code of Maryland

Agency note: The terms "dealer", "department", "manufacturer", "motorboat", "operator", "owner", "person", "state or principal use", "use", "vessel", and "waters of the State" are defined in the Natural Resources Article, Title 8, Subtitles 1 and 7, Annotated Code of Maryland. The definitions of these terms are provided in this chapter as a convenience, but persons affected by the boating regulations should be aware that these definitions are subject to amendment by the General Assembly. The terms "act", "issuing authority" and "state" are defined in the regulation promulgated by the U.S. Department of Transportation, 33 CFR §173.3 and are subject to change by the federal government.

Notice of Proposed Action

[11-250-P]

The Secretary of Natural Resources proposes to amend Regulation .01 under COMAR **08.04.01 Definitions**. This action was considered at the Boat Dealer Advisory Committee meeting held on May 17, 2011.

Statement of Purpose

The purpose of this action is to add five definitions to codify Department policy and to amend two definitions to conform to federal regulation.

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 Sharon Maenner Carrick, Director, Licensing and Registration Service, Department of Natural Resources, 1804 West Street, Suite 300, Annapolis, MD 21401, or call 410-260-3233, or email to scarrick@dnr.state.md.us, or fax to 410-260-3281. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 Definitions.

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

B. Terms Defined.

(1)—(10) (text unchanged)

(11) *“Immediate family” means spouse, son, daughter, mother, father, sister, brother, grandmother, grandfather, son-in-law, father-in-law, mother-in-law, daughter-in-law, grandson, granddaughter, stepfather, stepmother, halfbrother, halvesister, stepson, or stepdaughter. The term includes persons so related by virtue of adoption.*

[(11)] (12) *“Issuing authority” means either a state that has a U.S. Coast Guard approved numbering system [approved by the Coast Guard] or the Coast Guard where a number system has not been approved.*

[(12)] (13)—[(19)] (20) (text unchanged)

(21) *Purchase Price.*

(a) *“Purchase price” means, for vessels sold by manufacturers, brokers, or dealers, the certified gross purchase price of the vessel and its equipment in the case of sales of new vessels and the resale of used vessels.*

(b) *“Purchase price” means, for all other transactions, the total purchase price if verified by means of a certified bill of sale approved by the Department, or that valuation shown in a national publication of used vessels adopted for use by the Department, with the Department having discretionary power in determining the valuation.*

[(20)] (22) (text unchanged)

(23) *“Sale” is defined pursuant to UCC §2-106(1) and 2-401(20) as amended.*

[(21)] (24) *“State” means a state of the United States, [the Commonwealth of] the District of Columbia, Puerto Rico, the U.S. Virgin Islands, [Guam, American Samoa, and the District of Columbia.] a federally-recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.*

[(22)] (25)—[(25)] (28) (text unchanged)

(29) *“Vessel number” means the USCG documentation number or the number issued by a state numbering system.*

[(26)] (30) (text unchanged)

(31) *“Week” means any 7 consecutive days.*

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 04 BOATING**08.04.03 Certificate of Boat Number**

Authority: Natural Resources Article, §§8-704(b) and 8-712, Annotated Code of Maryland

Notice of Proposed Action

[11-251-P]

The Secretary of Natural Resources proposes to amend Regulations .01—.05, repeal existing Regulations .06—.11, and .13, and amend and recodify existing Regulations .12 and .14—.18 to be Regulations .06 and .07—.11 under **COMAR 08.04.03 Certificate of Boat Number**. This action was considered at the Boat Dealer Advisory Committee meeting held on May 17, 2011.

Statement of Purpose

The purpose of this action is to codify Department policy and incorporate formatting changes to comply with the Style Manual for Maryland Regulations.

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 Sharon Maenner Carrick, Director, Licensing and Registration Service, Department of Natural Resources, 1804 West Street, Suite 300, Annapolis, MD 21401, or call 410-260-3233, or email to scarrick@dnr.state.md.us, or fax to 410-260-3281. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 [Issuance and Display of Number.] Vessel Numbering.

A. [Numbers; Size; Display, Color.] *A person may not use a vessel unless:*

(1) *It has a number issued on a certificate of number by the Department or the issuing authority in the state where the vessel is principally used; or*

(2) *The vessel is exempt from numbering pursuant to 33 CFR §173.13 as amended.*

B. *Display.*

(1) The number [issued by the Department] shall [consist of three parts. The first part shall consist of the letters “MD” indicating the State. The second part shall consist of not more than four arabic numerals. The third part shall consist of not more than two letters. The parts shall be separated by a hyphen or an equivalent space, for example: MD-1-A; MD-1234-AA; MD 56 AA. Since the letters “I”, “O”, and “Q” may be mistaken for arabic numerals, they may not be used in the suffix.] *conform to the requirements of 33 CFR §174.23 as amended.*

(2) Each number [required by §B, of this regulation,] shall[:] *be displayed pursuant to 33 CFR §173.27 as amended.*

[(a) Be painted on or permanently attached to each side of the forward half of the vessel except as allowed by §A(3), of this regulation, or required by §A(4), of this regulation;

(b) Be in plain vertical block characters of not less than 3 inches in height;

(c) Contrast with the color of the background and be distinctly visible and legible; and

(d) Read from left to right.

(3) [If a vessel is used by a] A manufacturer or [by a] dealer, but not a broker, may apply to the Department for the issuance of certificates of number to be used for testing or demonstrating vessels [, the number may be painted on or attached to removable plates that are temporarily but firmly attached to the side of the forward half of the vessel.]

(4) Vessel number shall end with the suffix "DL".

(5) There can be no personal use of a vessel displaying a "DL" number.

(4) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number shall be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel.

(5) Other numbers may not be carried on the forward half of the vessel.

B. Except as provided in Regulation .04, a person may not use a vessel unless:

(1) It has a number issued on a certificate of number by the Department or the issuing authority in the state where the vessel is principally used; and

(2) The number is displayed as required by regulation §A, of this regulation.

C. This regulation does not apply to a vessel for which a valid temporary certificate has been issued to its owner by the issuing authority in the state in which the vessel is principally used.]

.02 Possession of Certificate of Number[, Temporary Certificate, or Rental Agreement Required on Board].

A. Except as provided in [Regulations .03 and .04] 33 CFR §173.13 and 33 CFR §173.17 as amended, a person may not use a vessel unless it has on board:

(1) A valid certificate of number or temporary certificate for that vessel issued by the issuing authority in the state in which the vessel is principally used[.]; or

(2) For the vessel described in §B[.] of this regulation, a copy of the lease or rental agreement, signed by the owner or [his] the owner's authorized representative and by the person leasing or renting the vessel, that contains at least:

(a)—(b) (text unchanged)

B. The certificate of number for [vessels] a vessel less than 26 feet in length and leased or rented to another for the latter's noncommercial use of less than [24 hours] 7 days may be retained on shore by the vessel's owner or [his] the owner's representative at the place from which the vessel departs or returns to the possession of the owner or [his] the owner's representative.

.03 Exemptions.

The numbering requirements [of Regulations .01 through .18] do not apply to the following vessels:

[A. A vessel which has a valid document issued by the United States Coast Guard or its successor;

B. A vessel with a valid number awarded pursuant to federal law or a federally-approved numbering system of another state, if the number awarded is displayed in accordance with the requirements of that system, and the certificate of number is available for inspection whenever the vessel is in use;

C. A vessel from a country other than the United States temporarily using the waters of the State for less than 90 days;

D. A vessel used for public service and owned by the United States government, another state, or any political subdivision;

E. A ship's lifeboat;

F. A vessel propelled only by sail;

G. A vessel numbered according to the Federal Boat Safety Act of 1971;

H. A vessel manually propelled;]

A. Exceptions noted in Natural Resources Article, §8-712(a)(1), Annotated Code of Maryland;

[I.] B.A motor boat used solely for power boat racing which carries an official racing number issued by a recognized racing organization; [and]

[J.] C. Chesapeake Bay log sailing canoes which are registered with the Department [of Natural Resources], used exclusively for racing and which meet the specifications of the Chesapeake Bay Log Canoe Association as to construction and rig. These vessels shall display their names on each bow in letters not less than 3 inches high, and of a contrasting color to the background[.]; and

D. A vessel equipped with propulsion less than 10 horsepower used exclusively for direct transportation between a numbered vessel and the shore. Vessel must display the number of the numbered vessel followed by the suffix "I".

.04 Reciprocity.

A. [When a] A vessel [is actually] numbered in another state [of principal use, it shall be considered as] and temporarily using Maryland waters is deemed in compliance with the numbering system requirements of Maryland [if it is being used temporarily].

B. When a vessel is [removed] moved to Maryland as [a] the new state of principal use, a number awarded by another state shall be recognized as valid for 60 days before numbering issued by the [department] Department is required.

.05 [Application for] Certificate of Number.

A. A person [may obtain] required to secure a certificate of number under 33 CFR §173.15 as amended shall submit to the Department [and a number by filing] an application for certificate of number [containing the information required by §B, of this regulation] and the required fee.

B. [Each application for a certificate of number shall contain at least the following] The Department shall collect the information[.] required by 33 CFR §187 as amended.

(1) Name of the owner;

(2) Address of the owner, including zip code;

(3) Citizenship of the owner;

(4) State in which the vessel is or will be principally used;

(5) The number previously issued by an issuing authority for the vessel, if any;

(6) Whether the application is for a new number, renewal of a number, or transfer of ownership;

(7) Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing, or other commercial use;

(8) Make of vessel;

(9) Year vessel was manufactured or model year;

(10) Manufacturer's hull identification number, if any;

(11) Overall length of vessel;

(12) Type of vessel (open, cabin, house, or other);

(13) Whether the hull is wood, steel, aluminum, fiberglass, plastic, or other;

(14) Whether the propulsion is inboard, outboard, inboard-outdrive or sail and name of engine manufacturer if available;

(15) Whether the fuel is gasoline, diesel, or other; and

(16) The signature of the owner.

C. If a manufacturer or dealer applies for a number that is to be temporarily affixed to a vessel for demonstration and test purposes, he may omit §B(8) through §B(15), of this regulation.

D. If a person who intends to lease or rent the vessel without propulsion machinery makes an application he may omit §B(14) and §B(15), of this regulation.]

C. Each certificate of number shall contain the information required by 33 CFR §174.19 as amended.

D. A vessel issued a Maryland certificate of number must be titled in Maryland.

.12 Notification to Department.

[Within 15 days, the] A person whose name appears as the owner of a vessel on a certificate of number shall notify the issuing authority[, in a manner prescribed by the Department,] within 15 days of:

- A. Any address change [in his address];
- B.—C. (text unchanged)
- D. The transfer of [all or part of his] full or partial interest in the vessel; and
- E. (text unchanged)

.14 Removal of Number.

The person whose name appears on a certificate of number as the owner of a vessel shall remove the number and validation sticker from the vessel when:

- A. (text unchanged)
- B. [The certificate] Certificate of number is invalid under [Regulation .15B of this chapter] 33 CFR §173.77(c) as amended; or
- C. [The vessel] Vessel is no longer principally used in the state where the certificate was issued [and upon the expiration of 60 days after the vessel is moved to a new state of principal use].

.15 Validity of Certificate of Number.

A. A certificate of number issued by [an issuing authority] the Department is invalid after the date when:

- (1) [The vessel] Vessel is documented or required to be documented under [Part 67 of Title 46, the Code of Federal Regulations] 46 CFR §67 as amended; or
- (2)—(3) (text unchanged)
- B. (text unchanged)
- C. (text unchanged)
- D. The certificate of number is invalid when the person whose name appears on the certificate involuntarily loses [his] ownership interest in the numbered vessel by legal process.

.17 Validation [Emblems.] Stickers.

A. [All vessels] In order to use Maryland waters, a vessel numbered by the State [of Maryland shall be provided with emblems at the time of registration or re-registration to be secured in line above or below and within 3 inches of the registration number on each side of the vessel. These emblems will show the year of validity of the certificate of number for the vessel to which they are attached and shall be displayed at all times] must display validation stickers issued in accordance with the provisions of Natural Resources Article, §8-712, Annotated Code of Maryland.

[B. Upon written request the Department, in individual cases, may make an exception to the required locations for good cause shown.]

B. The validation stickers expire December 31 of the year following issuance.

C. The color of the validation sticker shall represent the year the validation stickers expire, with red for stickers that expire in 2012, followed by blue, international orange and green in rotation.

[C.] D. If the [emblems] validation stickers are defaced, lost, or destroyed, [an] a sworn affidavit to that effect shall be filed within 15 days with the Department by the owner and application made for [the] replacements. A service fee of \$1 will be charged for the replacements.

.18 Hull Identification Numbers.

A. The hull identification number is the permanent identification for any vessel titled under the provisions of Natural Resources

Article, §8-715, Annotated Code of Maryland[, is the hull identification number of the vessel].

B. The hull identification number shall be [carved, burned, stamped, or embossed on the outboard side of the transom above the waterline of the boat so that alteration, removal, or replacement would be obvious and evident.] displayed on the vessel pursuant to 33 CFR §181.29 as amended.

[C. The characters of the hull identification number shall be at least 1/4 inch in height.

D. Backyard boat builders or persons] C. Persons who build a vessel for their own use and are not engaged in the business of manufacturing boats for resale shall obtain from the Department a hull identification number for any vessel they build.

[E.] D. Vessels built before November, 1972 are exempt from the requirements of this regulation.

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 04 BOATING

08.04.09 [Manufacturer’s and Dealer’s] Boat Dealer License

Authority: Natural Resources Article §§1-104, 8-704(b), 8-710.1 and 8-712; State Government Article, §10-206; Annotated Code of Maryland

Notice of Proposed Action
[11-252-P]

The Secretary of Natural Resources proposes to amend Regulation .01 under COMAR 08.04.09 Boat Dealer License. This action was considered at the meeting of the Boat Dealer Advisory Committee meeting held on May 17, 2011.

Statement of Purpose

The purpose of this action is to codify Department policy, modify bonding requirements, and incorporate formatting changes to comply with the Style Manual for Maryland Regulations.

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 Sharon Maenner Carrick, Director, Licensing and Registration Service, Department of Natural Resources, 1804 West Street, Suite 300, Annapolis, MD 21401, or call 410-260-3233, or email to scarrick@dnr.state.md.us, or fax to 410-260-3281. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 [Manufacturer’s and Dealer’s] Boat Dealer License.

A. License [Required; Contents of Application; Fee.] Application.

(1) A manufacturer or dealer may not conduct [his] business in the State unless [a license first is obtained from the Department. Only a manufacturer or dealer licensed pursuant to this regulation may purchase temporary numbers for vessels.] licensed as a Maryland boat dealer.

(2) [If any person has more than one place of business] *A dealer with multiple locations* in the State[,] *must secure* a separate license [shall be obtained for each place of business] *for each location where sales activities take place.*

(3) The annual license fee [for manufacturers or dealers —] *is* \$25.

(4) [In addition to any other] *Applicant shall provide the information required by* [§8-710 of the Natural Resources Article, each application shall show each place of business in the state of the applicant.] *Natural Resources Article, §8-710(c), Annotated Code of Maryland.*

B. Cancellation or Denial of License.

[(1)] The Department may cancel or refuse to issue a license for any violation of the State Boat Act including any of the following:

[(a)] (1) [The applicant or licensee has made any] *License application contains false or fraudulent [statement in a application for a dealer’s or manufacturer’s license;] information;*

[(b)] (2) [The applicant] *Applicant does not meet or licensee [does not operate a bona fide established place of business; or] no longer meets the requirements for designation as a Maryland boat dealer;*

[(c)] (3) [The applicant or licensee] *Licensee has collected monies on behalf of the State and has failed [or refused] to forward the monies to the Department [tax monies he has received for the sale of any vessel sold by him] within 30 days [after the vessel is sold] of sale.*

[(2)] Before cancelling, revoking, or refusing to renew a license, the Department shall provide a contested case hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.]

C. A surety bond or other security approved by the Department shall accompany each application for a boat [manufacturer’s or dealers] *dealer license or license renewal.* The amount of the surety bond or other security shall be as follows:

(1) *\$20,000 surety for a newly designated Maryland boat dealer;*

[(1)] A dealer, broker, or manufacturer with] (2) *\$5,000 surety for gross annual sales of \$500,000 or less[— \$5,000];*

[(2)] A dealer, broker, or manufacturer with] (3) *\$10,000 surety for gross annual sales greater than \$500,000 but less than \$1,000,000[— \$10,000];*

[(3)] A dealer, broker, or manufacturer with] (4) *\$20,000 surety for gross annual sales of \$1,000,000 but less than \$3,000,000[— \$20,000];*

[(4)] A dealer, broker, or manufacturer with] (5) *\$50,000 surety for gross annual sales of \$3,000,000 [and over — \$50,000;] but less than \$5,000,000;*

[(5)] A new business with no prior sales shall file a bond or other security in accordance with §C(3).]

(6) *\$100,000 surety for gross annual sales of \$5,000,000 but less than \$10,000,000;*

(7) *\$150,000 surety for gross annual sales of \$10,000,000 but less than \$15,000,000;*

(8) *\$200,000 surety for gross annual sales of \$15,000,000 and greater.*

D. [The] *Gross annual sales [total] shall be determined by [the gross sales shown] a review of sales for the [previous year of business.] twelve months prior to issuance of license renewal application.*

E. *Failure to comply with surety requirements can result in disciplinary action, which may include a verbal warning, a warning letter, increased bond requirement, suspension of temporary registration privileges, suspension of dealer license, and criminal charges.*

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 04 BOATING

08.04.10 [Taxable Value of Vessels] *Certificate of Title*

Authority: Natural Resources Article, §§8-704(b), 8-712, 8-716 and 8-722, Annotated Code of Maryland

Notice of Proposed Action

[11-253-P]

The Secretary of Natural Resources proposes to adopt new Regulation .01, amend and recodify existing Regulation .01 to be Regulation .02, repeal existing Regulation .02, and adopt new Regulations .03—.05 under COMAR 08.04.10 **Certificate of Title**. This action was considered at the Boat Dealer Advisory Committee meeting on May 17, 2011.

Statement of Purpose

The purpose of this action is to codify Department policy.

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 Sharon Maenner Carrick, Director, Licensing and Registration Service, Department of Natural Resources, 1804 West Street, Suite 300, Annapolis, MD 21401, or call 410-260-3233, or email to scarrick@dnr.state.md.us, or fax to 410-260-3281. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 *Titling Documents.*

A. Documents must identify vessel by at least the vessel number or hull identification number.

B. Required ownership transfer elements are purchaser’s name, date of purchase, purchase price, and signature of all owners.

C. Any alteration or erasure on an original ownership transfer document invalidates the document.

D. The following documents are required to title a new vessel:

(1) *Original manufacturer’s certificate of origin; and*

(2) *Original certified bill of sale if any ownership transfer element is missing from the certificate of origin.*

E. The following documents are required to title a used vessel:

(1) *When the vessel was previously titled:*

(a) *Original certificate of title assigned to the purchaser;*

(b) *Original certified bill of sale if any ownership transfer element is missing on the title; and*

(c) *Original evidence that lien has been satisfied, when applicable;*

(2) *When the vessel was previously registered in a non-title state:*

(a) *Copy of the out-of-state registration card or a true test copy of that state’s official vessel record;*

(b) *Original certified bill of sale containing all ownership transfer elements; and*

(c) *Original evidence that lien has been satisfied, when applicable; and*

(3) *When the vessel was previously federally-documented:*

- (a) *Copy of the federal certificate of documentation;*
- (b) *Original certified bill of sale;*
- (c) *USCG abstract of title; and*
- (d) *Original evidence that ship mortgage has been satisfied,*

when applicable.

[.01] .02 Taxable Value of Vessels.

[A. Fair market value shall mean the certified gross purchase price in the case of sales of new vessels and the resale of used vessels by manufacturers, brokers, or dealers.

B. In the case of vessels sold by any person other than a registered manufacturer, dealer, or broker, it means the total purchase price or that valuation shown in a national publication of used vessels adopted for use by the Department, with the Department having discretionary power in determining the valuation.

C. In all cases, the gross purchase price or fair market value shall be a minimum of \$100.

D. The gross purchase price shall mean the price of the vessel and its equipment agreed upon by the buyer and the seller with no allowance for trade-in.

E. The cost of trailers may not be included in either the gross purchase price or the fair market value.]

A. *Vessel excise tax is levied at the rate of 5 percent of the purchase price of a vessel.*

B. *The minimum vessel excise tax is \$5.*

C. *Purchase price may be reduced by the value of any vessel traded to a licensed dealer as part of the consideration for the sale.*

(1) *Trade value shall be documented using the form provided by the Department.*

(2) *Value shall be calculated using one of the following methods:*

- (a) *Average of BUC Book low and high retail;*
- (b) *NADA average retail;*
- (c) *80 percent of a survey based on a physical inspection of the vessel occurring within the prior 180 days by a surveyor accredited by the Society of Marine Surveyors Inc. or certified by the National Association of Marine Surveyors Inc.*

D. *Vessel excise tax and fees collected by a licensed dealer must be received by the Department within 30 days of sale.*

E. *A vessel duly registered in another jurisdiction may use Maryland waters for a cumulative total of 90 days in a calendar year without incurring a vessel excise tax liability. A vessel may remain longer than 90 days as long as a greater portion of the year is spent in another single jurisdiction.*

.03 Mechanics Lien Title.

A. *A mechanics lien is created under Commercial Law Article, §16-201 et seq., Annotated Code of Maryland, when:*

- (1) *The Applicant, with the consent of the owner, has provided services or materials for a vessel;*
- (2) *Charges are due and unpaid for 30 days; and*
- (3) *The Applicant has possession of the vessel.*

B. *An application for mechanics lien title must include the following:*

- (1) *Vessel identification;*
- (2) *Evidence of published notice, with first date of publication at least 14 days prior to sale;*
- (3) *Evidence of owner and lienholder notification, mailed at least 10 days prior to sale;*
- (4) *Evidence of indebtedness:*
 - (a) *Owner consent for services provided;*
 - (b) *Invoices dated not later than 30 days prior to sale;*
 - (c) *Invoices and statements with the vessel clearly identified by vessel number or hull identification number; and*

(d) *Invoices cannot bill for services provided after the date of owner notification.*

(5) *Evidence of sale; and*

(6) *Any other documentation required by the Department.*

C. *Vessel excise tax shall be assessed on:*

(1) *Successful bid when vessel is sold in an arm's-length transaction at auction; or*

(2) *Total charges claimed when there are no bidders and applicant is granted a mechanics lien title.*

D. *Mechanics lien title will be issued in applicant's name as shown on invoices and statements submitted as evidence of indebtedness.*

.04 Disposal Title.

A. *A lienor under Commercial Law Article, §16-201 et seq., Annotated Code of Maryland, may apply for a title for purposes of disposal. Minimum vessel excise tax of \$5 will be assessed.*

B. *Lienor must declare and affirm under penalty of perjury that lienor seeks title for purposes of removal and that the vessel will be destroyed within 90 days of issuance of disposal title.*

C. *Lienor must provide evidence that vessel has been destroyed.*

D. *Lienor accepts responsibility for the difference between the minimum vessel excise tax and tax on the total charges claimed in the mechanics lien transaction should the Department subsequently learn that vessel was not destroyed as required.*

E. *Vessel will be identified as "destroyed" in the permanent records of the Department.*

.05 Abandoned Boat Title.

A. *An application for abandoned boat title under Natural Resources Article, §8-721 et seq., Annotated Code of Maryland, shall include:*

- (1) *Vessel identification;*
- (2) *Evidence of published notice;*
- (3) *Evidence of owner and lienholder notification; and*
- (4) *Any other documentation required by the Department.*

B. *Vessel excise tax will be assessed on the fair market value of the vessel as shown in a national publication of used vessel values adopted by the Department.*

C. *A marina may submit a single abandoned boat application for multiple vessels when;*

(1) *The marina was purchased not more than 12 months prior to application;*

(2) *Vessels remained on marina property at the time of property transfer without associated ownership and payment records; and*

(3) *The contract of sale did not include assumption of accounts receivable.*

D. *Vessel excise tax shall be assessed on the fair market value of the vessel as shown in a national publication of used vessel values adopted by the Department.*

E. *Valuation may be adjusted at the Department's discretion based on the physical condition of the vessel.*

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 04 BOATING

08.04.12 Security Interest Recordation

Authority: Natural Resources Article, §§8-704(b) and 8-712, Annotated Code of Maryland

Notice of Proposed Action

[11-254-P]

The Secretary of Natural Resources proposes to amend Regulation .01 under COMAR 08.04.12 Security Interest Recordation. This action was considered at the Boat Dealer Advisory Committee meeting held on May 17, 2011.

Statement of Purpose

The purpose of this action is to incorporate formatting changes to comply with the Style Manual for Maryland Regulations.

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 Sharon Maenner Carrick, Director, Licensing and Registration Service, Department of Natural Resources, 1804 West Street, Suite 300, Annapolis, MD 21401, or call 410-260-3233, or email to scarrick@dnr.state.md.us, or fax to 410-260-3281. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 Security Interest Recordation.

A. [To perfect a security interest in a vessel, a] A secured party shall [file the security interest] *effect recordation* by submitting the filing fee and completing:

(1)—(2) (text unchanged)

(3) The Security Interest Filing Statement [in triplicate] and submitting the Statement, the owner's Certificate of Title, and the corrected title fee.

B. (text unchanged)

C. To record a subsequent security in a vessel[, the second]:

(1) *Second* or subsequent secured party shall submit the Security Interest Filing Statement [in triplicate] to the first secured party with the filing fee and the corrected title fee. [The first]

(2) *First* secured party shall transmit the Security Interest Filing Statement, fees, and [the] title to the Department. [The]

(3) Department shall [correct the title and] deliver [the] *corrected* title to the first secured party. [The]

(4) Department shall deliver [to the second or subsequent secured party] a validated copy of the Security Interest Filing Statement showing the date of recordation *to the second or subsequent secured party*.

D. When a second or subsequent secured party [discharges his] interest *is discharged*[, he]:

(1) *That party* shall forward the original [of the] Discharge of Security Interest to the Department and a [coy] *copy* to the first secured party.

(2) The first secured party shall attach the copy of the Discharge of Security Interest to the title.

E. The Department record shall be available for inspection by the public during normal working hours in the Annapolis office only. [No more than five individual records may be withdrawn for this purpose by any one individual. True copies may be provided by payment of the fee provided in COMAR 08.04.03.16.]

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 04 BOATING

08.04.14 Documented [Yachts] Vessels

Authority: Natural Resources Article, §§8-704(b-1) and 8-712.1, Annotated Code of Maryland

Notice of Proposed Action

[11-255-P]

The Secretary of Natural Resources proposes to amend Regulations .01 and .02 under COMAR 08.04.14 Documented Vessels. This action was considered at the Maryland Boat Dealer Advisory Committee meeting held on May 17, 2011.

Statement of Purpose

The purpose of this action is to codify Department policy, clarify statutes, and incorporate formatting changes to comply with the Style Manual for Maryland Regulations.

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 Sharon Maenner Carrick, Director, Licensing & Registration Service, Department of Natural Resources, 1804 West St., Ste. 300, Annapolis, MD 21401, or call 410-260-3233, or email to scarrick@dnr.state.md.us, or fax to 410-260-3281. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 Validation Stickers.

A. [The Department shall issue validation stickers] *In order to use Maryland waters for pleasure, a vessel documented with the U.S. Coast Guard with principal use in Maryland must display validation stickers issued in accordance with the provisions of Natural Resources Article, §8-712.1, Annotated Code of Maryland.*

B. *The vessel excise tax is levied at the rate of 5 percent of the purchase price.*

C. *Stickers expire December 31 of the year following issuance.*

D. *The color of the stickers shall represent the year the decals expire.*

E. *Decals shall be colored red, blue, international orange, and green, in rotation.*

[B.] F. If the stickers are defaced, lost, or destroyed, a sworn affidavit to that effect shall be filed within [3] 15 days with the Department [of Natural Resources] by the vessel owner and application made for replacements. A service fee of \$1 will be charged for the [replacement.] replacements.

.02 [Vessels Not Subject to Validation Sticker Requirements.]

Exemptions.

[A. Any federally documented vessel principally using Maryland waters for pleasure is required to display a current validation sticker.

B.] A. The following *federally documented* vessels may not be regarded as using Maryland waters for pleasure:

(1) *Commercially registered vessels that are:*

[(1)] (a) [Any commercially registered vessel for] *For hire with a licensed captain on board;*

[(2)] (b) [Any commercially registered vessel used] *Used exclusively by a marine school as a training vessel;*

[(3)] (c) [Any commercially registered vessel used] *Used principally in the commercial fisheries of this State; or*

[(4)] (d) [Any commercially registered vessel used] *Used exclusively to test marine equipment;*

[(5)] (2) A vessel used for public service and owned by the United States [Government] *government*, another state, or any political subdivision;

[(6)] (3) A federally documented vessel in Maryland for storage, repairs, or resale, and not in use; *and*

[(7)] (4) A federally documented yacht on cruise through Maryland waters, visiting or in a race in Maryland, and which is determined to be used principally in another state.

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 07 FORESTS AND PARKS

08.07.08 Licensed Forest Products Operator

Authority: Natural Resources Article, §5-608, Annotated Code of Maryland

Notice of Proposed Action

[11-243-P]

The Department of Natural Resources proposes to adopt new Regulations **.01—.07** under a new chapter, **COMAR 08.07.08 Licensed Forest Products Operator**.

Statement of Purpose

The purpose of this action is to adopt regulations that reflect the statutory changes adopted during the 2010 legislative session. These regulations allow the Department to issue a Forest Products Operator's license as well as suspend or revoke a Forest Products Operator's license if the operator fails to comply with existing laws and regulations pertaining to timber harvesting, environmental protections, or appropriate business practices.

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 regulations include a licensing requirement and a licensing fee. The fee was originally located in the statute but was removed from the statute during the 2010 legislative session. The original fee was \$20 but has been increased to \$30 as the fee has not been increased in years.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	Minimal
B. On other State agencies:	NONE	

C. On local governments:	Benefit (+)	Magnitude
	Cost (-)	
	NONE	
D. On regulated industries or trade groups:	(-)	Minimal
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. Currently, the Maryland Forest Service receives approximately \$8,000 in revenue from issuing licenses required under the forest product operators statute. These funds are used to implement the licensing program. The \$10 fee increase will increase the revenue by \$4,000 to a total of approximately \$12,000.

D. Currently, approximately 400 forest product operators pay \$20 for their licenses. The \$10 increase in fee per these proposed regulations increases the cost to \$30.

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 Marian Honecny, Supervisor, Urban and Community Forestry, MD Forest Service, 580 Taylor Avenue, E-1, Annapolis, MD 21401, or call 410-260-8511, or email to mhonecny@dnr.state.md.us, or fax to 410-260-8595. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 Definitions.

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

B. *Terms Defined.*

(1) *"Commercial logging or timber harvesting operations" means the cutting and removing of tree stems from a site for commercial purposes while leaving the root mass intact.*

(2) *Forest Products.*

(i) *"Forest products" includes trees or parts of trees that are harvested for compensation.*

(ii) *"Forest products" includes green lumber, logs, pulpwood, firewood, bark, chips, shavings, and sawdust.*

(3) *"Forest products operator" means a person who represents to the public that the person is available to engage in the commercial trade of forest products, including the harvesting, transporting, selling or re-selling of forest products.*

(4) *"Licensed forest products operator" means a person who has received a license from the Department displaying the person's qualification to practice as a forest products operator.*

.02 License Required.

Forest products may be sold for compensation only by a person licensed as a forest products operator by the Department.

.03 Responsibilities.

A. A licensed forest products operator shall comply in all respects with applicable statutes and regulations pertaining to forest products operations.

B. A licensed forest products operator may not engage in any form of false or misleading advertising or promotional activities, including the falsification or misrepresentation of:

- (1) The professional or trade qualifications or affiliations of the forest products operator; or
- (2) The experience or licensing status of the forest products operator.

C. A licensed forest products operator may not falsely represent the species of forest products sold or delivered, the quantity of forest products sold or delivered, or records of forest product transactions.

D. A licensed forest products operator shall retain documentation of all sales of chips produced at the site of harvest, logs, pulpwood, and firewood for one year from the date of sale. The documentation shall provide:

- (1) Date of sale, name and address of purchaser;
- (2) Quantity of forest product sold or delivered including unit of measurement;
- (3) Species of the forest product; and
- (4) County from which the forest product originated.

E. A licensed forest products operator shall disclose the license number issued by the Department in all advertisements of services offered or notices for sale of forest products.

F. A forest products operator shall not trespass upon property adjacent to the property from which the forest products operator is lawfully harvesting or collecting forest products.

G. A forest products operator shall ensure the safe operation of all equipment used during the harvesting or collecting of forest products.

H. In the performance of harvesting, collecting, or transporting forest products, a forest products operator shall make every reasonable effort to protect the safety, health, property, and welfare of the public.

I. A forest products operator shall cooperate fully with the Department of Natural Resources in an investigation or adjudication of an alleged violation of laws pertaining to licensed forest product operators and, upon request, shall provide copies of documents to the Department.

J. A forest products operator shall, within 30 days, inform the Department of Natural Resources Forest Service in writing of a change in business address or telephone number.

.04 Supervision.

A licensed forest products operator is responsible for the quality and content of all work and acts performed by those working under the license.

.05 Requirements for Licensure.

A. *Qualifications; Issuance.* The Department shall issue a forest products operator license to any applicant who:

- (1) Pays the fee of \$30 per year; and
- (2) Completes a form provided by the Department indicating the applicant's sales of forest products during the previous calendar year.

B. *Licensee to Carry Insurance.* Every licensee shall obtain workman's compensation insurance in an amount meeting the minimum requirements established pursuant to the Maryland Workers' Compensation Act under Title 9 of the Labor and Employment Article, prior to the Department issuing the license. The licensee shall maintain the insurance protection for the period the license is in effect.

.06 Prohibited Conduct.

Illegal Action and Activity. A person may not:

A. Solicit, advertise, or represent oneself to the public as a forest products operator without having received a license;

B. After having received the license and subsequently losing it by revocation or suspension, continue to represent oneself as a licensed forest products operator; or

C. Use the title or abbreviation "F.P.O." or any other words, letters, or abbreviations tending to indicate that one is a licensed forest products operator without having received a license, or when the license has been revoked or suspended.

.07 Suspension and Revocation.

A. The Department may permanently revoke or temporarily suspend the license of any licensed forest products operator who:

- (1) Is guilty of any fraud or deceit in obtaining the license;
- (2) Violates any provision of Natural Resources Article, §5-608, Annotated Code of Maryland or this chapter.

B. The Department shall provide notice of its intent to suspend or revoke a license in accordance with Natural Resources Article, §5-608(c), Annotated Code of Maryland.

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 01 PROCEDURES

10.01.20 Nursing Facility Quality Assessment

Authority: Health-General Article, [§19-301.1] §19-310.1, Annotated Code of Maryland

Notice of Proposed Action

[11-262-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .03 under **COMAR 10.01.20 Nursing Facility Quality Assessment**.

Statement of Purpose

The purpose of this action is to increase the maximum assessment that may be collected to 5.5 percent of the operating revenue for all nursing facilities subject to the assessment, in accordance with legislation adopted during the 2011 session of the General Assembly.

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. Nursing facility quality assessments will increase by \$34,371,118 during Fiscal Year 2012 under the provisions of the proposed amendment.

	Revenue (R+/R-)	
II. Types of Economic Impact.	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$34,371,118
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
--	-------------------------	-----------

D. On regulated industries or trade groups:	(-)	\$34,371,118
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. and D. Based upon a maximum assessment of 5.5 percent of the operating revenue for all nursing facilities subject to this assessment, 177 facilities will be assessed \$19.94 per day for 6,184,862 non-Medicare days of care, and 5 facilities will be assessed \$5.32 per day for 507,760 non-Medicare days of care, for a total assessment of \$126,027,431, 27.27 percent of which represents an increase from the previously allowed maximum.

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, 210 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.03 Collection of Nursing Facility Quality Assessment.

A.—D. (text unchanged)

E. Effective July 1, [2010] 2011, the aggregated annual assessment collected under this chapter may not exceed [4] 5.5 percent of the operating revenue for all nursing facilities subject to this assessment.

F. (text unchanged)

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.06 Hospital Services

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

Notice of Proposed Action

[11-248-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .09 under **COMAR 10.09.06 Hospital Services**.

Statement of Purpose

The purpose of this action is to freeze revenues for outpatient services at the Kennedy Krieger Institute in accordance with budget

language in the FY 2012 budget approved by the Maryland Legislature.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The economic impact is to reduce payments to providers to offset the effect of increasing charges by the providers in the new fiscal year.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	\$500,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude

D. On regulated industries or trade groups:	(-)	\$500,000
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. and D. Savings is based on applying the cost master increase percentage by provider to the revenue earned by that provider in the previous year. This will result in offsetting an increase in expenditures resulting from an increase in charges by the providers.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 412, Baltimore, Maryland 21201, or call 410-767-7499, TTY:800-735-2258, or email to regs@dnhm.state.md.us, or fax to 410-767-7483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.09 Payment Procedures.

A. Reimbursement Principles.

(1)—(3) (text unchanged)

[(3-1)] (4)—[(3-4)] (7) (text unchanged)

(8) For outpatient services in §A(7) of this regulation, the revenue shall be maintained at the FY 2011 level beginning July 1, 2011.

[(4)] (9)—[(7)] (12) (text unchanged).

B.—C. (text unchanged)

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.06 Hospital Services

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

Notice of Proposed Action
[11-247-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .15 and .15-1 under **COMAR 10.09.06 Hospital Services**.

Statement of Purpose

The purpose of this action is to increase the rates paid to D.C. hospitals.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. There will be a net cost saving of \$11,400,000 for the Department and a \$1,800,000 increase in rates for D.C. hospitals.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	\$11,400,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) MCOs	(-)	\$13,200,000
(2) D.C. hospitals	(+)	\$1,800,000
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. and D. There will be a \$13,200,000 reduction in the MCO's capitation payments to cover a \$1,800,000 increase in the fee-for-service payments to D.C. hospitals resulting in a net cost savings of \$11,400,000 for the Department as stated in the estimate of economic impact for the proposed changes to COMAR 10.09.06, as published in 38:7 Md. R. (March 25, 2011).

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.15 District of Columbia Hospital Reimbursement.

- A. (text unchanged)
- B. Outpatient Services.
 - (1)—(2) (text unchanged)
 - (3) *Effective for dates of service starting July 1, 2011, an overall average of 2 percentage points will be added to the product of §B(2) of this regulation.*
 - [(3)] (4)—[(5)] (6) (text unchanged)

.15-1 District of Columbia Hospital Reimbursement — Revised Inpatient Methodology.

- A. Inpatient Services Rate Calculation.
 - (1)—(2) (text unchanged)
 - (3) *Effective for dates of service starting July 1, 2011, an overall average of 2 percentage points will be added to the product of §A(2) of this regulation.*
 - [(3)] (4)—[(10)] (11) (text unchanged)
- B. (text unchanged)

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.10 Nursing Facility Services

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

Notice of Proposed Action
[11-257-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .07, .08, .09, .10, .11-1, .11-2, and .16 under **COMAR 10.09.10 Nursing Facility Services**.

Statement of Purpose

The purpose of this action is to increase Medicaid reimbursement for nursing facility services by an average of 1.5 percent. Cost containment adjustments that were set to end after Fiscal Year 2011 will be extended through Fiscal Year 2012, and net Medicaid payments in the Administrative/Routine, Other Patient Care, and Capital cost centers will be reduced by 1.623 percent rather than 4.158 percent as was established under existing regulatory provisions.

In addition, the requirement is eliminated that a provider must have 40 percent of its days of care paid by Medicaid in order to be eligible for pay-for-performance. Also, pay-for-performance distributions during Fiscal Year 2012 shall be determined using Minimum Data Set clinical quality indicators from the 3-month period ending September 30, 2010.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Increasing provider rates by 1.5 percent will result in an increase of \$19,090,530 in reimbursement.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	\$19,090,530
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	\$19,090,530
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. The Program projects that a 1.5 percent increase in reimbursement equals \$3.33 per Medicaid day of care. With a projection of 5,732,892 Medicaid days in Fiscal Year 2012, the result is an increase in nursing home reimbursement of \$19,090,530.

D. Provider reimbursement for nursing facilities will be increased by \$19,090,530 during Fiscal Year 2012 as described in Section A.

Economic Impact on Small Businesses

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

Thirty-eight nursing homes, which qualify as small businesses, are expected to account for 773,000 Medicaid days during Fiscal Year 2012. At an average increase in rates of \$3.33 per day, the impact on small businesses is estimated as an increase in revenue of \$2,574,090.

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, 210 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.07 Payment Procedures — Maryland Facilities.

A. The Department shall pay the provider the sum of the rates calculated under the provisions of Regulations .08—.11 of this chapter. [The provider shall be paid its allowable costs and an efficiency allowance based on a maximum per diem rate as determined by the Department or its designee under the provisions of

Regulations .08 and .09 of this chapter. The provider shall be paid its allowable costs plus a net capital value rental under the provisions of Regulation .10 of this chapter. The provider shall be reimbursed for nursing services as determined by the Department or its designee under the provisions of Regulation .11 of this chapter.] All interim per diem rates shall remain unchanged during the rate year unless documentation is submitted by the provider to the Department or its designee to demonstrate that a recalculation of the [facility's] provider's interim per diem rate for the [cost center of concern] *Administrative and Routine, Other Patient Care, or Capital cost center* would change by 5 percent (10 percent during the period July 1, 2009 through June 30, [2010] 2012), or more or unless otherwise authorized by the Department. *A provider may request an interim rate change in the Nursing Service cost center by submitting documentation to the Department or its designee to demonstrate that a recalculation of the provider's interim per diem rate would change by 2 percent or more.* For the cost of power wheelchairs or power wheelchair repairs, there is no requirement of a percent change in the Capital cost center. The revised interim per diem rates shall be applicable from the first whole month after submission of the request for revision to the end of the rate year. A [facility] provider may not request an interim rate change more than two times during the same rate year. Interim and maximum per diem rates shall be increased or decreased as necessary to the extent these adjustments are required by State law or Title XIX of the Social Security Act.

[A-1.] — [A-3.] (proposed for repeal)

[A-4.] *A-1.* For services provided during the period November 1, 2008—[June 30, 2010] *July 31, 2009*, providers' interim and final per diem rates as calculated under the provisions of Regulations .08, .09, and .10 of this chapter shall be reduced by 4.816 percent.

B. The per diem average of all projected Medicaid payments for all cost centers shall be determined in accordance with the provisions of [§§A and A-4] §A of this regulation (*and, for services provided during the period July 1, 2011 through June 30, 2012, in accordance with provisions of §C-1 of this regulation*). When this average exceeds the average determined if payments were to be made for Medical Assistance Program covered services on the basis of Medicare's principles of cost reimbursement, selected parameters of the rate determination process shall be adjusted downward in order to project a per diem patient average for Medicaid payments which does not exceed the Medicare Statewide class average. The following apply:

(1)—(3) (text unchanged)

C. (text unchanged)

[C-1.] — [C-3.] (proposed for repeal)

[C-4.] *C-1.* With the exception of interim rate changes allowed in accordance with [§§A and A-1] §A of this regulation, for services provided during the period July 1, [2010] 2011 through June 30, [2011] 2012, interim and maximum reimbursement rates shall remain unchanged from those in effect for the period November 1, 2008 through [June 30, 2009] *July 31, 2009*, except that rates calculated under the provisions of Regulations .08, .09, and .10 of this chapter shall be reduced by [4.158] *1.623* percent rather than by the percentage indicated under [§A-4] §A-1 of this regulation.

D. (text unchanged)

.08 Rate Calculation — Administrative and Routine Costs.

A. (text unchanged)

B. The final per diem rate for administrative and routine costs in each reimbursement class is the sum of:

(1) (text unchanged)

(2) An efficiency allowance equal to the lesser of 50 percent ([45 percent for the period July 1, 2008 through October 31, 2008 and] 40 percent for the period November 1, 2008 through June 30, [2011] 2012) of the amount by which the allowable per diem costs in

§B(1) of this regulation are below the maximum per diem rate for this cost center, or 10 percent of the maximum per diem rate for the cost center.

C.—D. (text unchanged)

E. Maximum per diem rates for administrative and routine costs in each reimbursement class shall be established according to the following:

(1)—(4) (text unchanged)

(5) The maximum per diem rate for each reimbursement class shall be 114 percent ([113 percent for the period July 1, 2008 through October 31, 2008 and] 112 percent for the period November 1, 2008 through June 30, [2011] 2012) of the lowest aggregate indexed current interim per diem cost, from §E(1) of this regulation, which is equal to the aggregate indexed current interim per diem costs associated with at least 50 percent of the paid Medical Assistance days in the reimbursement class.

F.—H. (text unchanged)

.09 Rate Calculation — Other Patient Care Costs.

A.—D. (text unchanged)

E. Maximum per diem rates for Other Patient Care costs in nursing facilities shall be established using the provisions described in Regulation .08E of this chapter except that 120 percent ([119 percent for the period July 1, 2008 through October 31, 2008 and] 118 percent for the period November 1, 2008 through June 30, [2011] 2012) of the lowest aggregate indexed current interim per diem cost which is equal to the aggregate indexed current interim costs associated with at least 50 percent of the paid Medical Assistance days in the reimbursement class shall be used instead of the percentage expressed in Regulation .08E(5) of this chapter and except that the table of monthly indices listed under Regulation .21 of this chapter shall be used instead of that presented in Regulation .20 of this chapter.

F.—H. (text unchanged)

.10 Rate Calculation — Capital Costs.

A.—F. (text unchanged)

G. The net capital value rental for those facilities which are subject to rate determination under §C of this regulation is determined through the following steps:

(1)—(8) (text unchanged)

(9) The value of net capital from §G(7) of this regulation shall be multiplied by 0.0857 ([0.0807 for the period July 1, 2008 through October 31, 2008 and] 0.0757 for the period November 1, 2008 through June 30, [2011] 2012) in order to generate the net capital value rental.

H.—N. (text unchanged)

.11-1 Pay-for-Performance — Eligibility.

In order to be eligible to receive funds through the pay-for-performance program under the provisions of Regulations .11-2—.11-6 of this chapter:

A. The provider shall:

(1) Be] *be* subject to quality assessment under COMAR 10.01.20; and

(2) Have at least 40 percent of days of care during their most recent fiscal cost reporting period paid by Medicaid]; and

B. (text unchanged)

.11-2 Pay-for-Performance — Quality Measures.

A.—D. (text unchanged)

E. Minimum Data Set Clinical Quality Indicators.

(1)—(2) (text unchanged)

(3) *Payments distributed during State fiscal year 2012 shall be based upon scores for the 3-month period ending September 30, 2010, rather than the period indicated under §E(1) of this regulation.*

F.—G. (text unchanged)

.16 Selected Costs — Allowable.

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

A.—E. (text unchanged)

F. Bed Occupancy.

(1) [For services on or after September 1, 2005, the] *The* per diem cost determined for a provider, or a distinct part thereof in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus 1.5 percent (2 percent during the period November 1, 2008 through June 30, [2011] 2012), whichever is higher, for the calculation of ceilings, current interim costs, and final costs in the cost centers of Administrative and Routine, and Other Patient Care.

(2) [For services on or after September 1, 2005, the] *The* per diem cost determined for a provider, or a distinct part of it in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus 1.5 percent (2 percent during the period November 1, 2008 through June 30, [2011] 2012), whichever is higher, for all Capital cost items exclusive of the net capital value rental.

(3) [For services on or after September 1, 2005, the] *The* per diem rate determined for a provider, or a distinct part of it in a multilevel facility, shall be calculated at the actual occupancy of the nursing facility beds plus 95 percent of licensed capacity of the non-nursing facility beds, or at the Statewide average occupancy of nursing facility beds, based on the cost reports used to set the current interim rates, plus 1.5 percent (2 percent during the period November 1, 2008 through June 30, [2011] 2012), plus 95 percent of licensed capacity of the non-nursing facility beds, whichever is higher, for the net capital value rental.

(4)—(8) (text unchanged)

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

Subtitle 19 DANGEROUS DEVICES AND SUBSTANCES

10.19.01 Prohibition of Bisphenol-A in Child Care Articles

Authority: Health-General Article, §24-304, Annotated Code of Maryland

Notice of Proposed Action

[11-246-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.05 under a new chapter, **COMAR 10.19. 01 Prohibition of Bisphenol-A in Child Care Articles.**

Statement of Purpose

The purpose of this action is to adopt regulations as directed by Health-General Article, §24-304, Annotated Code of Maryland, to prohibit the manufacture, sale, and distribution of child care articles containing bisphenol-A.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. There is no economic impact on local health departments from these proposed regulations. The Department may gain revenues from collection of fines for violation

of the BPA ban by the regulated industry. This amount, which cannot be determined, will go to the General Fund of the State. There may be an impact on the industry because of the prohibition of bisphenol-A in child care articles and possible fines for violation of this ban. The impact cannot be quantified because the extent of the impact is unknown. Similarly, the public may benefit from these proposed regulations because of the reduction in exposure to bisphenol-A among children under the age of 4 years.

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

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

A. The Department may gain revenues from collection of fines for violation of BPA ban by the regulated industry. This amount, which cannot be determined, will go to the General Fund of the State.

D. The child care products industry may be negatively impacted by this proposal because of the ban of bisphenol-A (BPA) in child care articles and possible fines for violation of this ban. The industry will be required to make BPA-free child care articles by using suitable alternatives. These suitable alternatives may be more expensive. However, many manufacturers are already producing BPA free child care articles using alternatives. Therefore, it cannot be quantified what the cost may be on those manufacturers that have not yet made the switch to BPA-free child care articles.

F. The public health impact on the public from these regulations will be positive. This is because there may be links between BPA exposure and increased risk of cancer, diabetes, and reproductive, neurological, and developmental disorders. Therefore, reduced exposure to BPA should lead to gains in health. However, it is not possible to quantify the benefit at this time.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston St., Room 512, Baltimore,

Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 Scope.

This chapter establishes regulations that prohibit the manufacturing, sale, or distribution of child care articles that contain bisphenol-A, also known as BPA.

.02 Definitions.

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

B. Terms Defined.

(1) "Bisphenol-A (BPA)" means an industrial chemical also known as 2,2-bis (4-hydroxyphenyl) propane used primarily in the manufacture of polycarbonate plastic and epoxy resins.

(2) "Child care article" means an empty bottle or cup to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child younger than 4 years old.

.03 Prohibition of Bisphenol-A in Child Care Articles.

On or after January 1, 2012, a person may not manufacture, knowingly sell, or distribute in commerce a child care article containing bisphenol-A.

.04 Requirements on Manufacturers.

A. A manufacturer of a child care article shall use a safe and legal alternative to BPA when replacing BPA in a child care article.

B. A manufacturer of a child care article may not use in place of BPA a substance determined by the United States Environmental Protection Agency to be a:

(1) Group A, B, or C carcinogen; or

(2) Reproductive toxicant causing birth defect, reproductive harm, or developmental harm.

.05 Violations.

A person that violates any of the provisions of Health-General Article, §24-304, Annotated Code of Maryland, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000 for each violation.

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

Subtitle 19 DANGEROUS DEVICES AND SUBSTANCES

10.19.03 Controlled Dangerous Substances

Authority: Criminal Law Article, §§5-202(b) and 5-203, Annotated Code of Maryland

Notice of Proposed Action

[11-232-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulation .13 under **COMAR 10.19.03 Controlled Dangerous Substances**.

Statement of Purpose

The purpose of this action is to ban the sale, distribution, and possession of 3,4-Methylenedioxypropylvalerone (MDPV); 4-Methylmethcathinone (Mephedrone, 4-MMC), 3,4-Methylenedioxymethcathinone (Methylone, MDMC), 4-Fluoromethcathinone (Flephedrone, 4-FMC), 3-Fluoromethcathinone (3-FMC), and 4-Methoxymethcathinone (Methedrone, bk-PMMA, PMMC) — generically known as "bath salts".

This action is being proposed to codify the Secretary's order, dated July 20, 2011, that these drugs be added to the list of Schedule I controlled dangerous substances. As the Secretary found, these drugs pose an imminent hazard to the public safety of the citizens of Maryland. Prior to this regulatory action, the Department created a webpage and solicited public comments regarding this issue. In addition, and as required by law, the Department has considered the factors listed in Criminal Law Article, §5-202(c), Annotated Code of Maryland. In accordance with Criminal Law Article, §5-202(d), the Department has developed a report outlining its findings and the Secretary has found that these substances have a potential for abuse and no accepted medical use.. All of this information may be found on the DHMH website (<http://www.dhmh.state.md.us/news/bathsalts/index.html>). In addition, a copy of the Secretary's order is being published in this issue of the Maryland Register.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY: 800-735-2258, or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.13 Additional Controlled Dangerous Substances — Schedule I.

The following substances, also known as "bath salts", are added to the Maryland Controlled Dangerous Substances Act, Schedule I of the Criminal Law Article, §5-402, Annotated Code of Maryland:

- A. 3,4-Methylenedioxypropylvalerone (MDPV);
- B. 4-Methylmethcathinone (Mephedrone, 4-MMC);
- C. 3,4-Methylenedioxymethcathinone (Methylone, MDMC);
- D. 4-Fluoromethcathinone (Flephedrone, 4-FMC);
- E. 3-Fluoromethcathinone (3-FMC); and
- F. 4-Methoxymethcathinone (Methedrone, bk-PMMA, PMMC).

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

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.33 Temporary Licenses for Volunteer Dentists and Dental Hygienists and Temporary Dental Clinic Permits

Authority: Health Occupations Article, §§4-101, 4-304, 4-306, and 4-308, Annotated Code of Maryland

Notice of Proposed Action

[11-256-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.06 under a new chapter, **COMAR 10.44.33 Temporary Licenses for Volunteer Dentists and Dental**

Hygienists and Temporary Dental Clinic Permits. This action was considered by the Board of Dental Examiners at a public meeting held on July 6, 2011, notice of which was given under the Notice of Public Meetings link on the Board's website pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement Chs. 496 and 497, Laws of 2011, by adopting a new chapter that provides for the issuance of temporary volunteer dentist's licenses and temporary volunteer dental hygienist's licenses for out-of-State dentists and dental hygienists who wish to volunteer at a temporary dental clinic providing care to the poor, elderly, and disabled in Maryland. The chapter also provides for the issuance of temporary dental clinic permits for nonprofit entities that wish to host temporary dental clinics.

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, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.01 Scope.

This chapter establishes the requirements for the issuance of:

- A. A temporary volunteer dentist's license to practice dentistry;
- B. A temporary volunteer dental hygienist's license to practice dental hygiene; and
- C. A temporary dental clinic permit.

.02 Definitions.

- A. In this chapter, the following terms have the meaning indicated.
- B. Terms Defined.

(1) "Board" means the Maryland State Board of Dental Examiners.

(2) "Temporary dental clinic" means a dental clinic of a specific limited duration at which a bona fide charitable organization provides dental services to the poor, elderly, or disabled.

(3) "Temporary dental clinic permit" means a temporary permit issued by the Board to a bona fide charitable organization to provide dental services to the poor, elderly, or disabled at a temporary dental clinic.

(4) "Temporary volunteer dental hygienist's license" means a temporary license issued by the Board to a dental hygienist who:

(a) Holds an active general license to practice clinical dental hygiene in another state; and

(b) Otherwise meets the requirements of this chapter to obtain a temporary volunteer dental hygienist's license.

(5) "Temporary volunteer dentist's license" means a temporary license issued by the Board to a dentist who:

(a) Holds an active general license to practice clinical dentistry in another state; and

(b) *Otherwise meets the requirements of this chapter to obtain a temporary volunteer dentist's license.*

.03 Temporary Volunteer Dentist's License.

A. *License Required.* A dentist who holds a general license to practice dentistry in another state may practice dentistry at a temporary dental clinic or for a government entity only after receiving a temporary volunteer dentist's license to practice dentistry as provided in this chapter.

B. *Qualifications for Out-of-State Dentists.*

(1) *The Board shall issue a temporary volunteer dentist's license to a dentist who satisfies the requirements of this chapter.*

(2) *To qualify for a temporary volunteer dentist's license, an applicant shall:*

(a) *Comply with the following:*

(i) *Submit a completed Board-approved application with the Board at least 60 days before the date the temporary dental clinic is scheduled to open;*

(ii) *Hold an active general license to practice clinical dentistry in another state that is not subject to clinical restrictions; and*

(iii) *Have passed the North East Regional Board Clinical Examination or submit to the Board a notarized affidavit or other evidence satisfactory to the Board that for the 5 years preceding application the applicant has actively engaged in the practice of dentistry for at least 850 hours on average per year;*

(b) *Provide a notarized affidavit to the Board:*

(i) *Agreeing to donate dental services without compensation for a temporary dental clinic operated by a bona fide charitable organization or government entity; and*

(ii) *Indicating that the applicant does not practice dentistry for profit in the State;*

(c) *Provide documentation to the Board that evidences that the dentist is covered by malpractice insurance; and*

(d) *Provide current verification of cardiopulmonary resuscitation certification.*

(3) *The Board may require a dentist seeking a temporary volunteer dentist's license to:*

(a) *Pass the Maryland Jurisprudence Examination; or*

(b) *Fulfill any other requirements relating to knowledge of the laws and regulations concerning the practice of dentistry in the State.*

(4) *An applicant for a temporary volunteer dentist's license may not be required to pay an application fee.*

(5) *The Board may deny a temporary volunteer dentist's license on the grounds provided under Health Occupations Article, §4-315, Annotated Code of Maryland.*

C. *Practice Locations.* A temporary volunteer dentist's license authorizes the licensee to practice dentistry only in a temporary dental clinic providing medical care to the poor, elderly, or disabled that is operated by:

(1) *A bona fide charitable organization;*

(2) *The State or a local government; or*

(3) *A local health department.*

D. *Practice Restrictions.*

(1) *A dentist who holds a temporary volunteer dentist's license may not administer, monitor, or maintain general anesthesia or sedation.*

(2) *A dentist who holds a temporary volunteer dentist's license may administer, monitor, and maintain nitrous oxide oxygen.*

(3) *A dentist who holds a temporary volunteer dentist's license may only provide services authorized under the:*

(a) *Maryland Dentistry Act; and*

(b) *Regulations adopted by the Board.*

E. *Dentists Licensed in Maryland.* A dentist who holds an active general license to practice dentistry in Maryland may:

(1) *Practice at a temporary dental clinic without obtaining a temporary volunteer dentist's license; and*

(2) *Only provide services authorized under the:*

(a) *Maryland Dentistry Act; and*

(b) *Regulations adopted by the Board.*

F. *Follow-Up Care.* The treating dentist shall ensure that each patient receives a form at the conclusion of treatment that contains:

(1) *A summary of the services that were provided to the patient by the dentist and, if applicable, the dental hygienist; and*

(2) *Instructions for any recommended follow-up care.*

G. *Expiration and Renewal.*

(1) *A temporary volunteer dentist's license issued under this chapter shall be issued for the duration of the temporary dental clinic only and may not be renewed.*

(2) *The Board may issue a temporary volunteer dentist's license to a dentist who previously held a temporary volunteer dentist's license if the dentist:*

(a) *Applies for a new license; and*

(b) *Satisfies the requirements of this chapter.*

H. *Continuing Education.* The Board may not require continuing education as a condition for the issuance of a temporary volunteer dentist's license.

I. *Display of License.* The holder of a temporary volunteer dentist's license shall maintain the holder's wallet license on the premises of the temporary dental clinic while practicing dentistry at the temporary dental clinic.

.04 Temporary Volunteer Dental Hygienist's License.

A. *License Required.* A dental hygienist who holds a general license to practice dental hygiene in another state may practice dental hygiene at a temporary dental clinic or for a government entity only after receiving a temporary volunteer dental hygienist's license to practice dental hygiene as provided in this chapter.

B. *Qualifications for Out-of-State Dental Hygienists.*

(1) *The Board shall issue a temporary volunteer dental hygienist's license to a dental hygienist who satisfies the requirements of this chapter.*

(2) *To qualify for a temporary volunteer dental hygienist's license, an applicant shall:*

(a) *Comply with the following:*

(i) *Submit a completed Board-approved application with the Board at least 60 days before the date the temporary dental clinic is scheduled to open;*

(ii) *Hold an active general license to practice clinical dental hygiene in another state that is not subject to clinical restrictions; and*

(iii) *Have passed the North East Regional Board Clinical Examination or submit to the Board a notarized affidavit or other evidence satisfactory to the Board that for the 3 years preceding application the applicant has actively engaged in the practice of dental hygiene for at least 150 hours on average per year;*

(b) *Provide a notarized affidavit to the Board:*

(i) *Agreeing to donate dental hygiene services without compensation for a temporary dental clinic operated by a bona fide charitable organization or government entity; and*

(ii) *Indicating that the applicant does not practice dental hygiene for profit in the State;*

(c) *Provide documentation to the Board that evidences that the dental hygienist is covered by malpractice insurance; and*

(d) *Provide current verification of cardiopulmonary resuscitation certification.*

(3) The Board may require a dental hygienist seeking a temporary volunteer dental hygienist's license to:

(a) Pass the Maryland Jurisprudence Examination; or

(b) Fulfill any other requirements relating to knowledge of the laws and regulations concerning the practice of dental hygiene in the State.

(4) An applicant for a temporary volunteer dental hygienist's license may not be required to pay an application fee.

(5) The Board may deny a temporary volunteer dental hygienist's license on the grounds provided under Health Occupations Article, §4-315, Annotated Code of Maryland.

C. Practice Locations. A temporary volunteer dental hygienist's license authorizes the licensee to practice dental hygiene only in a temporary dental clinic providing medical care to the poor, elderly, or disabled that is operated by:

(1) A bona fide charitable organization;

(2) The State or a local government; or

(3) A local health department.

D. Practice Restrictions.

(1) A dental hygienist who holds a temporary volunteer dental hygienist's license may not:

(a) Administer, monitor, or maintain general anesthesia or sedation;

(b) Administer local anesthesia by infiltration;

(c) Administer block anesthesia; or

(d) Administer, monitor, or maintain nitrous oxide oxygen.

(2) A dental hygienist who holds a temporary volunteer dental hygienist's license may only provide services authorized under the:

(a) Maryland Dentistry Act; and

(b) Regulations adopted by the Board.

E. Dental Hygienists Licensed in Maryland. A dental hygienist who holds an active general license to practice dental hygiene in Maryland may:

(1) Practice at a temporary dental clinic without obtaining a temporary volunteer dental hygienist's license; and

(2) Only provide services authorized under the:

(a) Maryland Dentistry Act; and

(b) Regulations adopted by the Board.

F. General Supervision.

(1) A temporary volunteer dental hygienist's license authorizes the dental hygienist to practice dental hygiene at a temporary dental clinic under the general supervision of a dentist who:

(a) Is on the premises;

(b) Examines the patient at any time during the treatment; and

(c) Is available for personal consultation while the services are being performed.

(2) A dental hygienist may:

(a) Perform an assessment of dental needs; and

(b) Provide dental hygiene services before an examination by a supervising dentist.

(3) This section may not be construed to:

(a) Require a preliminary dental examination or treatment by a dental hygienist; or

(b) Prohibit a supervising dentist from either examining a patient or providing treatment to a patient before treatment by a dental hygienist.

G. Expiration and Renewal.

(1) A temporary volunteer dental hygienist's license issued under this chapter shall be issued for the duration of the temporary dental clinic only and may not be renewed.

(2) The Board may issue a temporary volunteer dental hygienist license to a dental hygienist who previously held a temporary volunteer dental hygienist license if the dental hygienist:

(a) Applies for a new license; and

(b) Satisfies the requirements of this chapter.

H. Continuing Education. The Board may not require continuing education as a condition for the issuance of a temporary volunteer dental hygienist's license.

I. Display of License. The holder of a temporary volunteer dental hygienist's license shall maintain the holder's wallet license on the premises of the temporary dental clinic while practicing dental hygiene at the temporary dental clinic.

.05 Temporary Dental Clinic Permit.

A. Bona Fide Charitable Organization.

(1) A bona fide charitable organization may utilize holders of a temporary volunteer dentist's license or a temporary volunteer dental hygienist's license to provide dental services to the poor, elderly, or disabled at a temporary dental clinic only after receiving a temporary dental clinic permit issued by the Board.

(2) The Board shall issue a temporary dental clinic permit to a bona fide charitable organization that meets the requirements of this chapter.

(3) To apply for a temporary dental clinic permit, a bona fide charitable organization:

(a) Shall submit an application on a form that the Board requires; and

(b) May not be required to pay an application fee.

(4) Expiration and Renewal of Permit.

(a) A temporary dental clinic permit issued under this chapter:

(i) Shall be issued for the duration of the temporary dental clinic only; and

(ii) May not be renewed.

(b) The Board may issue a temporary dental clinic permit to a bona fide charitable organization that previously held a temporary dental clinic permit if the bona fide charitable organization:

(i) Applies for a new permit; and

(ii) Satisfies the requirements of this chapter.

(5) A bona fide charitable organization that conducts a temporary dental clinic under this chapter may not be construed to be practicing dentistry.

B. Government Entities.

(1) The State, a local government, or a local health department that provides dental services to the poor, elderly, or disabled and that wishes to utilize the services of dentists or dental hygienists that hold an active general license in another state at a temporary dental clinic shall at least 60 days before the services are to be provided:

(a) Provide written notice to the Board of:

(i) Its intention to provide the services;

(ii) The dates and location of the temporary dental clinic;

(iii) The name, address, and telephone number of the temporary dental clinic's coordinator; and

(b) Indicate whether it has provided malpractice insurance to those who are applying for either a:

(i) Temporary volunteer dentist's license; or

(ii) Temporary volunteer dental hygienist's license.

(2) The State, a local government, or a local health department may not be required by the Board to seek authorization to provide services at a temporary dental clinic.

(3) A holder of an active general license to practice dentistry or dental hygiene in another state who wishes to provide dental services sponsored by the State, a local government, or a local health department shall obtain a temporary volunteer dentist's license or a temporary volunteer dental hygienist's license as provided in this chapter before providing the dental services.

C. Permit Holders. The holder of a temporary dental clinic permit shall have:

(1) A medical emergency plan;

(2) Adequate equipment, including:

- (a) Portable equipment where appropriate; and
- (b) Appropriate armamentarium available for the delivery of dental services; and

(3) Adequate safeguards to protect the health and safety of patients.

D. Display of Permit. The holder of a temporary dental clinic permit shall display the permit conspicuously in the clinic.

.06 Board Authority.

A. The Board may:

(1) Enter and inspect a temporary dental clinic in order to carry out a duty under Health Occupations Article, Title 4, Annotated Code of Maryland, or this chapter; and

(2) Conduct an investigation of:

- (a) A temporary dental clinic;
- (b) A holder of a temporary volunteer dentist's license providing services at a temporary dental clinic;
- (c) A holder of a temporary volunteer dental hygienist's license providing services at a temporary dental clinic;
- (d) A holder of a general license to practice dentistry providing services at a temporary dental clinic; or
- (e) A holder of a general license to practice dental hygiene providing services at a temporary dental clinic.

B. This regulation may not be construed to limit the authority of the Board to conduct investigations under Health Occupations Article, Title 4, Annotated Code of Maryland.

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

Title 14

INDEPENDENT AGENCIES

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

[11-258-P]

The Maryland Workers' Compensation Commission proposes to amend Regulations .01 and .19 under COMAR 14.09.01 Procedural Regulations. This action was considered at a public meeting held on July 14, 2011, notice of which was given by publication in 38:13 Md. R. (June 17, 2011) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to ensure compliance with the guidelines issued by the Centers for Medicare and Medicaid Services (CMS) involving the settlement of future medical benefits.

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 October 11, 2011. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) "Formal set-aside allocation" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

(4) "Non-compromise case" means a case in which the employer/insurer has not contested liability or in which the Commission has found liability and in which the settlement compensates the claimant for anticipated future medical expenses.

[(3)] (5) (text unchanged)

.19 Agreements for Final Compromise and Settlement.

A. General Requirements. An agreement for final compromise and settlement of a claim that is submitted to the Commission for approval as required by Labor and Employment Article, §9-722, Annotated Code of Maryland, shall contain the following:

(1) (text unchanged)

(2) [The] A payment allocation sheet including the amount of any deductions for attorney's fees, medical fees, and other costs;

(3) — (4) (text unchanged)

(5) If any compensation was previously awarded or paid, a statement indicating whether the settlement includes, is in addition to, or is in place of all or part of that compensation; [and]

(6) A statement indicating the rate of payment and whether all or part of the settlement is to be paid in a lump sum[.];

(7) The claimant's average weekly wage;

(8) The claimant's date of birth and age in years and months;

(9) The total amount of all indemnity benefits paid to claimant;

(10) A statement that the insurer shall reimburse Medicare for any provisional or conditional payments made by Medicare, up to the date of the settlement, that are determined to be the responsibility of the employer/insurer in a non-compromise case;

(11) The gross total of all future payments to be paid pursuant to an annuity (not present value); and

(12) If the insurer makes an assignment of any of its obligations to a third party, the settlement agreement shall contain affirmative language confirming that the employer/insurer shall resume its obligation for all remaining payments in the event of default by the third party.

B. Future Medical Expenses.

(1) A settlement involving future medical expenses, including future pharmaceutical expenses, may be approved by the Commission provided that the settlement agreement:

(a) Contains a detailed statement explaining how the interests of Medicare have been considered in reaching the settlement; and

(b) Identifies the amount of the proposed settlement:

(i) Apportioned to future medical expenses; or

(ii) *Set aside for future medical expenses through a formal set-aside allocation.*

(2) *The apportionment of the amount of the settlement associated with future medical expenses shall be supported by medical evidence such as a medical opinion or evaluation.*

(3) *A formal set-aside allocation shall comply with the guidelines established by Medicare for set-aside allocations.*

(4) *In determining whether a set-aside allocation and settlement may be reviewed and approved by the Centers for Medicare and Medicaid Services (CMS), the Commission shall apply the most current Medicare review thresholds set forth in the memoranda or regulations available on the CMS website.*

(5) *A settlement within the Medicare review thresholds may be approved by the Commission provided that, in addition to the requirements set forth in §B(1) of this regulation, the settlement agreement contains a statement acknowledging:*

(a) *That the settlement is within the CMS review thresholds;*

(b) *That the parties voluntarily have elected not to submit the settlement and formal set-aside allocation to CMS for review and approval; and*

(c) *That the parties are aware that CMS may refuse to pay for services related to the injury and may assert a recovery claim against any entity, including a claimant, provider, supplier, physician, attorney, or private insurer.*

[B.] C. Special Requirements.

(1) [Claims Involving] *Resolution of Third-Party Liability Claims.* When [the settlement arises in connection with a claim involving a third-party liability action under Labor and Employment Article, Title 9, Subtitle 9, the agreement submitted to the Commission for approval, in addition to complying with §A.] *a third-party liability claim has been resolved by settlement or judgment, the agreement settling the workers' compensation claim shall be submitted to the Commission for approval, comply with §§A and B of this regulation, and contain or be accompanied by the following:*

(a) — (b) (text unchanged)

(c) *A copy of the executed release or judgment.*

(2) **Dependency Claims.**

(a) *When the settlement arises in connection with a claim involving a surviving dependent, the agreement submitted to the Commission for approval, in addition to complying with [§A] §§A and B, shall contain:*

(i) — (ii) (text unchanged)

(b) (text unchanged)

[C.] D. (text unchanged)

[D.] E. Medical Report.

(1) [Except for those settlements arising under §B(2), a] *An agreement for final compromise and settlement shall be accompanied by all medical reports evaluating the nature and extent of the claimant's disability.*

(2) *On written request of the parties, the Commission may waive the requirement under [§D(1), above,] §E(1) of this regulation if:*

(a) — (c) (text unchanged)

[E.] F. Hearing. *The Commission may not approve an agreement for final compromise and settlement without a hearing unless the agreement is accompanied by the [notarized] affidavit of the claimant, on the form prescribed by the Commission, waiving the hearing. The Commission may, at its discretion, require a hearing even when the affidavit is filed.*

R. KARL AUMANN
Chairman
Workers' Compensation Commission

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.01 Designation of Service Regions

Authority: Natural Resources Article, §§3-106(b) and 3-129, Annotated Code of Maryland

Notice of Proposed Action

[11-259-P]

The Director of the Maryland Environmental Service proposes to repeal Regulation .01 under **COMAR 14.27.01 Designation of Service Regions**. This action was considered by the Board of Directors of the Maryland Environmental Service at a public meeting held on July 25, 2011, 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 repeal COMAR 14.27.01.01. As a result of the review conducted by the Maryland Environmental Service under the Regulatory Review and Evaluation Act, MES and the Northeast Maryland Waste Disposal Authority have determined that this regulation is no longer necessary and should be repealed.

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 Pamela Fuller, Regulations Coordinator, Maryland Environmental Service, 259 Najoles Road, Millersville, MD 21108, or call 410-729-8243, or email to pfull@menv.com, or fax to 410-729-8220. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

JAMES M. HARKINS

Director

Maryland Environmental Service

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.02 Human Resources

Authority: Natural Resources Article, §§3-103.1 and 3-127, Annotated Code of Maryland

Notice of Proposed Action

[11-260-P]

The Director of the Maryland Environmental Service proposes to amend Regulation .12 under **COMAR 14.27.02 Human Resources**. This action was considered by the Board of Directors of the Maryland Environmental Service at a public meeting held on July 25, 2011, 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 correct an inconsistency in COMAR 14.27.02.12 allowing for use of sick leave for the birth of a child. As a result of the review conducted by the Maryland Environmental Service (MES) under the Regulatory Review and Evaluation Act, MES determined that while adoption of a child was listed as an approved use of sick leave, birth of a child was not included in the regulation. This amendment corrects that inconsistency.

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 Pamela Fuller, Regulations Coordinator, Maryland Environmental Service, 259 Najoles Road, Millersville, MD 21108, or call 410-729-8243, or email to pfull@menv.com, or fax to 410-729-8220. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.12 Sick Leave.

A. — C. (text unchanged)

D. Use of Sick Leave. An employee may use sick leave for the following purposes only:

(1) — (4) (text unchanged)

[(5) Adoption leave, if the employee:

(a) Is the individual primarily responsible for furnishing the care and nurture of a child placed for adoption with the employee,

(b) Does not use more than 30 days of sick leave following the date of placement of the child with the employee for adoption, and

(c) Obtains the approval of the Director before the date of placement of the child with the employee; or

(6) Bereavement leave as described in §H of this regulation.]

(5) Bereavement leave as described in §I of this regulation; or

(6) Birth or adoption of employee's child as describe in §J of this regulation.

E. — I. (text unchanged)

J. Birth or Adoption of Employee's Child. An employee who is primarily responsible for the care and nurturing of a child, with the approval of the Director or designee, may use accrued sick leave to care for the child during the period immediately following:

(1) The birth of the employee's child; or

(2) The placement of the child with the employee for adoption.

JAMES M. HARKINS

Director

Maryland Environmental Service

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.02 Human Resources System

Authority: Natural Resources Article, §§3-103.1 and 3-127, Annotated Code of Maryland

Notice of Proposed Action

[11-244-P]

The Director of the Maryland Environmental Service proposes to amend Regulation .16 under **COMAR 14.27.02 Human Resources System**. This action was considered by the Board of Directors of the Maryland Environmental Service at a public meeting held on July 25, 2011, 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 ensure the agency is in compliance with all the latest changes to the federal Family and Medical Leave Act (FMLA). With several recent changes to the FMLA, the Service's family leave regulation has become outdated. Rather than amending COMAR 14.27.2.16 each time the FMLA is amended, the Service has elected to repeal its current FMLA regulation, and replace it with language adopting the applicable provisions of the federal act. This new language is consistent with the Department of Budget and Management's practice contained in COMAR 17.04.11.24(I). This change will not result in loss of any FMLA leave benefits for MES employees.

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 Pamela Fuller, Regulations Coordinator, Maryland Environmental Service, 259 Najoles Road, Millersville, MD 21108, or call 410-729-8243, or email to pfull@menv.com, or fax to 410-729-8220. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.16 Family Leave.

[A. An employee who has been employed by the Service for at least 12 months and who has at least 1,250 hours of service during the previous 12 months is eligible for family leave.

B. Personal leave, annual leave, sick leave, compensatory leave, and leave without pay may be designated as family leave.

C. Uses of Family Leave.

(1) An employee may use family leave only for the following reasons:

(a) Because of the birth of a child of the employee and in order to care for the child;

(b) Because of the placement of a child with the employee for adoption or foster care;

(c) In order to care for the spouse, or a child or parent of the employee, if the spouse, child, or parent has a serious health condition; or

(d) Because of a serious health condition that makes the employee unable to perform the functions of the position of the employee.

(2) In any case in which the necessity for leave under §C(1)(a) or (b) of this regulation is foreseeable based on an expected birth or placement, the employee shall provide the Service with not less than 30 days notice, before the date the leave is to begin, of the employee's intention to take leave under §C(1)(a) or (b) of this regulation, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide as much notice as is practicable.

(3) In any case in which the necessity for leave under §C(1)(c) or (d) of this regulation is foreseeable based on planned medical treatment, the employee shall:

(a) Make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Service, subject to the approval of the health care provider of the employee, child, spouse, or parent of the employee, as the case may be; and

(b) Provide the Service with not less than 30 days notice, before the date the leave is to begin, of the employee's intention to take leave under §C(1)(c) or (d) of this regulation, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide as much notice as is practicable.

D. In any case in which a husband and wife eligible for family leave under this section are both employed by the Service, then the aggregate number of workweeks of leave which both may use may be limited to 12 weeks during any 12-month period. This subsection only applies to family leave taken under §C(1)(a) or (b) of this regulation or to care for a sick parent under §C(1)(c) of this regulation.

E. Amount of Family Leave. An employee may use up to 12 weeks of family leave during any 12-month period for the purposes set forth in §C of this regulation.

F. An employee may not use family leave for the uses set forth in §C(1)(a) or (b) of this regulation for a birth or placement of a child after the 12-month period beginning on the date of the birth or placement.]

Family and medical leave may be used in accordance with the provisions of the Family and Medical Leave Act of 1993, as amended, the implementing federal regulations, and the policies and guidelines adopted by the Service.

JAMES M. HARKINS
Director
Maryland Environmental Service

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.03 Procurement

Authority: Natural Resources Article, §§3-103 and 3-127, Annotated Code of Maryland

Notice of Proposed Action

[11-261-P]

The Director of the Maryland Environmental Service proposes to amend Regulation .11 under **COMAR 14.27.03 Procurement**. This action was considered by the Board of Directors of the Maryland Environmental Service at a public meeting held on July 25, 2011, 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 bring COMAR 14.27.03.11 into line with statutory requirements. As a result of the review conducted by the Maryland Environmental Service (MES) under the Regulatory Review and Evaluation Act, MES determined this regulation did not provide for advertisement of procurement awards in eMaryland Marketplace as required by State Finance and Procurement Article, §17-502, Annotated Code of Maryland. This regulation requires the Service to publish notice of award of procurement in eMaryland Marketplace if the Service previously published notice of the solicitation, as set forth in COMAR 14.27.03.06C(2).

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 Pamela Fuller, Regulations Coordinator, Maryland Environmental Service, 259 Najoles Road, Millersville, MD 21108, or call 410-729-8243, or email to pfull@menv.com, or fax to 410-729-8220. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.11 Contract Award.

A. — C. (text unchanged)

D. Publication of Award. The Service shall publish notice of award of a procurement in eMaryland Marketplace if the Service has previously published notice of solicitation for the same procurement in eMaryland Marketplace, as set forth in Regulation.06C(2) of this chapter.

JAMES M. HARKINS
Director
Maryland Environmental Service

Title 20 PUBLIC SERVICE COMMISSION

Subtitle 50 SERVICE SUPPLIED BY ELECTRIC COMPANIES

Notice of Proposed Action

[11-249-P]

The Public Service Commission proposes to:

(1) Amend Regulation .03 in under **COMAR 20.50.01 General**; and

(2) Adopt new Regulations .01—.06 under new chapter, **COMAR 20.50.11 Contact Voltage Survey Requirement and Reporting (In Memory of Deanna Camille Green)**.

This action was considered by the Public Service Commission at a scheduled rulemaking meeting on July 7, 2011 notice of which was given under State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to add definitions; to set rules for each electric company to perform contact voltage surveys within specific time frames in and out of contact voltage risk zones (CVRZs); and when certain contact voltage levels are located, to set rules to make the area safe and set reporting procedures.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The contact voltage survey requirement will benefit the public by ensuring the implementation of a program to mitigate the impact of contact voltage on persons or animals contacting objects or surfaces that could cause an electric shock or fatality. The requirements should also have some reliability benefits by requiring electric companies to identify problems on their electric systems and to take corrective action. These benefits, however, are unquantifiable. The program may have an impact on the electric rates charged by electric companies since prudently incurred program costs will be eligible for inclusion in future utility rates. The actual costs to implement the program will be reviewed by the Commission in rate case proceedings and it is expected the utilities will minimize the costs of the program by including contact voltage surveys in existing inspection programs to the extent possible.

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:	(+)	\$8,000,000
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.)

D. The regulations require electric utilities to test for contact voltage issues. The regulations will benefit the public by ensuring the implementation of measures to detect and remedy contact voltage problems. The contact voltage testing of utility systems and in some cases local government streetlights and traffic signals, as well as some public parks and playgrounds, may identify safety issues that the government or private property owners should resolve. The cost to resolve contact voltage issues identified on non-utility property is unquantifiable; however, it should not be significant and it is necessary to protect the public from potential electric shock or electrocution. The estimate annual cost to implement the program for electric utilities is less than \$8,000,000.

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 Terry J. Romine, Executive Secretary, Public Service Commission, William Donald Schaefer Tower, 6 St. Paul Street, Baltimore, Maryland 21202-6806, or call 410-767-8067. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

20.50.01 General

Authority: Public Utilities Article, §§2-113, 2-121, 5-101[,] and 5-303, [and 7-203], Annotated Code of Maryland

.03 Definitions.

A. In this subtitle, the following terms have the meanings indicated:

B. Terms Defined.

- (1)— (2) (text unchanged)
- (3) “Contact voltage” means a voltage condition that may result in an object or surface being inadvertently energized.
- (4) “Contact voltage risk zone (CVRZ)” means the portions of each electric company’s service territory that:
 - (a) Are served by an underground electric distribution plant; and
 - (b) Have substantial pedestrian traffic or population density, whether permanent, seasonal or varying by time of day.
- (5) “Contact voltage survey” means a survey performed by an electric company to detect contact voltage consistent with the company’s Commission-approved voltage survey plan.
- [(3)] (5-1)— [(5-2)] (5-5) (text unchanged)
- (5-6) “Electric distribution plant” means all electric company plant used to distribute electricity to its customers, including covers and protective structures and excluding customer meters and meter enclosures.
- (6)— (25) (text unchanged)
- (26) “Voltage survey plan” means an electric company plan approved by the Commission governing the electric company’s contact voltage detection and testing equipment and voltage detection and testing procedures to be used when conducting contact voltage surveys.

20.50.11 Contact Voltage Survey Requirement and Reporting (In Memory of Deanna Camille Green)

Authority: Public Utilities Article, §§2-113, 2-121, 5-101, and 5-303, Annotated Code of Maryland

.01 CVRZ, Voltage Survey Plan, and Voltage Survey Requirement.

A. Within 60 days after the effective date of these regulations, each electric company shall file for Commission approval:

- (1) A list and location map for all CVRZs within its service territory, if applicable; or
- (2) If no CVRZs are designated in its service territory, its voltage survey plan.

B. Within 30 days after the Commission approves a CVRZ or CVRZs within an electric company’s service territory, the electric company shall file its voltage survey plan for Commission approval.

C. Upon approval of the electric company’s voltage survey plan, the electric company shall conduct an initial contact voltage survey

of each CVRZ within 1 year of the approval and shall conduct subsequent contact voltage surveys of each CVRZ as set forth in its voltage survey plan.

D. The electric company shall conduct its initial and each subsequent contact voltage survey within each Commission-approved CVRZ of:

(1) All publicly accessible electric distribution plant and electric company-owned or-maintained streetlights that are capable of conducting electricity;

(2) Municipal-owned or governmental-owned streetlights and traffic signals that are publicly accessible and are capable of conducting electricity, if the consent of the municipal government or other appropriate governmental authority is received; and

(3) All objects and surfaces that are publicly accessible in public parks and playgrounds and that are capable of conducting electricity, if the consent of the municipal government or other appropriate governmental authority is received.

E. At least 60 days prior to implementing any material change to its voltage survey plan, the electric company shall file for Commission approval.

F. For areas within each electric company's service territory which are not located in a CVRZ, the electric company shall perform an initial contact voltage survey within 3 years of the approval of the voltage survey plan on all publicly accessible electric distribution plant, except for wooden poles, and publicly accessible electric company-owned or-maintained streetlights that are capable of conducting electricity. Subsequent contact voltage surveys for all equipment capable of conducting electricity shall be conducted in accordance with the voltage survey plan.

G. Streetlights shall be tested for contact voltage after dark or when the light is illuminated.

H. The Commission may increase or decrease the frequency or scope of any contact voltage survey requirement upon a showing of good cause.

.02 Contact Voltage Survey Equipment.

Each electric company shall include in its voltage survey plan all equipment used for detecting contact voltage. The type of equipment shall be certified by an independent test laboratory as being able to reliably detect voltages of 6 to 600 volts and this certification shall be included with the electric company's voltage survey plan filing.

.03 Contact Voltage Survey Test Results.

A. Each electric company shall make an area safe after detecting a potential contact voltage condition during its contact voltage survey until the potential condition can be confirmed under §B of this regulation.

B. Each electric company shall confirm and document all contact voltage detected in its contact voltage survey using a voltmeter and a 500 ohm shunt resistor.

C. For each contact voltage measurement under §B of this regulation greater than or equal to one volt (60 Hertz Alternating Current), each electric company shall:

(1) Perform a contact voltage survey on all objects and surfaces that are capable of conducting electricity and are publicly accessible within a minimum 30 foot radius of the location of the measured contact voltage;

(2) When an electric distribution plant or an electric company-owned or-maintained streetlight is indicating contact voltage, immediately and continuously make the area safe, and use best efforts to make a permanent repair to mitigate the contact voltage as soon as possible, but not later than 45 days, however, a temporary measure to mitigate contact voltage may last longer than 45 days in extraordinary circumstances provided the area remains safe;

(3) When non-electric company property is indicating contact voltage, immediately use best efforts to make the area safe and

immediately use best efforts to notify the customer or responsible person associated with the premises or the customer-owned facility of the unsafe condition and the need for the customer to make a permanent repair to mitigate contact voltage; and

(4) Maintain written records of its actions to make the area safe and to mitigate the contact voltage.

.04 Compliance Reporting and Certification.

A. Each electric company shall file, on a form approved by the Commission, an annual compliance report with the Commission:

(1) Describing the results of its contact voltage surveys; and

(2) Summarizing each known contact voltage electric shock and each contact voltage electric shock complaint received from a member of the public, whether the shock affected a person or animal.

B. An initial compliance report shall be filed at the direction of the Commission and subsequent compliance reports shall be filed on or before April 1 of each year for the preceding calendar year.

.05 Civil Penalty.

An electric company's failure to comply with this subtitle may subject the company to civil penalties under the Public Utilities Article.

.06 Waivers and Modifications.

The Commission may, in its discretion, waive or modify any provision of this subtitle and may also impose additional requirements as circumstances warrant.

TERRY J. ROMINE
Executive Secretary
Public Service Commission

**Title 30
MARYLAND INSTITUTE
FOR EMERGENCY
MEDICAL SERVICES
SYSTEMS (MIEMSS)**

**Subtitle 03 EMS OPERATIONAL
PROGRAMS**

30.03.05 Protocol Development

Authority: Education Article, §13-516, Annotated Code of Maryland

Notice of Proposed Action

[11-263-P]

The State Emergency Medical Services Board proposes to amend Regulation .02 under COMAR 30.03.05 Protocol Development. This action was considered and approved by the State Emergency Medical Services Board at its regular meeting on July 12, 2011, notice of which was given by publication in 38:14 Md. R. 871 (July 1, 2011) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to make explicit the range of representation on the MIEMSS Protocol Review Committee.

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 E. Fremont Magee, Assistant Attorney General, Maryland Institute for Emergency Medical Services Systems, 653 West Pratt Street, Baltimore, MD 21201, or call 410-706-8531, or email to fmagee@miemss.org, or fax to 410-706-2138. Comments will be accepted through October 11, 2011. A public hearing has not been scheduled.

.02 Protocol Development.

A. — C. (text unchanged)

D. MIEMSS shall appoint the protocol review committee which shall be composed of:

(1) [Representatives of interested parties including] *One representative from each of the following groups:*

(a) — (c) (text unchanged)

(d) The Pediatric Emergency Medical Advisory [Group,] *Committee;*

(e) (text unchanged)

(f) The Commercial Ambulance Service Advisory [Council,] *Committee;*

(g) (text unchanged)

(h) [EMS providers, including volunteer and career providers at the BLS and ALS level,] *Volunteer EMS BLS Providers;*

(i) *Volunteer EMS ALS Providers;*

(j) *Career EMS BLS Providers;*

(k) *Career EMS ALS Providers;*

(l) *Commercial EMS BLS Providers;*

(m) *Commercial EMS ALS Providers;*

[(i)] (n) [Physicians in specialty areas, and] *EMS subcommittee of the Maryland Chapter of ACEP;*

[(j)] (o) [Other health practitioners as necessary] the State Board of Nursing; and

(p) *Trauma Net; and*

(2) (text unchanged)

E. — I. (text unchanged)

ROBERT R. BASS, M.D.
Executive Director
Maryland Institute for Emergency
Medical Services Systems (MIEMSS)

Special Documents

DEPARTMENT OF THE ENVIRONMENT SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: July 1, 2011, through July 31, 2011.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR §806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR §806.22(f):

XTO Energy Incorporated, Pad ID: Spiece Unit A, ABR-201107001, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 1, 2011.

Chesapeake Appalachia, LLC, Pad ID: Belawske, ABR-201107002, Burlington Borough, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 5, 2011.

Chesapeake Appalachia, LLC, Pad ID: SJW, ABR-201107003, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 5, 2011.

Chesapeake Appalachia, LLC, Pad ID: ACW, ABR-201107004, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 5, 2011.

Seneca Resources Corporation, Pad ID: DCNR 595 Pad I 1V, ABR-201107005, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 5, 2011.

Seneca Resources Corporation, Pad ID: DCNR 007 Pad G 10V, ABR-201107006, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 5, 2011.

Seneca Resources Corporation, Pad ID: DCNR 100 Pad D 85V, ABR-201107007, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 5, 2011.

Penn Virginia Oil & Gas Corporation, Pad ID: Godshall B Pad, ABR-201107008, Hector Township, Potter County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: July 5, 2011.

EXCO Resources (PA), LLC, Pad ID: Houseknecht Drilling Pad #1, ABR-201012014.1, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: July 5, 2011.

EXCO Resources (PA), LLC, Pad ID: Kensinger 3H Drilling Pad #1, ABR-20100205.1, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: July 5, 2011.

Energy Corporation of America, Pad ID: Whitetail #1-5MH, ABR-201008112.1, Goshen and Girard Townships, Clearfield County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: July 5, 2011.

Energy Corporation of America, Pad ID: Coldstream Affiliates #1MH, ABR-201007051.1, Goshen Township, Clearfield County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: July 5, 2011.

Carrizo Marcellus, LLC, Pad ID: Erickson Family Trust Pad, ABR-201107009, Woodward Township, Clearfield County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

Carrizo Marcellus, LLC, Pad ID: Cowfer B (CC-09) Pad, ABR-201107010, Gulich Township, Clearfield County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

Carrizo Marcellus, LLC, Pad ID: Giangrieco Pad, ABR-201107011, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

Carrizo Marcellus, LLC, Pad ID: Steinman Development Co. (CC-11) Pad, ABR-201107012, Rush Township, Centre County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

Carrizo Marcellus, LLC, Pad ID: Hegarty (CC-04) Pad, ABR-201107013, Beccaria Township, Clearfield County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

Carrizo Marcellus, LLC, Pad ID: River Hill Power Karthaus Pad, ABR-201107014, Karthaus Township, Clearfield County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

Carrizo Marcellus, LLC, Pad ID: EP Bender B (CC-03) Pad, ABR-201107015, Reade Township, Cambria County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: July 6, 2011.

EXCO Resources (PA), LLC, Pad ID: Dale Bower Drilling Pad #1, ABR-20100214.1, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: July 8, 2011.

XTO Energy Incorporated, Pad ID: Raymond Unit A, ABR-201107016, Pine Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 8, 2011.

XTO Energy Incorporated, Pad ID: TLT Unit A, ABR-201107017, Jordan Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 8, 2011.

EOG Resources, Inc., Pad ID: HOUSER 1H Pad, ABR-201107018, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: July 8, 2011.

EOG Resources, Inc., Pad ID: FAY 1H Pad, ABR-201107019, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: July 8, 2011.

EOG Resources, Inc., Pad ID: NICHOLS 2H Pad, ABR-201107020, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: July 8, 2011.

- EOG Resources, Inc., Pad ID: STAHL 1H Pad, ABR-201107021, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: July 8, 2011.
- EOG Resources, Inc., Pad ID: HOLCOMBE 1H Pad, ABR-201107022, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: July 8, 2011.
- EOG Resources, Inc., Pad ID: CRANE Pad, ABR-201107023, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: July 8, 2011.
- XTO Energy Incorporated, Pad ID: Free Library Unit E, ABR-201107024, Beech Creek Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 11, 2011.
- Penn Virginia Oil & Gas Corporation, Pad ID: Original Ten Pad, ABR-201107025, Hector Township, Potter County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: July 11, 2011.
- Penn Virginia Oil & Gas Corporation, Pad ID: Godshall A Pad, ABR-201107026, Hector Township, Potter County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: July 11, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 007 Pad T 20V, ABR-201107027, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 11, 2011.
- EXCO Resources (PA), LLC, Pad ID: Doeblar Drilling Pad #1, ABR-201012033.1, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: July 11, 2011.
- Chief Oil & Gas LLC, Pad ID: Kuziak Drilling Pad #1, ABR-201107028, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: July 12, 2011.
- Cabot Oil & Gas Corporation, Pad ID: VandermarkR P1, ABR-201107029, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 12, 2011.
- Anadarko E&P Company LP, Pad ID: COP Tract 027B Pad A, ABR-201107030, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 14, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 007 Pad D 11V, ABR-201107031, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 15, 2011.
- Seneca Resources Corporation, Pad ID: Rich Valley Pad E, ABR-201107032, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 15, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 595 Pad G, ABR-201107033, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 15, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 007 Pad H 12V, ABR-201107034, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 15, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 100 Pad B, ABR-201107035, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 15, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Layton, ABR-201107036, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 15, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Oilcan, ABR-201107037, Overton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 15, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Burns, ABR-201107038, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 15, 2011.
- EQT Production Company, Pad ID: Gobbler, ABR-201107039, Huston Township, Clearfield County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: July 15, 2011.
- EQT Production Company, Pad ID: Turkey, ABR-201107040, Huston Township, Clearfield County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: July 15, 2011.
- EXCO Resources (PA), LLC, Pad ID: Niedzwiecki Drilling Pad #1, ABR-201012025.1, Sugarloaf Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: July 18, 2011.
- XTO Energy Incorporated, Pad ID: Buck Unit A, ABR-201107041, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 21, 2011.
- Anadarko E&P Company LP, Pad ID: COP Tr 285 Pad E, ABR-201007074.1, Grugan Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 26, 2011.
- Anadarko E&P Company LP, Pad ID: COP Tr 290 Pad A, ABR-201009043.1, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 26, 2011.
- Anadarko E&P Company LP, Pad ID: COP Tr 289 Pad D, ABR-201008030.1, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: July 26, 2011.
- Southwestern Energy Production Company, Pad ID: Van Order Pad, ABR-201107042, Herrick Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: July 26, 2011.
- Southwestern Energy Production Company, Pad ID: Clark Pad, ABR-201107043, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: July 26, 2011.
- Southwestern Energy Production Company, Pad ID: Lyncott Corp Pad, ABR-201107044, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: July 26, 2011.
- Southwestern Energy Production Company, Pad ID: Bark'em Squirrel Pad, ABR-201107045, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: July 26, 2011.
- Pennsylvania General Energy Co., LLC, Pad ID: COP Tract 729 Pad E, ABR-201107046, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 3.500 mgd; Approval Date: July 26, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Fisher, ABR-201107047, Wysox Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 26, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Paul, ABR-201107048, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: July 26, 2011.
- Talisman Energy USA Inc., Pad ID: 05 164 Bennett, ABR-201107049, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: July 26, 2011.
- Talisman Energy USA Inc., Pad ID: 02 153 Mountain Run Hunting Club, ABR-201107050, Union Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: July 26, 2011.

Cabot Oil & Gas Corporation, Pad ID: Dobrosielski P1, ABR-201107051, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: July 26, 2011.

Southwestern Energy Production Company, Pad ID: Bernstein Pad, ABR-201107052, Clifford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: July 26, 2011.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: August 17, 2011.

STEPHANIE L. RICHARDSON
Secretary to the Commission.

[11-19-35]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

IN THE MATTER OF STIMULANTS KNOWN AS BATH SALTS BEFORE THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Findings and Order

In accordance with sections 5-202(d) and 5-402(g) of the Criminal Law Article of the Annotated Code of Maryland, the Department of Health and Mental Hygiene (the "Department") issues these findings and order with respect to the addition of certain substances as Schedule I controlled dangerous substances.

Background

1. New drugs of abuse, known generically as 'bath salts,' have been introduced in many parts of the country, including Maryland. These 'bath salts' contain multiple substances and may pose significant health risks, including death. One death in Maryland has been confirmed and there have been reports of hospitalizations following exposure to these substances.

2. These 'bath salts' are sold over the internet and in various retail locations under multiple brand names. These 'bath salts' are distinguished by their packaging and retail locations from the preparations which are traditionally used as bath or soaking preparations, often used as foot soaks, for topical relief or local comfort. The most common substances identified in these products are 3,4-methylenedioxypropylvalerone (MDPV), mephedrone and derivatives of cathinone, all of which produce stimulant-like effects.

3. These drugs can be inhaled, ingested, smoked or injected. Users may develop cardiac and circulatory disturbances, agitation, delirium, paranoia and psychosis. There have been several cases in which users have attempted to inflict injury on themselves or others. The agitation and delirium may persist for days to weeks.

Section 5-202(c) Factors

4. The actual or relative potential for abuse of the substance

(a) In one state, in a 4½ month period, 35 persons who had ingested, inhaled, or injected "bath salts" and visited an emergency room. Those persons had the following types of symptoms: agitation (23 patients [66%]), tachycardia (22 [63%]), and delusions/hallucinations (14 [40%]). Seventeen patients were hospitalized, and one was dead upon arrival at the emergency room.

MMWR Morb Mortal Wkly Rep. 2011 May 20;60(19):624-7. Emergency department visits after use of a drug sold as "bath salts" -- Michigan, November 13, 2010--March 31, 2011. Centers for Disease Control and Prevention (CDC)

(b) Experience in the United Kingdom indicates a high risk of overdose for mephedrone. Message from the NIDA Director on "Bath Salts"-Emerging and Dangerous Products, <http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html>, February 2011.

(c) In addition, the precise substances that constitute "bath salts" are largely unknown, which makes the practice of abusing them, by any route, that much more dangerous. *Id.*

(d) Anecdotal reports from users state the presence of cravings. Methylenedioxypropylvalerone (MDPV) (Street Names: bath salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011, http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf

5. Scientific evidence of the pharmacological effect of the substances

(a) These substances are norepinephrine and dopamine reuptake inhibitors that produce amphetamine-like effects. Toxic Tidbits, Maryland Poison Control Center, Feb. 2011, http://www.mdpoison.com/publications/toxtidbit_pdf/2011/February%202011%20Toxtidbits.pdf

(b) "Doctors and clinicians at U.S. poison centers have indicated that ingesting or snorting 'bath salts' containing synthetic stimulants can cause chest pains, increased blood pressure, increased heart rate, agitation, hallucinations, extreme paranoia, and delusions." *Id.*

(c) "There have been several cases in which users have attempted to inflict injury on themselves or others. The agitation and delirium may persist for days and could require large doses of benzodiazepines. Volkow, Nora, Message from the NIDA Director on "Bath Salts" - Emerging and Dangerous Products. <http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html>, February 2011.

(d) Higher doses of MDPV have caused intense, prolonged panic attacks in stimulant-intolerant users. Methylenedioxypropylvalerone (MDPV) (Street Names: bath salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011, http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf

(e) The duration of the subjective effects is about 3 to 4 hours and the side effects continuing a total of 6 to 8 hours after administration. *Id.*

(f) It has been demonstrated that MDPV administered to mice increased the extracellular levels of dopamine levels 60 min after administration of MDPV. Though MDPV increased dopamine levels, the effect was not as marked as the increases induced by methamphetamine or MDMA. *Id.*

6. The state of current scientific knowledge regarding the substance

(a) These products often contain various chemicals, such as methylenedioxypropylvalerone (MDPV), mephedrone and propylvalerone, and cathinone. "Bath Salts" (MDPV), Toxic Tidbits, Maryland Poison Control Center, February, 2011, http://www.mdpoison.com/publications/toxtidbit_pdf/2011/February%202011%20Toxtidbits.pdf.

(b) Methylenedioxypropylvalerone, or MDPV, is not approved for medical use in the United States.

(c) (MDPV) is a designer drug of the phenethylamine class. MDPV is structurally related to cathinone, an active alkaloid found in the khat plant, methamphetamine, and

methylenedioxyamphetamine (MDMA).

Methylenedioxypropylvalerone (MDPV) (Street Names: bath salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011, http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf.

7. The history and current pattern of abuse of the substance

(a) The use of “bath salts” first came to the attention of clinicians and the public in the USA in 2010.

(b) Most of the cases presenting to emergency departments involve snorting the powder, but the drug can also be ingested, smoked or injected. “Bath Salts” (MDPV), from Toxic Tidbits, Maryland Poison Control Center, Feb. 2011, http://www.mdpoison.com/publications/toxtidbit_pdf/2011/February%202011%20Toxtidbits.pdf.

(c) It was first seized in Germany in 2007. The abuse of MDPV is increasing, particularly in Europe and Australia.

Methylenedioxypropylvalerone (MDPV) (Street Names: bath salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011, salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011, salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011,

(d) MDPV and/or mephedrone have been banned in the following countries as of April 28, 2011: Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Order of the Acting Director, Controlled Dangerous Substances, State of New Jersey, Department of Law and Safety, Division of Consumer Affairs, April 27, 2011, <http://www.njconsumeraffairs.gov/bathsalts/>.

(e) On April 27, 2011, the Order of the Acting Director lists the following chemicals as Schedule I Controlled Dangerous Substances in New Jersey, supported by clinical and public health justifications for this order: 3,4 – Methylenedioxypropylvalerone (MDPV), 4 – Methylmethcathinone (Mephedrone, 4-MMC), 3,4 – Methylenedioxypropylmethcathinone (Methylone, MDMC), 4 – Fluoromethcathinone (Flephedrone, 4-FMC), 3 – Fluoromethcathinone (3-FMC), and 4 – Methoxymethcathinone (Methedrone, bk-PMMA, PMMC). *Id.*

8. The scope, duration, and significance of abuse of the substance

(a) The Maryland Poison Control Center has reported 15 cases of bath salts ingestion with minor to major effects, treated by emergency rooms from January through June 2011.

(b) The American Association of Poison Control Centers reports 303 calls to poison control centers about “bath salts” and related products/drugs in all of 2010. From January 1 to June 30, 2011, there were 3740 answered calls. American Association of Poison Control Centers, Bath Salts Data Updated July 7, 2011

(c) There has been one reported death in Maryland secondary to “bath salts.”. Data from the Maryland Office of the Chief Medical Examiner (OCME) lists an accidental death in 2011 due to Methylenedioxypropylvalerone intoxication.

9. Any risk that the substance poses to the public health

These substances are being misleadingly labeled and sold for household and garden uses, avoiding the true intended effect of causing euphoria and other illicit drug-like effects. For example, “‘Bath salts’ are being sold over the internet and in convenience

stores, gas stations, gift shops, tobacco stores and other local establishments under such brand names as ‘Ivory Wave’, ‘Vanilla Sky’, ‘Red Dove’, ‘Zoom’, ‘Bloom’, ‘Cloud Nine’, ‘Blue Silk’, ‘Ocean Snow’, ‘White Lightning’, ‘Scarface’ and ‘Hurricane Charlie’. The packages are labeled ‘bath salts’ and ‘not for human consumption’ but are being promoted and used as cocaine substitutes. They sell for approximately \$15-\$50 for a small bag or jar. There are reports that other products containing the same drug are being sold as ‘insect repellent’ or ‘plant fertilizer.’” “Bath Salts” (MDPV) from Toxic Tidbits, Maryland Poison Control Center, February 2011, http://www.mdpoison.com/publications/toxtidbit_pdf/2011/February%202011%20Toxtidbits.pdf

10. The ability of the substance to cause psychological or physiological dependence

These agents “trigger intense cravings not unlike those experienced by methamphetamine users, and clinical reports from other countries appear to corroborate their addictiveness.” *Id.*

12. Whether the substance is an immediate precursor of a controlled dangerous substance.

MDPV is structurally related to cathinone, an active alkaloid found in the khat plant, methamphetamine, and methylenedioxypropylvalerone. Methylenedioxypropylvalerone (MDPV) (Street Names: bath salts, Ivory Wave, plant fertilizer, plant food, Vanilla Sky, Energy-1), US Department of Justice, Office of Diversion Control, Drug and Chemical Evaluation Section, March, 2011, http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf. It is not an immediate precursor of a controlled dangerous substance.

Section 5-402(g) Factors

13. Based on the information described above, there is a high potential for abuse of the substances known as “Bath Salts.”

14. There is no accepted medical use in the United States for the substances known as “Bath Salts.”

15. There is a lack of accepted safety for use of the substances known as “Bath Salts” under medical supervision.

ORDER

Based on the above findings, the Department orders that:

1. The following substances shall be added to the list of controlled dangerous substances on Schedule I in section 5-402 of the Criminal Law Article of the Annotated Code of Maryland: 3,4 – Methylenedioxypropylvalerone (MDPV), 4 – Methylmethcathinone (Mephedrone, 4-MMC), 3,4 – Methylenedioxypropylmethcathinone (Methylone, MDMC), 4 – Fluoromethcathinone (Flephedrone, 4-FMC), 3 – Fluoromethcathinone (3-FMC), and 4 – Methoxymethcathinone (Methedrone, bk-PMMA, PMMC).

2. The Department shall submit emergency and proposed regulations* to implement this order.

Dated: July 20, 2011

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

* **NOTE:** COMAR 10.19.03.13 is being proposed for adoption in this issue of the Maryland Register.

[11-19-44]

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 ARCHITECTS

Subject: Public Meeting
Date and Time: September 28, 2011, 10 a.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263
 [11-19-39]

ATHLETIC COMMISSION

Subject: Public Meeting
Date and Time: September 27, 2011, 2 p.m. — 4 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patrick Pannella (410) 230-6223
 [11-19-38]

ADVISORY COUNCIL ON CEMETERY OPERATIONS

Subject: Public Meeting
Date and Time: September 22, 2011, 10 a.m. — 1 p.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 2nd Fl., Baltimore, MD
Contact: Benjamin Foster (410) 230-6229
 [11-19-16]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting
Date and Time: October 3, 2011, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195
 [11-19-18]

CRIMINAL JUSTICE INFORMATION ADVISORY BOARD

Subject: Public Hearing
Date and Time: September 19, 2011, 1 — 3 p.m.
Place: Judicial Training Center, 2009-D Commerce Park Dr., Rm. 9-10, Annapolis, MD
Contact: Robyn Lyles (410) 585-3185
 [11-19-29]

COMMISSION ON CRIMINAL SENTENCING POLICY

Subject: Public Meeting
Date and Time: September 20, 2011, 5:30 — 7:30 p.m.
Place: Judiciary Education and Conference Center, 2009D Commerce Park Dr., Training Rms. 1 and 2, Annapolis, MD
Contact: David Soule (301) 403-4165
 [11-19-19]

OFFICE OF THE DEAF AND HARD OF HEARING/MARYLAND ADVISORY COUNCIL ON THE DEAF AND HARD OF HEARING

Subject: Public Meeting
Date and Time: September 14, 2011, 1 — 4 p.m.
Place: Dept. of Transportation, 7201 Corporate Center Dr., Hughes Ste. II, Ground Fl., Hanover, MD
Add'l. Info: Please RSVP to lquinn@gov.state.md.us or call 410-767-6290, due to MDOT's security policies. Also, you must show a photo ID or State ID badge to enter the building.
 Advisory Council Business Meeting (1 — 4 p.m.) is opened for the public to observe. (There will be no public forum following this Advisory Council meeting.) Sign language interpreters, real-time captioning services, and assistive listening devices will be provided.
 For additional accommodations, please contact Laura Quinn at lquinn@gov.state.md.us.
Contact: Laura Quinn (410) 767-6290
 [11-19-15]

MARYLAND STATE BOARD OF EDUCATION

Subject: Public Meeting
Date and Time: September 27, 2011, 9 a.m. — 5 p.m.; Additional Dates: September 28, October 25—26, and December 6—7, 2011
Place: 200 W. Baltimore St., Baltimore, MD
Add'l. Info: The State Board of Education is pleased to receive oral public comment at each of its regular monthly meetings. In order to allow the State Board sufficient time for its other business, the total time allotted to public comment will generally be limited to 30 minutes. Individuals

seeking to speak to the Board will be given 3 minutes each. Persons desiring to speak to the State Board, must call (410-767-0467) or e-mail (cnecessary@msde.state.md.us) the Board office no earlier than 1 week prior to the meeting to register to speak. Registration will be accepted on a first-come, first-served basis. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views.
Contact: Charlene L. Necessary (410) 767-0467

[11-19-07]

BOARD OF MASTER ELECTRICIANS

Subject: Public Meeting
Date and Time: October 25, 2011, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
 [11-19-34]

ELEVATOR SAFETY REVIEW BOARD

Subject: Public Meeting
Date and Time: October 6, 2011, 1:30 — 5 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Contact: Raquel M. Meyers (410) 230-6379
 [11-19-01]

MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

Subject: Public Meeting
Date and Time: September 14, 2011, 10 a.m. — 12 p.m.
Place: 653 W. Pratt St., Ste. 212, Baltimore, MD
Add'l. Info: The Protocol Review Committee meets regularly on the 2nd Wednesday of every other month.
Contact: Leandra Gilliam (410) 706-4449
 [11-19-14]

**MARYLAND INSTITUTE FOR
EMERGENCY MEDICAL SERVICES
SYSTEMS (MIEMSS)**

Subject: Public Meeting
Date and Time: September 16, 2011, 10 a.m. — 12 p.m.
Place: 653 W. Pratt St., Ste. 508, Baltimore, MD
Add'l. Info: The EMS Provider Review Panel meets regularly on the 3rd Friday of every other month.
Contact: Leandra Gilliam (410) 706-4449
[11-19-13]

**BOARD OF EXAMINING
ENGINEERS**

Subject: Public Meeting
Date and Time: October 18, 2011, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
[11-19-33]

**DEPARTMENT OF THE
ENVIRONMENT/AIR AND
RADIATION MANAGEMENT
ADMINISTRATION**

Subject: Notice of Public Hearing on Air Quality Plan
Date and Time: September 27, 2011, 10:30 a.m.
Place: Department of the Environment, 1800 Washington Blvd., Baltimore, MD
Add'l. Info: The Maryland Department of the Environment (MDE) gives notice of a Public Hearing concerning proposed revisions to the Maryland Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) for the 1997 8-hour Ozone Standard.

A public hearing will be held on:

September 27, 2011, at the Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230 — First Floor Conference Room — 10:30 a.m. The hearing will focus on State Implementation Plan revisions which include added information regarding existing Maryland RACT regulations for nitrogen oxides (NO_x).

The Public Hearing will be held as required by federal law (Clean Air Act at 42 U.S.C. 7410(a) and 40 CFR 51.102). Interested persons are invited to attend and express their views. After the Department considers the comments received, and revises the proposal if necessary, all related items will be submitted to the U.S. Environmental Protection Agency.

An electronic copy of the proposed revision will be available on the Maryland Department of the Environment's website at http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprogram/s/air_planning/index.aspx. Note: the public library systems in Maryland can be used for Internet access to view the document. An electronic copy of the document can also be obtained via email by writing to Molla Sarros at msarros@mde.state.md.us.

Copies of the document can also be viewed at the Maryland Department of the Environment Main Office, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland — Hard Copy Contact: Molla Sarros.

Written comments may be presented at the hearing, faxed to 410-537-4223, emailed to msarros@mde.state.md.us, or mailed to Molla Sarros, MDE ARMA, 1800 Washington Boulevard, Baltimore, MD, 21230. Comments must be received before the close of business on September 27, 2011.

Anyone needing special accommodations at a public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

For more information contact Molla Sarros, Natural Resources Planner, at (410) 537-4180. Toll free in Maryland call 1-(800) 633-6101, ext. 4180, Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Ste. 730, Baltimore, Maryland 21230
Contact: Molla Sarros (410) 537-4180
[11-19-42]

**DEPARTMENT OF HEALTH AND
MENTAL HYGIENE**

Subject: Public Meeting
Date and Time: September 19, 2011, 4:30 — 6:30 p.m.
Place: Dept. of Health and Mental Hygiene, 201 W. Preston St., Lobby Rm. L-1, Baltimore, MD
Add'l. Info: The Maryland Advisory Council on Physical Fitness
Contact: Erin Penniston (410) 767-6783
[11-19-41]

**DEPARTMENT OF HEALTH AND
MENTAL HYGIENE/MARYLAND
BOARD OF PHYSICIANS**

Subject: Public Meeting
Date and Time: September 28, 2011, 9 — 10 a.m.
Place: 4201 Patterson Ave., Rms. 108/109, Baltimore, MD

Add'l. Info: Appropriate auxiliary aids services provided for qualified individuals upon request. Call Ellen D. Smith at (410) 764-2477.

Contact: Tammy Austin (410) 764-4769
[11-19-17]

**BOARD OF HEATING,
VENTILATION, AIR-
CONDITIONING, AND
REFRIGERATION CONTRACTORS
(HVACR)**

Subject: Public Meeting
Date and Time: October 12, 2011, 9:30 a.m.
Place: 500 N. Calvert St., 3rd Floor Conf. Rm., Baltimore, MD
Contact: Steve Smitson (410) 230-6169
[11-19-32]

**BOARD OF EXAMINERS OF
LANDSCAPE ARCHITECTS**

Subject: Public Meeting
Date and Time: September 29, 2011, 1:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-62623
[11-19-40]

**MARYLAND STATE LOTTERY
COMMISSION**

Subject: Public Meeting
Date and Time: September 22, 2011, 10 a.m. — 12 p.m.
Place: Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD
Contact: Marie A. Torosino (410) 230-8970
[11-19-43]

**MARYLAND HEALTH CARE
COMMISSION**

Subject: Public Meeting
Date and Time: September 15, 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 days before the meeting to make arrangements.
Contact: Valerie Wooding (410) 764-3460
[11-19-02]

GENERAL NOTICES

**MARYLAND PUBLIC
BROADCASTING COMMISSION**

Subject: Public Meeting
Date and Time: September 27, 2011, 8:30 a.m.
Place: Maryland Public Television, Owings Mills, MD
Contact: Sharon Abernathy (410) 581-4141
 [11-19-09]

**MINORITY BUSINESS ENTERPRISE
ADVISORY COMMITTEE**

Subject: Public Meeting
Date and Time: September 28, 2011, 8:30 a.m. — 5 p.m.
Place: Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., Hanover, MD
Contact: Pam Gregory (410) 865-1253
 [11-19-28]

**BOARD OF MORTICIANS AND
FUNERAL DIRECTORS**

Subject: Public Meeting
Date and Time: September 14, 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 other appropriate accommodations for qualified individuals with disabilities will be provided upon request.
Contact: LouAnn Cox (410) 764-4792
 [11-19-27]

**BOARD OF EXAMINERS OF
NURSING HOME ADMINISTRATORS**

Subject: Public Meeting on Regulations
Date and Time: September 14, 2011, 9:30 a.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Patricia A. Hannigan (410) 764-4750
 [11-19-25]

**BOARD OF EXAMINERS IN
OPTOMETRY**

Subject: Public Meeting
Date and Time: September 28, 2011, 10:30 a.m. — 12:30 p.m.
Place: Metro Executive Building, Rm. 105, Baltimore, MD
Add'l. Info: Health Occupations Article, Title 11, Annotated Code of Maryland, and COMAR 10.28 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.
Contact: Patricia G. Bennett (410) 764-4710
 [11-19-31]

**BOARD OF PODIATRIC MEDICAL
EXAMINERS**

Subject: Public Meeting
Date and Time: October 13, 2011, 1 p.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Sheri Henderson (410) 764-4785
 [11-19-03]

**BOARD OF PODIATRIC MEDICAL
EXAMINERS**

Subject: Public Meeting
Date and Time: November 10, 2011, 1 p.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Sheri Henderson (410) 764-4785
 [11-19-04]

**BOARD OF PODIATRIC MEDICAL
EXAMINERS**

Subject: Public Meeting
Date and Time: December 8, 2011, 1 p.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Sheri Henderson (410) 764-4785
 [11-19-05]

BOARD OF PUBLIC ACCOUNTANCY

Subject: Public Meeting
Date and Time: October 4, 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
 [11-19-06]

**PUBLIC SCHOOL LABOR
RELATIONS BOARD**

Subject: Public Meeting
Date and Time: September 16, 2011, 10 a.m. — 12 p.m.
Place: State Labor Relations Boards Offices, 839 Bestgate Rd., Ste. 400, Annapolis, MD
Contact: Erica Snipes (410) 260-3216
 [11-19-30]

RACING COMMISSION

Subject: Public Meeting
Date and Time: September 20, 2011, 10 — 11 a.m.
Place: Laurel Park, Laurel, MD

Contact: J. Michael Hopkins (410) 296-9682
 [11-19-26]

**MARYLAND TRANSPORTATION
AUTHORITY**

Subject: Public Meeting
Date and Time: September 22, 2011, 9 — 11 a.m.
Place: Maryland Transportation Authority, Point Breeze Complex, 2310 Broening Hwy., Ste. 160, Baltimore, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Cindy Taylor (410) 537-1002
 [11-19-11]

**BOARD OF WATERWORKS AND
WASTE SYSTEMS OPERATORS**

Subject: Public Meeting
Date and Time: October 20, 2011, 10 a.m. — 4 p.m.
Place: Little Patuxent Reclamation Plant, Savage, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Pat Kratochvil (410) 537-3167
 [11-19-10]

COMAR PDF ORDER FORM

Titles	Agency Name	Price ¹	Subscription ²	Quantity	Total
Complete set of COMAR PDF format		\$1,000	\$500	_____	_____
Title 01	Executive Department	\$35	\$24	_____	_____
Title 02	Office of the Attorney General	\$22	\$13	_____	_____
Title 03	Comptroller of the Treasury	\$30	\$20	_____	_____
Title 04	General Services	\$16	\$10	_____	_____
Title 05	Housing and Community Development	\$78	\$50	_____	_____
Title 07	Human Resources	\$80	\$53	_____	_____
Title 08	Natural Resources	\$78	\$51	_____	_____
Title 09	Labor, Licensing and Regulation	\$89	\$60	_____	_____
Title 10	Health & Mental Hygiene (All parts) **	\$272	\$180	_____	_____
Title 10	Part 1 **	\$48	\$32	_____	_____
Title 10	Part 2 **	\$75	\$50	_____	_____
Title 10	Part 3 **	\$75	\$50	_____	_____
Title 10	Part 4 **	\$50	\$35	_____	_____
Title 10	Part 5 **	\$69	\$50	_____	_____
Title 11	Transportation (All parts) **	\$106	\$75	_____	_____
Title 11	Part 1 (Transportation) **	\$42	\$25	_____	_____
Title 11	Parts 2 & 3 (MVA)**	\$74	\$50	_____	_____
Title 12	Public Safety and Correctional Services	\$67	\$43	_____	_____
Title 13A	Board of Education	\$63	\$42	_____	_____
Title 13B	Higher Education Commission	\$25	\$15	_____	_____
Title 14	Independent Agencies	\$87	\$60	_____	_____
Title 15	Agriculture	\$48	\$30	_____	_____
Title 16	Juvenile Service	\$23	\$15	_____	_____
Title 17	Budget and Management	\$28	\$16	_____	_____
Title 18	Assessments and Taxation	\$20	\$12	_____	_____
Title 19A	State Ethics Commission	\$24	\$14	_____	_____
Title 20	Public Service Commission	\$49	\$32	_____	_____
Title 21	State Procurement Regulations	\$48	\$30	_____	_____
Title 22	State Retirement and Pension System	\$22	\$13	_____	_____
Title 23	Board of Public Works	\$18	\$11	_____	_____
Title 24	Business and Economic Development	\$34	\$20	_____	_____
Title 25	State Treasurer	\$16	\$9	_____	_____
Title 26	Environment (All parts) **	\$189	\$125	_____	_____
Title 26	Part 1 **	\$54	\$35	_____	_____
Title 26	Part 2 **	\$83	\$52	_____	_____
Title 26	Part 3 **	\$57	\$38	_____	_____
Title 26	Part 4 **	\$37	\$24	_____	_____
Title 27	Critical Area Comm. for the Chesapeake and Atlantic Coastal Bays	\$18	\$10	_____	_____
Title 28	Office of Administrative Hearings	\$16	\$9	_____	_____
Title 29	State Police	\$30	\$18	_____	_____
Title 30	MD Institute for Emergency Medical Services Systems	\$25	\$17	_____	_____
Title 31	Maryland Insurance Administration	\$68	\$45	_____	_____
Title 32	Aging	\$25	\$15	_____	_____
Title 33	State Board of Elections	\$42	\$25	_____	_____
Title 34	Planning	\$31	\$18	_____	_____
Title 35	Veterans Affairs	\$16	\$9	_____	_____
	Individual Binders (COMAR PDF's binders not included)	\$15	S & H \$9.00	_____	_____
				Total:	_____

Prices are for single user license only ~ Multi-user licenses are available. Please call 410-260-3876 for pricing information.

¹ Price is per copy of each Title

² Subscription (optional) - Receive updated information quarterly. ~ If ordered, subscription quantities MUST match Title quantities.

** See the following pages for description of contents

COMAR PRINT ORDER FORM (8 1/2 x 11 format)

Titles	Agency Name	Price ¹	Subscription ²	Quantity	Total
Complete set of COMAR (includes binders)		\$1,400	\$700	_____	_____
Title 01	Executive Department	\$47	\$30	_____	_____
Title 02	Office of the Attorney General	\$31	\$20	_____	_____
Title 03	Comptroller of the Treasury	\$41	\$25	_____	_____
Title 04	General Services	\$23	\$12	_____	_____
Title 05	Housing and Community Development	\$103	\$70	_____	_____
Title 07	Human Resources	\$104	\$70	_____	_____
Title 08	Natural Resources	\$102	\$70	_____	_____
Title 09	Labor, Licensing and Regulation	\$116	\$75	_____	_____
Title 10	Health & Mental Hygiene (All Parts)**	\$345	\$230	_____	_____
Title 10	Part 1 **	\$65	\$40	_____	_____
Title 10	Part 2 **	\$99	\$70	_____	_____
Title 10	Part 3 **	\$99	\$70	_____	_____
Title 10	Part 4 **	\$69	\$42	_____	_____
Title 10	Part 5 **	\$91	\$62	_____	_____
Title 11	Transportation (All parts) **	\$137	\$85	_____	_____
Title 11	Part 1 (Transportation)**	\$55	\$35	_____	_____
Title 11	Parts 2 & 3 (MVA) **	\$102	\$70	_____	_____
Title 12	Public Safety and Correctional Services	\$86	\$55	_____	_____
Title 13A	Board of Education	\$83	\$60	_____	_____
Title 13B	Higher Education Commission	\$34	\$20	_____	_____
Title 14	Independent Agencies	\$112	\$75	_____	_____
Title 15	Agriculture	\$63	\$40	_____	_____
Title 16	Juvenile Service	\$32	\$20	_____	_____
Title 17	Budget and Management	\$38	\$25	_____	_____
Title 18	Assessments and Taxation	\$28	\$18	_____	_____
Title 19A	State Ethics Commission	\$33	\$20	_____	_____
Title 20	Public Service Commission	\$64	\$42	_____	_____
Title 21	State Procurement Regulations	\$65	\$42	_____	_____
Title 22	State Retirement and Pension System	\$33	\$18	_____	_____
Title 23	Board of Public Works	\$26	\$15	_____	_____
Title 24	Business and Economic Development	\$47	\$25	_____	_____
Title 25	State Treasurer	\$23	\$12	_____	_____
Title 26	Environment (All parts) **	\$241	\$160	_____	_____
Title 26	Part 1 **	\$72	\$42	_____	_____
Title 26	Part 2 **	\$109	\$72	_____	_____
Title 26	Part 3 **	\$76	\$50	_____	_____
Title 26	Part 4 **	\$51	\$30	_____	_____
Title 27	Critical Area Comm. for the Chesapeake and Atlantic Coastal Bays	\$26	\$15	_____	_____
Title 28	Office of Administrative Hearings	\$23	\$12	_____	_____
Title 29	State Police	\$40	\$22	_____	_____
Title 30	MD Institute for Emergency Medical Services Systems	\$34	\$20	_____	_____
Title 31	Maryland Insurance Administration	\$90	\$62	_____	_____
Title 32	Aging	\$34	\$18	_____	_____
Title 33	State Board of Elections	\$57	\$35	_____	_____
Title 34	Planning	\$42	\$25	_____	_____
Title 35	Veterans Affairs	\$23	\$12	_____	_____
	Binders	\$15	S & H \$9.00	_____	_____
Shipping & Handling Total: _____		Order Total: _____			

¹ Price is per copy of each Title

Binder included with purchase of Title

² Subscription (optional) - Receive updated information bi-annually ~ If ordered, subscription quantities MUST match Title quantities.

** See the following pages for description of contents

Note: COMAR prices are subject to change. Check the date on the lower right hand corner of this form. If the form is more than two months old, call the COMAR Subscription Manager (410-974-2486) to confirm prices. **Fees are not refundable.**

Shipping/Handling	
Publication Total	Shipping
\$ 0-50	\$15
\$ 51-150	\$20
\$ 151-300	\$25
\$ 301-400	\$35
\$400 + please call Subscription Department.	
State agencies using courier, may omit	

Updated on 4/27/2011

SPECIAL PUBLICATIONS

Publication / Handbook	Print Price	S & H	Quantity	Total
Preventive Maintenance Handbook (PM Handbook)	\$15	\$5	_____	_____
Vehicle Inspection Handbook	\$40	\$9	_____	_____
Forest Conservation Technical Manual 3 rd Edition, 1997	\$25	\$9	_____	_____
Forest Conservation Law	\$20	\$9	_____	_____
Control of Ionizing Radiation (including supplements up to 19)	\$130	\$12	_____	_____
Total				_____
If more than one quantity, shipping charges may vary, please call 410-260-3876 for pricing information.				

Just In 26.12.01.01	Print Price	S & H	Quantity	Total
Control of Ionizing Radiation supplements 18 & 19 ONLY	\$42	\$9	_____	_____
If more than one quantity, shipping charges may vary, please call 410-260-3876 for pricing information.				

~~~~~

Date \_\_\_\_\_ Account Number \_\_\_\_\_

Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Tel. \_\_\_\_\_ Fax \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_ Check enclosed, made payable to Division of State Documents

\_\_\_\_\_ Visa/Master Card/American Express/Discover card payment:

**Acct.#** \_\_\_\_\_ **Exp.** \_\_\_\_\_

Signature \_\_\_\_\_ Tel: \_\_\_\_\_

**Return form & payment to:** Office of the Secretary of State, Division of State Documents ~ State House ~ Annapolis, MD 21401 ~ Tel: 410-260-3876 ~ 800-633-9657 ext. 3876 ~ Fax: 410-280-5647

## CODE OF MARYLAND REGULATIONS

Titles 10, 11, and 26 consist of more than one volume. Each volume may be purchased separately.

### Title 10

Department of Health and Mental Hygiene: Part & Subtitles

#### Part 1

- 01 Procedures
- 02 Division of Reimbursements
- 03 Health Statistics
- 04 Fiscal
- 05 Freestanding Ambulatory Care Facilities
- 06 Diseases
- 07 Hospitals
- 08 Health Facilities Grants

#### Part 2

- 09 Medical Care Programs

#### Part 3

- 10 Laboratories
- 11 Maternal and Child Health
- 12 Adult Health
- 13 Drugs
- 14 Cancer Control
- 15 Food
- 16 Housing
- 17 Sanitation
- 18 Human Immunodeficiency Virus (HIV) Infection and  
Acquired Immunodeficiency Syndrome (AIDS)
- 19 Dangerous Devices and Substances
- 20 Kidney Disease Program
- 21 Mental Hygiene Regulations
- 22 Developmental Disabilities

#### Part 4

- 23 Advance Directive Registry
- 24 Maryland Health Care Commission
- 25 Maryland Health Care Commission
- 26 Board of Acupuncture
- 27 Board of Nursing
- 28 Board of Examiners in Optometry
- 29 Board of Morticians and Funeral Directors
- 30 Commission on Kidney Disease
- 31 Health Occupation Boards
- 32 Board of Physicians
- 33 Board of Examiners of Nursing Home Administrators
- 34 Board of Pharmacy
- 35 Postmortem Examiners Commission
- 36 Board of Examiners of Psychologists

#### Part 5

- 37 Health Services Cost Review Commission
- 38 Board of Physical Therapy Examiners
- 39 Board of Nursing – Certified Nursing Assistants
- 40 Board of Podiatric Medical Examiners
- 41 Board of Examiners for Audiologists, Hearing Aid  
Dispensers, and Speech-Language Pathologists
- 42 Board of Social Work Examiners
- 43 Board of Chiropractic Examiners
- 44 Board of Dental Examiners
- 45 Maryland Community Health Resources Commission
- 46 Board of Occupational Therapy Practice
- 47 Alcohol and Drug Abuse Administration
- 48 Child Abuse and Neglect Medical Reimbursement Program
- 49 State Anatomy Board
- 50 Tissue Banks
- 51 Vacant
- 52 Preventive Medicine
- 53 Board of Nursing—Electrology Practice Committee
- 54 Special Supplemental Nutrition Program for Women,  
Infants, and Children (WIC)
- 55 State Board of Spinal Cord Injury Research
- 56 Board of Dietetic Practice
- 57 Board for Certification of Residential Child Care Program  
Professionals
- 58 Board of Professional Counselors and Therapists
- 59 Catastrophic Health Emergencies

### Title 11

Department of Transportation – Volume & Subtitles

#### Volume 1

- 01 Office of the Secretary
  - 02 Transportation Service Human Resources System
  - 03 Maryland Aviation Administration
  - 04 State Highway Administration
  - 05 Maryland Port Administration
  - 06 Mass Transit Administration
  - 07 Maryland Transportation Authority
  - 08 Vacant
  - 09 Vacant
  - 10 Vacant
- #### Volume 2 and Volume 3
- 11 Motor Vehicle Administration – Administrative Procedures
  - 12 MVA – Licensing of Businesses and Occupations
  - 13 MVA – Vehicle Equipment
  - 14 MVA – Vehicle Inspections
  - 15 MVA – Vehicle Registration
  - 16 MVA – Vehicle Operations
  - 17 MVA – Driver Licensing and Identification Documents
  - 18 MVA – Financial Responsibility Requirements
  - 19 MVA – School Vehicles
  - 20 MVA – Motorcycle Safety Program
  - 21 MVA – Commercial Motor Vehicles
  - 22 MVA – Preventive Maintenance Program
  - 23 MVA – Drivers' Schools, Instructors, Driver Education Program

### Title 26

Department of the Environment – Part & Subtitles

#### Part 1

- 01 General Provisions
- 02 Occupational, Industrial, and Residential Hazards
- 03 Water Supply, Sewerage, Solid Waste, and Pollution Control  
Planning and Funding
- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
- 05 Board of Well Drillers
- 06 Waterworks and Waste Systems Operators
- 07 Board of Environmental Sanitarians

#### Part 2

- 08 Water Pollution
- 09 Maryland CO<sub>2</sub> Budget Trading Program
- 10 Oil Pollution and Tank Management
- 11 Air Quality
- 12 Radiation Management

#### Part 3

- 13 Disposal of Controlled Hazardous Substances
- 14 Hazardous Substance Response Plan
- 15 Disposal of Controlled Hazardous Substances —  
Radioactive Hazardous Substances
- 16 Lead
- 17 Water Management
- 18 Susquehanna River Basin Commission

#### Part 4

- 19 Oil and Gas Resources
- 20 Surface Coal Mining and Reclamation under  
Federally Approved Program
- 21 Mining
- 22 Coastal Facilities Review
- 23 Nontidal Wetlands
- 24 Tidal Wetlands
- 25 Ballast Water Management
- 26 Community Right-to-Know Fund
- 27 Hazardous Material Security

Date: \_\_\_\_\_

Existing Account#: \_\_\_\_\_

## eCOMAR Order Form

Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

COMAR codification: \_\_\_\_\_ ;

(ex: 08.02.02\*) \_\_\_\_\_ ;

\_\_\_\_\_ ;

\_\_\_\_\_ ;

\_\_\_\_\_ ;

\* Each codification entered is considered a separate document

### Payment Method:

\_\_\_\_\_ Check enclosed and made payable to "*Division of State Documents*"

\_\_\_\_\_ Charge to my Visa / MasterCard / American Express / Discover

Account# \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone No. \_\_\_\_\_

| Basic Page Pricing<br>per Document* |                  |
|-------------------------------------|------------------|
| 1 — 20                              | \$10             |
| 21 — 40                             | \$15             |
| 41 — 60                             | \$20             |
| 61 — 80                             | \$25             |
| 81 — 100                            | \$30             |
| 101 — 120                           | \$40             |
| 121 — 140                           | \$50             |
| 141 — 160                           | \$60             |
| 161 — 180                           | \$70             |
| 181 — 200                           | \$80             |
| 201 — 220                           | \$90             |
| 221 — 240                           | \$100            |
| 241 — 260                           | \$110            |
| 260 — 280                           | \$120            |
| 281 — 300                           | \$130            |
| Over 300                            | Call for pricing |

### Return Options:

**Mail to:**  
Division of State Documents  
State House  
Annapolis, Maryland 21401

**Fax:**  
410-280-5647

\* For documents containing tables, maps, graphics etc. additional fees *may* apply.

- For additional information, please call 410-974-2486 ext. 3876 or 800-633-6957 ext. 3876 or email your questions and inquiries to: [subscriptions@sos.state.md.us](mailto:subscriptions@sos.state.md.us)
- Please allow up to 2 business days for turnaround.



Date: \_\_\_\_\_

Acct.# \_\_\_\_\_

# Maryland Register

## Archive Order Form

The Division of State Documents has created pdf files of all the Maryland Register issues since 1974. The issues from 1974—2003 are scanned images in pdf format of the actual Register and, as such, are not searchable, while the issues beginning with 2004 are *searchable text* in pdf format.

- ❖ Single issues of the Maryland Register from 1974—present
  - \_\_\_\_\_ \$10 Per issue of the Register from 1974—present via emailed pdf file.  
Please specify **Issue(s)**: \_\_\_\_\_
  - \_\_\_\_\_ \$15 Per issue of the Maryland Register from 1974—present via mailed hard-copy  
Please specify **Issue(s)**: \_\_\_\_\_
- ❖ An archival library of all Maryland Register issues from 1974—2003:
  - \_\_\_\_\_ \$375 2 DVDs (1974 — 2010)
  - \_\_\_\_\_ \$50 One year of the Maryland Register from 1974—2003 (unsearchable):  
Please specify **Year(s)**: \_\_\_\_\_
- ❖ \_\_\_\_\_ \$100 A single year of issues from 2004 forward will be available in January of the year following their publication. These will be searchable, on CD.  
Please specify: **2004 2005 2006 2007 2008 2009 2010**

**Note:** All products purchased are for individual use only. Resale or other compensated transfer of the information in printed or electronic form is a prohibited commercial purpose (see State Government Article, §7-206.2, Annotated Code of Maryland).

**By purchasing a product, the buyer agrees that the purchase is for individual use only and will not sell or give the product to another individual or entity.**

- ❖ Please order by *faxing* the completed form to:
  - Fax: 410-280-5647
  - Business/Firm: \_\_\_\_\_
  - Name: \_\_\_\_\_
- ❖ By *mailing* it to:
  - Division of State Documents
  - State House
  - Annapolis, MD 21401
  - Billing Address: \_\_\_\_\_
  - City, State, Zip \_\_\_\_\_
  - Tel: \_\_\_\_\_ Fax: \_\_\_\_\_
- ❖ By *email* to:
  - [subscriptions@sos.state.md.us](mailto:subscriptions@sos.state.md.us)
  - Recipient's Email: \_\_\_\_\_
- ❖ By *calling*: 410-260-3876

~~~~~  
(Please circle payment choice and complete the order form)

Money Order or Check # _____ Amount: \$ _____ or

VISA, MasterCard, American Express, Discover ~ Amount: \$ _____

Card # _____ Card Exp. Date: _____

Signature: _____ Phone: _____



Date: _____

Acct.# _____

Maryland Register

Print and E-Version Order Form

The Maryland Register is a biweekly publication containing proposed, emergency, and final administrative regulations as well as other State government information. The Register serves as the temporary supplement to the Code of Maryland Regulations (COMAR). 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.

See separate [Order Form](#) for the Maryland Register Archive Issues from 1974 — 2010.

- ❖ _____ \$225 A single year of print 1st Class Mail Delivery.
- ❖ _____ \$190 A **single-user** annual eSubscription, which would provide a searchable pdf text file of each issue, emailed directly to one recipient's email address.
- ❖ _____ \$130 *Per additional user, per account subscription.* Call 410-260-3876 for details.

Note: All products purchased are for individual use only. Resale or other compensated transfer of the information in printed or electronic form is a prohibited commercial purpose (see State Government Article, §7-206.2, Annotated Code of Maryland).

By purchasing a product, the buyer agrees that the purchase is for individual use only and will not sell or give the product to another individual or entity.

- ❖ Please order by *faxing* the completed form to:

Fax: 410-280-5647	Business/Firm: _____
	Name: _____
	Billing Address: _____

	City, State, Zip _____
	Tel: _____ Fax: _____
- ❖ By *mailing* it to:

Division of State Documents	_____
State House	_____
Annapolis, MD 21401	_____
- ❖ By *email* to: Recipient's Email: _____
subscriptions@sos.state.md.us
- ❖ By *calling*: 410-260-3876

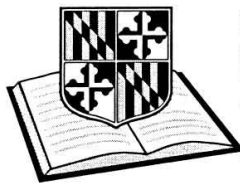
~~~~~  
(Please circle payment choice and complete the order form)

**Money Order or Check # \_\_\_\_\_ Amount: \$ \_\_\_\_\_ or**

**VISA, MasterCard, American Express, Discover ~ Amount: \$ \_\_\_\_\_**

Card # \_\_\_\_\_ Card Exp. Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_



**Office of the  
Secretary of State**

*Division of State Documents*

*State House  
Annapolis, MD 21401*

***PUBLISHERS OF:***

The Code of Maryland Regulations (COMAR)

The Maryland Register

*For information, contact:*

(410) 974-2486 \* (800) 633-9657

E-Mail address: [statedocs@sos.state.md.us](mailto:statedocs@sos.state.md.us)

Websites: [www.dsd.state.md.us](http://www.dsd.state.md.us) \* [www.sos.state.md.us](http://www.sos.state.md.us)