



# Maryland Register

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Volume 38 • Issue 20 • Pages 1181—1256

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Open Meetings Compliance  
Board  
Judiciary  
Regulations  
Errata  
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before September 2, 2011, 5 p.m.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 September 2, 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](http://www.dsd.state.md.us/CumulativeIndex.pdf). This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-260-3876.

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

## CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

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other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined.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

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

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January 13**	December 23	January 4	December 30
January 27	January 9	January 18	January 16

### COMAR Online

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

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\* Due date for documents containing 8 to 18 pages—48 hours before date shown

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**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.**

### 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.

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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)  
**30.06.03.01** • 38:18 Md. R. 1106 (8-26-11)  
**30.08.17.01—.19** • 38:15 Md. R. 924 (7-15-11)

**31 MARYLAND INSURANCE ADMINISTRATION**

**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)  
**31.14.03.10** • 38:20 Md. R. 1251 (9-23-11)

**34 DEPARTMENT OF PLANNING**

**34.04.07.04** • 38:20 Md. R. 1252 (9-23-11)



# The Governor

## EXECUTIVE ORDER 01.01.2011.17

### Continued 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, The heavy rains from Hurricane Irene followed by the heavy rains from Tropical Storm Lee have caused flash flooding and have caused many Maryland waterways to rise to dangerous levels;

WHEREAS, Flooding of these waterways and flash flooding throughout Maryland has resulted in risk to human life and safety, property, and state infrastructure;

WHEREAS, All of the floodgates of the Conowingo Dam in Harford and Cecil counties will be opened by tomorrow;

WHEREAS, Opening the floodgates is necessary but will result in flooding, potential risk to human life and safety, and property damage to many low-lying areas in the path of the releases;

WHEREAS, A mandatory evacuation order has been issued for Port Deposit as a result of the releases from the Conowingo Dam; and

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

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, ORDER AS FOLLOWS:

A. I hereby authorize the Maryland Emergency Management Agency, during this emergency period, to engage, deploy and coordinate available resources.

B. A state of emergency continues to exist in Maryland, and Executive Order 01.01.2011.14 remains in effect.

C. The Maryland National Guard remains activated in state service.

D. State agencies should take all necessary steps in response to the flooding to protect public safety.

Given Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 8th day of September, 2011.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[11-20-52]

# Open Meetings Compliance Board

## OPINIONS

July 26, 2011

### Complainants:

Paula Bienenfeld  
Rosanne A. Hurwitz  
Louis Wilen

### Respondent:

Montgomery County Board of Education

We have considered the complaint of Paula Bienenfeld, Rosanne A. Hurwitz, and Louis Wilen ("Complainants") that the Montgomery County Board of Education ("County Board") violated the Open Meetings Act (the "Act") with respect to the minutes of three closed sessions and a citizens' committee appointed by the County Board to participate in the process of hiring a new superintendent.

For the reasons stated below, we find that the Board violated the Act in some respects and not others. We shall state the facts in the discussion.

### I Discussion

#### ***A. Whether the County Board violated the Act by not posting minutes of its December 7, 2010, March 8, 2011, and March 28, 2011, closed meetings.***

Complainants allege that the County Board violated the Act by "fail[ing] to post minutes from the closed meeting sessions of December 7, 2010, March 8, 2011, and March 28, 2011." The County Board responds that the Act does not require a public body to disclose its closed-session minutes and that the County Board complied with the Act's requirement that the minutes of the open sessions subsequent to those closed sessions contain summaries of the actions taken in the closed sessions. The County Board argues that the Complainants "[have] the burden of proving a violation."

The Act does not require a public body to disclose the minutes of a properly-closed session. The Act instead provides that such minutes "shall be sealed and may not be open to public inspection," and that the public body may decide to unseal them. State Government Article ("SG") §10-510 (c) (3) and (4). Therefore, to the extent that the three sessions were properly closed, the County Board did not violate the Act by failing to make those minutes available<sup>1</sup>. The Act also does not require a public body to post its minutes online<sup>2</sup>. We turn next to the County Board's summaries of its closed sessions.

The Act requires a public body to include certain information about a closed session "in the minutes for its next open session." SG §10-509(c)(2). The County Board summarized the December 7, 2010, meeting in its January 11, 2011, minutes. On January 11, 2011, the County Board approved the minutes of a December 15, 2010,

meeting and other meetings dating back to November 4, 2010. If the December 15 meeting, which appears to have been devoted to the presentation of a budget to the County Board, was the "next open session" after the December 7 meeting, the summary of the December 7 closed session should have appeared in the December 15 minutes. While the General Assembly provided public bodies some leeway in the preparation of minutes by stating that minutes should be prepared "as soon as practicable" after the meeting, it did not provide the same leeway for the creation of closed-session summaries. *Compare* SG 10-509(b) with §10-509(c)(2). The requirement that closed-session summaries be promptly included in open-session minutes makes sense: while actions taken in an open session are immediately ascertainable by the public, the public's knowledge of closed-session actions depends entirely on the issuance of the summary. We encourage the County Board to continue its practice of attaching a draft closed-session summary to the agenda for the next open meeting and to approve its minutes more promptly.<sup>3</sup>

The March 8, 2011, closed session was timely summarized in the March 28, 2011, minutes. The March 28, 2011, closed session was summarized in the April 28, 2011, minutes, rather than in the minutes of the "next open session," which apparently occurred as a specially-called meeting on April 25, 2011. Nonetheless, the public received the substance of the summary in a timely fashion, and the County Board substantially complied with the Act, if, in that case, the County Board followed its usual practice of attaching a draft closed-session summary to its agenda three days in advance of the regular meeting.

We turn to the County Board's legal proposition that the Complainants bear the burden of proof. That proposition applies only in actions brought in circuit court to enforce the Act, *see* §2-510(c) of the State Government Article ("SG"); it does not apply to complaints submitted to us under SG §10-502.5, and we have not applied it here.

#### ***B. Whether the Act applied to the Board's creation of the citizens' committee and to the committee itself***

Complainants allege that the County Board violated the Act by creating in a closed session a committee of citizens to assist it in its selection of a new superintendent and allowing that committee to meet in closed sessions<sup>4</sup>. The County Board responds with three arguments: first, that the committee was created by informal consensus and so was not a public body subject to the Act; second, that the committee was performing an administrative function not subject to the Act; and, finally, that the Act permits the discussion of personnel matters in closed session. The County Board further states:

[T]he informal consensus pursuant to which the citizen's committee was created was reached at a meeting of the Board held to discuss the appointment of a new Superintendent of Schools. Because the topic of the meeting was not subject to the Open Meetings Act (the "Act"), there are no minutes of that meeting. Because the purpose of the citizens' committee meetings was to

<sup>1</sup> The March 8, 2011 meeting was closed partly to discuss the "use of real property." As we noted in 7 *OMCB Opinions* 208 (2011), which involved allegations about meetings the County Board closed in 2010, the County Board's decisions to close meetings to discuss the "use" of real property lack a basis in the Act; the "real estate exception" applies only to discussions about the acquisition of real property. SG §10-508(a)(3). The parties have not addressed, and nor shall we address, the question of whether the discussion fell within the exception.

<sup>2</sup> No complaint has been made about the methods used by the County Board to deliver information to the public; they are commendable. The County Board posts its minutes and archived minutes online and in a searchable format, posts streaming and subtitled video of its meetings, and posts announcements about its meetings shortly afterwards.

<sup>3</sup> Effective June 1, 2011, the Act was amended to allow a public body to substitute live, streaming, and archived audio or video for written minutes. SG §10-509(b). If a public body chooses to make such a substitution, the summary of any closed session should be presented during the next open session.

<sup>4</sup> Complainants state, "The inclusion of unknown community members as part of the search process was a public meeting that was convened without public notice or an agenda." We interpret this allegation to include both the County Board's and the citizens' meetings.

interview candidates for superintendent, there were no minutes taken for those meetings, either.

We begin with the County Board's assertion that the meeting at which it created the citizens' committee was not subject to the Open Meetings Act because the appointment of a new superintendent fell within the County Board's administrative function. The County Board cites an opinion in which we addressed meetings held by school boards to evaluate a superintendent's performance, *see, e.g.* 1 *OMCB Opinions* 123, 125 (1995), and various opinions involving other public bodies' evaluation and appointment of employees in the exercise of their administration of existing law assigning that function to them. Here, however, the County Board's meeting involved the arrival at a consensus on creating a citizens' committee to participate in the appointment process, and the County Board has not directed us to an existing law which would make that action merely administrative in nature. The County Board's meeting therefore comes closer to the meeting we addressed in 4 *OMCB Opinions* 163, 166 (2001), where a school board met to develop its guidelines for identifying candidates to recommend for a gubernatorial appointment. Although we noted there that the appointment function in question belonged to the Governor and so was not within the school board's administrative function, we also remarked that the school board, in discussing "important matters like the opportunity for citizen comment," was engaged in the creation of policy. *Id.* Discussions about whether and how to involve the public in the hiring process implicate policy matters not involved in the administrative function of evaluating and interviewing candidates. Accordingly, the County Board was not merely exercising an administrative function when it decided to create a citizens' committee, and it violated the Act by not discussing that topic in open and in accordance with the procedures set forth in the Act. We encourage the County Board to unseal and make available for inspection any closed-session minutes, or portions thereof, that pertain to discussions that should have been held in the open.

Finally, we turn next to the question of the application of the Act to the citizens' committee itself. The Act applies only to a "public body," as defined by the Act. §§10-505; 10-502(h). An entity may become a public body in any of three ways: creation by a formal legal instrument, such as a law, rule, resolution, bylaw, or executive order; appointment of certain persons by the Governor or local government executive, or by someone subject to that official's direction; or appointment of certain persons by an entity in the Executive branch of State government. SG §10-502(h). The County Board's citizens' committee, created by informal consensus, does not meet any of the statutory definitions. *See* 1 *OMCB Opinions* 69, 71 (1994) (finding that subcommittees created by informal action of public bodies were not themselves public bodies). We therefore find that the County Board's citizens' committee was not itself a public body and that the committee's meetings were not subject to the Act.

We need not reach the County Board's alternative argument that, in any event, the committee's meetings were administrative in nature and would not have been subject to the act. We note, however, that the administrative function exclusion can only be claimed by an entity "vested with legal responsibility for ... the administration" of the existing law or policy in question. 4 *OMCB Opinions, supra*, at 166.

## II Conclusion

We conclude that the County Board substantially complied with the Act's requirement that summaries of actions taken in closed sessions be included in the minutes of the next open meeting. While the Act does not require the County Board to disclose the minutes of properly-closed sessions, the County Board should disclose any

minutes of discussions that it conducted in closed sessions, but should have conducted in public.

We conclude that the County Board was not exercising an administrative function when it decided to create a citizens' committee. In light of our recent opinion on the County Board's reliance on that exclusion for a different discussion, *see* 7 *OMCB Opinions* 208 (2011), we encourage the County Board to close its meetings more sparingly. The citizens' committee was not subject to the Act and so did not violate it.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire

Courtney J. McKeldin

Julio A. Morales, Esquire

[11-20-21]

## OPINIONS

July 26, 2011

Complainant:  
Jason Keirn

Respondent:  
Mayor and Town Council of Brentwood

We have considered the complaint of Jason Keirn ("Complainant") that the Town Council of Brentwood (the "Town") violated the Open Meetings Act (the "Act") by holding a meeting without giving public notice or otherwise complying with the Act. We conclude that the Act did not apply to the discussion in question and therefore find no violation.

## I Discussion

Complainant states that he observed three members of the Town Council – the Mayor and two council members – meeting at a Dunkin Donuts in Hyattsville. He states that he does not know what they discussed.

The Town responds that the Town Council is comprised of five members, including the Mayor; that the Mayor and Council Member Harrison met at Dunkin Donuts for coffee; that they discussed attending the Mt. Rainier Day Celebration that day and planning for the Town's own celebration event; that Council Member Brooks then "came in unexpectedly"; that the three members talked about the Mt. Rainier event; and that the Mayor asked the other two to represent the Town at the Mt. Rainier event while the Mayor could get there. The Mayor then left. The Town asserts that the event was a "social gathering" and "chance encounter" during which no public business was discussed and that the Act therefore did not apply. We begin, however, with whether the gathering was a "meeting" subject to the Act.

The Act requires a public body to hold its "meetings" in open session, unless the Act expressly permits otherwise. Annotated Code of Maryland, State Government Article ("SG"), §10-505. A "meeting" for purposes of the Act occurs when a quorum of the public body's members convenes to consider or transact public business. SG §10-502(g). The Act thus does not apply when fewer than a quorum are present. A quorum is a "majority of the members," unless otherwise provided by law. SG §10-502(k). A quorum of Brentwood's five-member Town Council is at least three members. The conversation between the Mayor and Council Member Harrison about the Town's own Celebration Day involved public business, but it did not occur in the presence of a quorum, and

so the Act did not apply.<sup>5</sup> The discussion among the three members after Council Member Brooks arrived did occur in the presence of a quorum, and so we turn to the Town's contention that the discussion occurred during a "chance encounter" or "social gathering" and was thereby exempt from the Act.

The Act does not apply to "a chance encounter, social gathering, or other occasion that is not intended to circumvent [the Act]." SG §10-503(a). That exclusion does not confer on a public body a blanket permission to discuss public business at such gatherings. Instead, the exclusion evaporates, and the Act applies, when an event that begins as a chance encounter or social gathering is then used to convey information that constitutes public business within the Act. *See, e.g.* 3 *OMCB Opinions* 30,34 (2001) (finding that the Act applied when public business within the Act was conducted by an "accidental quorum" created by a member's unexpected appearance); 3 *OMCB Opinions* 78, 83 (2001) (finding that the Act applied to a social gathering where a nonvoting member told the members how he would present an agenda item at the board's meeting later that evening); 2 *OMCB Opinions* 74, 76 (1999) (cautioning that a public body meeting socially "must refrain from conducting public business during that time"). We have thus found that the Act will apply to a meeting originating by chance or for purely social reasons when the discussion turns to public business within the Act.

Public business falls within the Act when the public body is exercising an advisory, legislative, or quasi-legislative function. *See* SG §§10-502(b) and 10-503. As relevant here, the Act does not apply when the public body is exercising the administrative function. *Id.*<sup>6</sup> A public body's discussion of such matters as the committee assignments of its own members is generally administrative in nature when those assignments are made by the public body itself. *See* 7 *OMCB Opinions* 142, 144, n.1 (2011). For example, we have found that a public body's discussion about which member should attend a conference fell within the administrative function exclusion because it concerned a "housekeeping matter" of that body and did not implicate a policy-making or other function within the Act. 3 *OMCB Opinions* 39, 43 (2000).

According to the Town, the members discussed two topics: first, Mt. Rainier's celebration day, and, second, the Mayor's request that the other members represent the Town at that event until he arrived. The first topic perhaps involved Mt. Rainier's business; it apparently did not involve the Town's business. The Mayor's request did involve the Town's business. That topic, however, was analogous to a discussion of committee assignments or selection of conference attendees and was thus administrative in nature. We find that the Act did not apply to either topic.

## II Conclusion

We conclude that no violation occurred because the Act did not apply to the event in question.

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

[11-20-22]

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<sup>5</sup> Complainant later referred us to a video of a town meeting during which the Mayor referred to visiting a certain site that day with one other council member. Again, no quorum was created.

<sup>6</sup> The other express exclusions relate generally to the grant of licenses or permits and the performance of judicial or quasi-judicial functions, *see* SG §10-503; they do not apply here.

# The Judiciary

## ADMINISTRATIVE OFFICE OF THE COURTS

### ADMINISTRATIVE MEMORANDUM 11-3

## ADMINISTRATIVE REGULATION XVII PRE-SET FINES — MOTOR VEHICLE AND/OR PENALTY DEPOSITS MOTOR VEHICLE LAWS

By direction of Chief Judge Robert M. Bell, and for the information and guidance of all concerned, the attached notice is published for the purpose of advising of the revision to the District Court Administrative Regulation to become effective October 1, 2011. The attached revision has been adopted by the Chief Judge of the District Court.

FRANK BROCCOLINA  
State Court Administrator

September 1, 2011

### NOTICE

Under the authority of Courts Article '7-301 of the Maryland Code, certain District Court Pre-Set Fines and/or Penalty Deposits for Motor Vehicle Laws have been revised and will be in force and effective October 1, 2011. Also included herewith are the revisions to DCAR XVII

BEN C. CLYBURN  
Chief Judge  
District Court of Maryland

September 1, 2011

### DCAR XVII SCHEDULE OF PRESET FINES AND/OR PENALTY DEPOSITS MOTOR VEHICLE LAWS

[Brackets around text] indicate language deleted from existing fine schedule.  
Underlined text indicates language added to existing fine schedule.

Transportation Article			Charge	Fine	Points	Cont. to Accident	
Sec.	Para.					Fine	Points
13	602	[a]	Licensed dealer issuing more than one temporary registration for vehicle	\$140.00	00		00
		<u>ali</u>					
<u>15</u>	<u>305.1</u>	<u>a4</u>	Wholesale dealer licensed by Administration ( <del>selling, exchanging</del> ) vehicle	<u>\$290.00</u>	<u>00</u>		<u>00</u>
			<u>with retail buyer</u>				
<u>15</u>	<u>305.1</u>	<u>a5</u>	Wholesale dealer licensed by Administration ( <del>buying, selling, exchanging</del> )	<u>\$290.00</u>	<u>00</u>		<u>00</u>
			<u>new vehicles</u>				
15	313	[c1]	(Dealer, Dealer agent, Dealer employee) failing to state full delivered	MA	00		00
		<u>ci</u>	purchase price of veh. in advertisement				
15	313	[c2]	(Dealer, Dealer agent, Dealer employee) failing to print full delivered	MA	00		00
		<u>cii</u>	purchase price of veh. in largest font used in advertisement				
[16]	[104]	[a]	[Class A licensee ( <del>driving, attempting to drive</del> ) unauthorized class veh.]	[\$70.00]	[02]	[\$110.00]	[03]
[16]	[104]	[b]	[Class B licensee ( <del>driving, attempting to drive</del> ) unauthorized class veh.]	[\$70.00]	[02]	[\$110.00]	[03]
[16]	[104]	[c]	[Class C licensee ( <del>driving, attempting to drive</del> ) unauthorized class veh.]	[\$70.00]	[02]	[\$110.00]	[03]
[16]	[104]	[d]	[Class D licensee ( <del>driving, attempting to drive</del> ) unauthorized class veh.]	[\$70.00]	[02]	[\$110.00]	[03]
[16]	[104]	[e]	[Class E licensee ( <del>driving, attempting to drive</del> ) unauthorized class veh.]	[\$70.00]	[02]	[\$110.00]	[03]
[16]	[104]	[g]	[Person ( <del>driving, attempting to drive</del> ) veh. on hwy. w/o req. lic. class]	[\$70.00]	[02]	[\$110.00]	[03]
<u>16</u>	<u>113</u>	<u>k</u>	( <del>Driving, Attempting to drive</del> ) veh. not equipped with an ignition interlock	<u>MA</u>	<u>00</u>		<u>00</u>
			<u>as required by Ignition Interlock System Program</u>				
<u>21</u>	<u>201</u>	<u>a2</u>	( <del>Drive across private property, Leave the roadway</del> ) for the purpose of	<u>\$90.00</u>	<u>01</u>	<u>\$130.00</u>	<u>03</u>
			<u>avoiding traffic control device</u>				
21	507	c	Standing in ( <del>roadway, median divider, intersection</del> ) in ( <del>Carroll, Charles,</del>	\$70.00	00		00

THE JUDICIARY

1194

			[Frederick,] Harford, Washington) County to solicit money or donations from vehicle occupant				
21	507	k2	Standing in ( <i>road, median, intersection</i> ) in Frederick Co. to solicit money or donations from veh. occupant w/o permit	\$70.00	00		00
21	10A	02a	Parking lot ( <i>owner, operator's agent</i> ) having veh. ( <i>towed, removed</i> ) from parking lot not having required signage	\$90.00	00		00
21	10A	04.2	Failure to notify police dept. within 2 hours after ( <i>towing, removing</i> ) veh. from lot	\$90.00	00		00
21	10A	04.3	( <i>Towing, Removing</i> ) veh. without authorization from parking lot owner	\$90.00	00		00
21	10A	04.4	Failure to obtain required commercial liability insurance to cover any damages due to negligence	\$90.00	00		00
21	10A	04.5	Failure to obtain required surety bond to guarantee payment of any liability	\$90.00	00		00
21	1116	a	Driving veh. in ( <i>race, speed contest</i> ) on ( <i>hwy., private property used by public</i> )	\$290.00	05		05
			If violation resulted in serious bodily injury to another person (Code 4 or 5)	MA	05		05
21	1124.1	b	Driver ( <i>writing, sending, reading</i> ) a ( <i>text, electronic</i> ) message while operating vehicle in travel portion of highway	\$70.00	01	\$110.00	03
21	1124.2	c1	Driver of a Class H veh. that is carrying passengers and in motion using handheld telephone (Secondary Action)				
			1 <sup>st</sup> offense	\$40.00	00	[\$80.00] \$40.00	03
			2 <sup>nd</sup> offense	\$100.00	01	[\$140.00] \$100.00	03
21	1124.2	c2	Holder of ( <i>learner's permit, provisional license</i> ) driving motor vehicle while using a handheld telephone (Secondary Action)				
			1 <sup>st</sup> offense	\$40.00	00	[\$80.00] \$40.00	03
			2 <sup>nd</sup> offense	\$100.00	01	[\$140.00] \$100.00	03
21	1124.2	d2	Driver using hands to use handheld telephone while motor vehicle is in motion (Secondary Action)				
			1 <sup>st</sup> offense	\$40.00	00	[\$80.00] \$40.00	03
			2 <sup>nd</sup> offense	\$100.00	01	[\$140.00] \$100.00	03
21	[1128] 1129		Driving motor vehicle ( <i>equipped with television-type receiving equipment, video display equipment that is turned on and displaying an image visible to the driver</i> ) on hwy.	\$60.00	01	\$100.00	03
24	108	[b] a1	Exceeding allowable axle weight	See 27-105	00		00
24	108	[b3] a3	Driving veh. with gross wt. exceeding 73,000 lbs. for other than ( <i>pickup, delivery</i> ) using unauthorized route	\$140.00	00		00
24	108	d	( <i>Over-the-road bus, vehicle</i> ) used as intrastate public agency transit passenger bus exceeding ( <i>weight limit, tire capacity</i> )	\$140.00	00		00
392.80		a	Driver engaged in texting while ( <i>driving, operating</i> ) a commercial motor vehicle	\$250.00	00	\$1,000.0000	
[393.33] 393.28			Wiring not installed in a workmanlike manner	\$70.00	00		00

[11-20-39]

# COURT OF APPEALS OF MARYLAND

## DISCIPLINARY PROCEEDINGS

This is to certify that by an Order of this Court dated July 8, 2011, **JEFFREY EDWARD MICHELSON**, 71 Drake Lane, Ledgewood, New Jersey 07852, has been disbarred from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-760e).

\* \* \* \* \*

This is to certify that by an Order of this Court dated July 11, 2011, **STEPHEN ROBERT GREINER**, 6701 Democracy Blvd., Suite 300, Bethesda, MD 20817, has been indefinitely suspended by consent from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

\* \* \* \* \*

This is to certify that by an Order of this Court dated July 19, 2011, **MELISSA DONNELLE GRAY**, 305 W. Allegheny Avenue, Towson, MD 21204, has been reprimanded by consent.

\* \* \* \* \*

This is to certify that by an Order of this Court dated August 3, 2011, **EGAN PATRICK O'BRIEN**, 3104 Cheverly Avenue, Hyattsville, Maryland 20785, has been disbarred by consent from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

\* \* \* \* \*

This is to certify that by an Order of this Court dated August 3, 2011, **GLENN EDWARD CULPEPPER**, 10801 Lockwood Drive, Suite 330, Silver Spring, Maryland 20901, has been disbarred by consent from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

\* \* \* \* \*

This is to certify that by Opinion and Order of this Court dated August 19, 2011, **GREGORY RAYMOND KEINER**, 2425 Sand Hill Road, Ellicott City, Maryland 21042, has been disbarred from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

\* \* \* \* \*

This is to certify that by an Order of this Court dated July 28, 2011, **LESTER ANTHONY DOUGLAS ADAMS**, 7339 Hanover Parkway, Suite C, Greenbelt, Maryland 20770, has been disbarred by consent, effective August 29, 2011, from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-713).

\* \* \* \* \*

This is to certify that by an Order of this Court dated September 9, 2011, **LUCILLE SAUNDRA WHITE**, 1401 Mercantile Lane, Suite 200C, Largo, Maryland 20774, has been disbarred from the further practice of law in this State and her name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-760e).

\* \* \* \* \*

This is to certify that by an Order of this Court dated September 9, 2011, **SPENCER DEAN AULT**, 13193 Mountain Road, Lovettsville, Virginia 20180, has been disbarred from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-760e).

[11-20-47]

## STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

### NOTICE OF OPEN MEETING

The Standing Committee on Rules of Practice and Procedure will hold an open meeting on Thursday, October 7, 2011, in the Judiciary Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland, commencing at 9:30 A.M., to consider any questions relating to rules changes as may be brought before the meeting.

For further information contact Sandra F. Haines, Reporter, (410) 260-3630.

[11-20-42]

### RULES ORDER

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Sixty-Eighth Report to the Court recommending, in part, adoption of proposed new Rule 4-332, as set forth in that Report published in the *Maryland Register*, Vol. 38, Issue 8, pages 475 - 503 (April 8, 2011); and

This Court, by Rules Order dated June 7, 2011, having remanded proposed new Rule 4-332 to the Standing Committee on Rules of Practice and Procedure for revision in light of discussion at the Court's June 6, 2011 open meeting; and

The Rules Committee having submitted a Supplement to the One Hundred Sixty-Eighth Report to the Court dated August 16, 2011 containing alternative versions of Rule 4-332 for the Court's consideration, together with proposed amendments to Rules 4-403, 4-705, and 4-706; and

This Court having considered at open meetings, notices of which were posted as prescribed by law, proposed new Rule 4-332 and the proposed amendments to Rules 4-403, 4-705, and 4-706, together with the comments received, it is this 8<sup>th</sup> day of September, 2011,

ORDERED that new Rule 4-332 be, and it is hereby, adopted in the form attached hereto; and it is further

ORDERED that amendments to Rules 4-403, 4-705, and 4-706 be, and they are hereby, adopted in the form attached hereto; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after October 1, 2011 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

Robert M. Bell  
Glenn T. Harrell, Jr.  
Lynne A. Battaglia  
Clayton Greene, Jr.  
Joseph F. Murphy, Jr.  
Sally D. Adkins  
Mary Ellen Barbera

Filed: September 8, 2011

BESSIE M. DECKER  
Clerk  
Court of Appeals of Maryland

**MARYLAND RULES OF PROCEDURE**  
**TITLE 4 - CRIMINAL CAUSES**  
**CHAPTER 300 - TRIAL AND SENTENCING**

ADD new Rule 4-332, as follows:

**Rule 4-332. WRIT OF ACTUAL INNOCENCE**

(a) Scope

This Rule applies to an action seeking a writ of actual innocence as provided by Code, Criminal Procedure Article, §8-301.

(b) Filing; Caption

An action for a writ of actual innocence is commenced by the filing of a petition in the court where the conviction took place. The caption of the petition shall state the number of the criminal case to which the petition relates. If practicable, the petition shall be filed in the criminal action.

(c) Timing

A petition under this Rule may be filed at any time.

(d) Content of Petition

The petition shall be in writing, shall be signed by the petitioner or the petitioner's attorney, and shall state:

(1) the court in which the indictment or criminal information was filed and the file number of that case;

(2) if the case was removed to another court for trial, the identity of that court;

(3) each offense of which the petitioner was convicted, the date of the judgment of conviction, and the sentence imposed;

(4) if the judgment was appealed, the case number in the appellate court, a concise description of the issues raised in the appeal, the result, and the date of the appellate court's mandate;

(5) for each motion or petition for post-judgment relief, the court in which the motion or petition was filed, the case number assigned to each proceeding, a concise description of the issues raised, the result, and the date of disposition;

(6) that the request for relief is based on newly discovered evidence which, with due diligence, could not have been discovered in time to move for a new trial pursuant to Rule 4-331;

(7) a description of the newly discovered evidence, how and when it was discovered, why it could not have been discovered earlier, and, if the issue of whether the evidence could have been discovered in time to move for a new trial pursuant to Rule 4-331 was raised or decided in any earlier appeal or post-judgment proceeding, the identity of the appeal or proceeding and the decision on that issue;

(8) that the newly discovered evidence creates a substantial or significant possibility, as that standard has been judicially determined, that the result may have been different, and the basis for that statement;

(9) that the conviction sought to be vacated is based on an offense that the petitioner did not commit;

(10) if the petitioner is not already represented by counsel, whether the petitioner desires to have counsel appointed by the court and, if so, facts establishing indigency;

(11) that a copy of the petition, together with all attachments, was mailed to the State's Attorney of the county in which the petition was filed;

(12) the relief requested; and

(13) whether a hearing is requested.

(e) Notices

(1) To State's Attorney

The petitioner shall send a copy of the petition with all attachments to the State's Attorney of the county in which the petition was filed.

(2) To Victim or Victim's Representative

Upon receipt of the petition, the State's Attorney shall notify any victim or victim's representative of the filing of the petition, as provided by Code, Criminal Procedure Article, §11-104 or §11-503.

(3) To Public Defender

If the petitioner has requested an attorney and has alleged inability to employ one, the court shall send a copy of the petition and attachments to the Collateral Review Division of the Office of the Public Defender.

(f) Response by State's Attorney

Within 90 days after receipt of the petition and attachments, the State's Attorney shall file a response, serve a copy on the petitioner, and, if indigency is alleged, send a copy to the Collateral Review Division of the Office of the Public Defender.

(g) Response by Public Defender

Within 30 days after the State files its response, or, if no response is timely filed, the expiration of the time allowed for the State's response in section (f) of this Rule, the Office of the Public Defender shall (1) enter its appearance, (2) notify the court in writing that it declines to provide representation to the petitioner, or (3) request from the court an extension of the time for deciding whether to provide representation to the petitioner and state a specific reason for the request.

(h) Amendments

Amendments to the petition shall be freely allowed in order to do substantial justice. If an amendment is made, the court shall allow the State a reasonable opportunity to respond to the amendment.

(i) Dismissal of Petition; Appointment of Counsel

(1) Dismissal of Petition

Upon consideration of the petition and the State's response, the court may (A) dismiss the petition if it finds as a matter of law that the petition fails to comply substantially with the requirements of section (d) of this Rule or otherwise fails to assert grounds on which relief may be granted or (B) grant leave to amend the petition to correct the deficiency. If the court finds a lack of proper venue, the court shall transfer the petition to the court with proper venue.

(2) Appointment of Counsel

If the court finds that a petitioner who has requested the appointment of counsel is indigent and the Office of the Public Defender has declined to provide representation, the court may appoint counsel after the State has filed its response unless (A) the court denies the petition as a matter of law or (B) counsel has already filed an appearance to represent the petitioner.

(j) Hearing

(1) When Required

Except as provided in subsection (i)(1) of this Rule, the court shall hold a hearing on the petition if the petition substantially complies with the requirements of section (d) of this Rule and a hearing was requested.

(2) Right of Victim or Victim's Representative to Attend

A victim or victim's representative has the right to attend a hearing on the petition as provided under Code, Criminal Procedure Article, §11-102.

(k) Burden of Proof

The petitioner has the burden of proof to establish a right to relief.

(l) Ruling

(1) Actions of Court

If the court finds that the petitioner is entitled to relief, it may set aside the verdict or judgment of conviction, grant a new trial, re-sentence the petitioner, or correct the sentence.

(2) Reasons for Ruling

The court shall state the reasons for its ruling on the record.

Source: This Rule is new.



**MARYLAND RULES OF PROCEDURE**  
**TITLE 4 - CRIMINAL CAUSES**  
**CHAPTER 400 - POST CONVICTION PROCEDURE**

AMEND Rule 4-403 to add the words "Collateral Review Division of the" and to correct an obsolete cross reference, as follows:

**Rule 4-403. NOTICE OF PETITION**

Upon receipt of a post conviction petition, the clerk shall promptly notify the county administrative judge and the State's Attorney. When the petition relates to an action tried in that court, it shall be filed in the action. If the petition alleges that the petitioner is indigent, the clerk shall promptly notify the *Collateral Review Division of the Office of the Public Defender* by forwarding a copy of the petition.

Cross reference: Code, [Article 27A, §4] *Criminal Procedure Article, §16-204*.

Source: This Rule is derived from former Rule BK41 e.

**MARYLAND RULES OF PROCEDURE**  
**TITLE 4 - CRIMINAL CAUSES**  
**CHAPTER 700 - POST CONVICTION DNA TESTING**

AMEND Rule 4-705 to add the words "Collateral Review Division of the" to section (b), as follows:

**Rule 4-705. NOTICE OF PETITION**

(a) To State's Attorney

Upon receipt of a petition, the clerk promptly shall forward a copy of it to the State's Attorney and the county administrative judge. If the petition seeks a search of the DNA database or log of an identified law enforcement agency, the State's Attorney shall send a copy of the petition to that law enforcement agency.

(b) To Public Defender

If the petition alleges that the petitioner is unable to pay the costs of testing or to employ counsel, the clerk shall promptly forward a copy of the petition to the *Collateral Review Division of the Office of the Public Defender*.

Source: This Rule is new.

**MARYLAND RULES OF PROCEDURE**  
**TITLE 4 - CRIMINAL CAUSES**  
**CHAPTER 700 - POST CONVICTION DNA TESTING**

AMEND Rule 4-706 to add the words "Collateral Review Division of the," as follows:

**Rule 4-706. ANSWER; MOTION TO TRANSFER**

...

(d) Service

The State's Attorney shall serve a copy of the answer or motion to transfer on the petitioner and, if the petitioner alleges an inability to pay the costs of testing or to employ counsel, on the *Collateral Review Division of the Office of the Public Defender*.

Source: This Rule is new.

[11-20-40]

**RULES ORDER**

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Seventy-First Report to the Court recommending adoption of proposed amendments to Rules 3-306, 3-308, 3-509, 4-353, 4-354, 7-208, 8-204, 8-421, 8-502, 8-503, 8-504, 8-521, 16-101, 16-110, 16-204, 16-309, 16-714, and 16-902; Rules 3.8, 5.5, and 6.5 of the Maryland Lawyers' Rules of Professional Conduct; Rule 14 of the Rules Governing Admission to the Bar of Maryland; and Appendix: Forms for Special Admission of Out-of-State Attorneys, Forms RGAB-14/M and RGAB-14/O, all as set forth in that Report published in the *Maryland Register*, Vol. 38, Issue 15, pages 884 - 897 (July 15, 2011); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 8<sup>th</sup> day of September, 2011,

ORDERED, by the Court of Appeals of Maryland, that amendments to Rules 3-306, 3-308, 3-509, 4-353, 4-354, 7-208, 8-204, 8-421, 8-502, 8-503, 8-504, 8-521, 16-101, 16-110, 16-204, 16-309, 16-714, and 16-902; Rules 3.8, 5.5, and 6.5 of the Maryland Lawyers' Rules of Professional Conduct; Rule 14 of the Rules Governing Admission to the Bar of Maryland; and Appendix: Forms for Special Admission of Out-of-State Attorneys, Forms RGAB-14/M and RGAB-14/O be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that the amendments to Rules 16-101 and 16-714 hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after October 1, 2011 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that all other rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after January 1, 2012 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

Robert M. Bell  
 Glenn T. Harrell, Jr.  
 \*Lynne A. Battaglia  
 Clayton Greene, Jr.  
 \*\*Joseph F. Murphy, Jr.  
 Sally D. Adkins  
 Mary Ellen Barbera

\* Judge Battaglia declined to approve for adoption the amendments to Rules 4-353 and 4-354.

\*\* Judge Murphy declined to approve for adoption the amendments to Rules 3-306, 3-308, and 3-509.

Filed: September 8, 2011

BESSIE M. DECKER  
 Clerk  
 Court of Appeals of Maryland

[11-20-41]

# COURT OF SPECIAL APPEALS

## SCHEDULE FOR OCTOBER 3, 4, 5, 6, 7, 11, 12, 13, 14, 17, 18, 2011

**Monday, October 3, 2011**

### Courtroom No. 1

No. 02984/10\*\* State of Maryland vs. Earl Moore  
 No. 01478/10 Dexter Ingram vs. State of Maryland  
 No. 01435/10 James Riggs et al. vs. BAJV, LLC  
 No. 01404/10 Department of Human Resources, Queen Anne's County Office of Child Support Enforcement ex rel. vs. Daniel Dominic Rosendale  
 No. 01071/10 DeAngelo Tyrone Rouzer vs. State of Maryland

\*\*120 DAY RULE

### Courtroom No. 2

No. 01638/10 Jose D. Vargas-Aguila vs. State of Maryland, Office of the Chief Medical Examiner  
 No. 01045/10 Roza Y. Hodge vs. Paul C. Hodge  
 No. 02366/10 Shelley Nicole Martino vs. Justin Saul Jones  
 No. 01307/10 Cashea Smith vs. Benjamin Holmes et al.  
 No. 00978/10 Wilber E. Bayes vs. Brenda Gerwig f/k/a Brenda Bayes

**Tuesday, October 4, 2011**

### Courtroom No. 1

No. 00280/10 CR-RSC Tower I, LLC et al. vs. RSC Tower I, LLC et al.\*\*\*  
 No. 02535/10 CR-RSC Tower I LLC et al. vs. RSC Tower I LLC et al.\*\*\*  
 No. 01443/10 Martha Solimo et vir vs. J. Hutchins Haese  
 No. 01457/10 Board of License Commissioners for Prince George's County, Maryland vs. Datree D. Schwapp et al.  
 No. 01447/10 Board of Education of Prince George's County vs. Stephanie Lynn Marks-Sloan  
 No. 00467/10 The Carroll Independent Fuel Company vs. Washington Real Estate Investment Trust

\*\*\*Consolidated Cases

### Courtroom No. 2

No. 00783/10 Joseph Soleimanzadeh vs. Montgomery County, Maryland et al.  
 No. 01263/10 Renee L. Lake et al. vs. Thomas P. Dore et al.  
 No. 01376/10 Barry Williams vs. Maryland Automobile Insurance Fund  
 No. 01433/10 Khana Soleimanzadeh et al. vs. Montgomery County, Maryland  
 No. 01633/10 Kevin J. Green vs. Annie M. Hall

**Wednesday, October 5, 2011**

### Courtroom No. 1

No. 01365/10 Trevor Gibson a/k/a Trevor Gipson vs. State of Maryland  
 No. 01421/10 Rebecca Geshelin vs. Jacob Geesing et al., Substitute Trustees  
 No. 01400/10 Jackson H. Gichema vs. State of Maryland  
 No. 00818/10 Bongchan Kim et al. vs. Director of Finance for Baltimore City

No. 01888/10 Fozia Zareem vs. State of Maryland  
 No. 02670/10\* Millicent Sumpter vs. Sean Sumpter

\*8-207(a)

### Courtroom No. 2

No. 01347/10 Darnerien McCants vs. Pro-Football, Inc. t/a Washington Redskins, et al.  
 No. 01520/10 Roger Lynn Reed vs. Amanda Hurtt Deringer  
 No. 01518/10 Mary Jo Harting vs. Baltimore County Sheriff's Office  
 No. 00076/11\* Cynthia Fogg vs. Billy J. Horn  
 No. 01248/10 Omni Excavators, Inc. vs. Montgomery County, Maryland et al.

\*8-207(a)

**Thursday, October 6, 2011**

### Courtroom No. 1

No. 01212/10 Bonnie Bick et al. vs. Bauserman Services, Inc.  
 No. 02399/09 Warren Jerome Yates vs. State of Maryland  
 No. 01995/10 Mark Anthony Shryock vs. State of Maryland  
 No. 01228/10 Denise Elaine McMillan vs. U. S. Bank, National Association et al.  
 No. 01375/10 Lisa Cox vs. Office of the Public Defender

### Courtroom No. 2

No. 01455/10 David Hillman et al. vs. First American Title Insurance Company LLC et al.  
 No. 00291/10 Wallace H. Campbell & Company, Inc. vs. Maryland Commission on Human Relations\*\*\*  
 No. 01310/10 Wallace H. Campbell & Company, Inc. vs. Maryland Commission on Human Relations\*\*\*  
 No. 01397/10 Kester Obomighie vs. State of Maryland  
 No. 01119/10 Anderson Jett vs. State of Maryland  
 No. 01434/10 Collegiate Group, LLC vs. City of College Park

\*\*\*Consolidated Cases

**Friday, October 7, 2011**

### Courtroom No. 1

No. 01235/10 Linda Thornton Thomas et al. vs. Attorney General of Maryland et al.  
 No. 01199/10 Richard Tempel et al. vs. Elena L. Murphy et al.  
 No. 01007/10 Chicago Title Insurance Company vs. Northwest Title and Escrow Corp.  
 No. 01247/10 Richard W. Chace vs. Diane Chace  
 No. 01279/10 Mitra Firouz et vir. vs. Barry J. Cohen et al.

### Courtroom No. 2

No. 01326/10 John Doe vs. Department of Public Safety and Correctional Services  
 No. 01221/10 Lydia Sullivan vs. John Sullivan, Jr.  
 No. 01309/10 Richard Ramlall vs. Mobilepro Corporation et al.  
 No. 01249/10 Athena Kalivas et al. vs. County Council for Montgomery County et al.  
 No. 02058/10 Ingham Andre DeFreitas vs. State of Maryland

**Tuesday, October 11, 2011**

### Courtroom No. 1

No. 01453/10 Heavenly Days Crematorium, LLC vs. Harris, Smariga & Associates, Inc.  
 No. 01838/10 Antwan Grymes a/k/a Antoine Grimes vs. State of Maryland  
 No. 01229/10 James Lamont Rhodes vs. Pedro Antonio Amaya

No. 01456/10 75-80 Properties, LLC et al. vs. Board of County Commissioners of Frederick County, Maryland et al.  
 No. 01399/10 Cheri Mattison f/k/a Cheri Pruitt vs. Rene L. Gelber et al.

Courtroom No. 2

No. 01522/10 AMS Staff Leasing, Inc. et al. vs. Alonzo W. Perry  
 No. 00060/09 Margaret McHale et al. vs. DCW Dutchship Island, LLC et al.  
 No. 01466/10 Michael Wayne Molitor vs. State of Maryland  
 No. 01207/10 Francis D. Mackie vs. Kristine A. Mackie  
 No. 01179/10 Edward A. Bollman vs. Splash & Dash, LLC

**Wednesday, October 12, 2011**

Courtroom No. 1

No. 01273/10 Property & Casualty Insurance Guaranty Corporation vs. Belinda Beebe-Lee etc. et al.  
 No. 01451/10 Joo-Yeon Jeong vs. Jun-Un Park  
 No. 01380/10 Annapolis Roads Property Owners Association et al. vs. Thomas C. Lindsay, Sr. et al.  
 No. 01328/10 Susan Buchanan vs. Department of Health and Mental Hygiene, Baltimore County Department of Social Services  
 No. 01494/10 Bernitha Neversen et al. vs. Board of Education for Charles County et al.

Courtroom No. 2

No. 01418/10 Arthur E. Selnick Associates, Inc. vs. Howard County, Maryland et al.  
 No. 01161/10 Jerome Desmond Proctor, Jr. vs. State of Maryland  
 No. 01398/10 Samuel Smalls-Moreno vs. State of Maryland  
 No. 01382/10 Troy Durham vs. Robert Jones, Sheriff of Somerset County

**Thursday, October 13, 2011**

Courtroom No. 1

No. 00076/09 Linda T. Cox et al. vs. James D. Geren et al.  
 No. 00789/10 Pines Plaza Limited Partnership vs. Berkley Trace, LLC et al.  
 No. 02077/10 Nathaniel McGill vs. State of Maryland  
 No. 00250/11 Lydia F. Leverenz vs. Lance S. Leverenz  
 No. 01637/10 David F. Albright vs. Barbara Scherlis et al.

Courtroom No. 2

No. 00998/10 Cari Lynn Rosendale vs. Daniel H. Foster et ux.  
 No. 01516/10 Sandra C. Williams vs. Dennis Dobay et ux.  
 No. 01432/10 Timothy C. Bishop et al. vs. G.E.M. Development, Inc.  
 No. 01209/10 Clifford Keffer et al. vs. Tevis Oil Company, Inc. et al.  
 No. 01531/10 Hakim Nurudeen Thomas vs. State of Maryland

**Friday, October 14, 2011**

All cases submitted on brief

Courtroom No. 1

No. 01271/10 Colvin Inniss Bert vs. Comptroller of Maryland  
 No. 01270/10 Jeffery L. Brooks vs. Jacqueline Brooks  
 No. 01505/10 Debra Ann Tawes vs. State of Maryland  
 No. 02061/10 Jorge Appraicio vs. State of Maryland  
 No. 02063/10 Samuel Leroy Twyman vs. State of Maryland  
 No. 01383/10 Sajuan Smith vs. State of Maryland  
 No. 02085/10 Angel Santos Lopez-Pogoy vs. State of Maryland  
 No. 02106/10 Jamaal A. Parris vs. State of Maryland  
 No. 00910/10 Troy Thomas Haller vs. State of Maryland

No. 01325/10 Ranjit S. Hundal vs. Liz Draper t/a Draper Bros.

Courtroom No. 2

No. 02321/10\* Stephen J. Becker vs. Shelita N. Parham  
 No. 00502/10 Citrine Warren vs. Ari N. Laric et al.  
 No. 01483/10 Daytron Mobley vs. State of Maryland  
 No. 01766/10 Shannon Causion vs. State of Maryland  
 No. 00746/10 Jeremiah Jerard Watson vs. State of Maryland  
 No. 02034/10 Dorothy Durr Aird vs. State of Maryland  
 No. 01128/10 Andre Stubbs vs. State of Maryland  
 No. 00952/10 Carlton Nicholas Henry vs. State of Maryland  
 No. 02062/10 Kenneth Thomas vs. State of Maryland  
 No. 02026/10 Thomas Edward Parham vs. State of Maryland

\*8-207(a)

**Monday, October 17, 2011**

All cases submitted on brief

Courtroom No. 1

No. 01269/10 Kevin C. Betskoiff, Sr. vs. Martin Groff Construction Company et al.  
 No. 01239/10 Larry L. Bush vs. Fred W. Bennett et al.  
 No. 00940/10 Darvelle Jermaine Perry a/k/a Jermaine Fogg vs. State of Maryland  
 No. 00804/10 Marie B. Laroche vs. Jeffrey B. Fisher et al.  
 No. 00762/10 Vincent Joseph McAvoy vs. Sacha Simmons  
 No. 01761/10 Steven Ranson vs. State of Maryland  
 No. 02110/10 Bruce Sheldon Haines vs. State of Maryland  
 No. 02117/10 Jonathan Keith Morris vs. State of Maryland  
 No. 01532/10 Donald Ray Moore a/k/a Ronald Michael Moore vs. State of Maryland  
 No. 02232/10 In Re: Oscar M.

Courtroom No. 2

No. 00078/11 Jerry Jongerius vs. Frederick County Public Schools  
 No. 01305/10 Kumar Peries vs. Janna Peries  
 No. 01485/10 Jamarr A. Robinson vs. State of Maryland  
 No. 00079/11 Jerry Jongerius vs. Frederick County Public Schools  
 No. 01131/10 John Edwin Mooney vs. State of Maryland  
 No. 01506/10 Albert Meeds French, III vs. State of Maryland  
 No. 01723/10 Morrell Leon Whitehead vs. State of Maryland  
 No. 01731/10 Anthony Keith Page vs. State of Maryland\*\*\*  
 No. 01732/10 Anthony Keith Page vs. State of Maryland\*\*\*  
 No. 01767/10 Michael Anthony Housley vs. State of Maryland  
 No. 01768/10 Latesha Hughes vs. State of Maryland\*\*\*  
 No. 01971/10 Shontey Lane a/k/a Shontay Lane vs. State of Maryland\*\*\*

\*\*\*Consolidated Cases

**Tuesday, October 18, 2011**

All cases submitted on brief

Courtroom No. 1

No. 01002/10 Venkateswararao Dudi vs. Melanie Senter Lubin, Maryland Securities Commissioner  
 No. 00881/10 Joey Dayle Richards f/k/a Joey Maruschak vs. Gary Maruschak et al.  
 No. 00917/10 John Henry Dodson vs. State of Maryland  
 No. 00285/10 Lawrence Easley Echols vs. State of Maryland  
 No. 00301/10 James Albert Henson, Jr. vs. State of Maryland  
 No. 00437/10 Wardell Monroe Brooks vs. State of Maryland  
 No. 00474/10 Robert Earl Mitchell, Jr. vs. State of Maryland  
 No. 00493/10 Denarin Skyler Walley vs. State of Maryland  
 No. 00680/10 Emiliano Velasquez vs. State of Maryland

No. 00719/10 Anthony Grandison vs. Mary Ann Saar et al.

Courtroom No. 2

No. 01298/10 Laurie A. Eagan vs. Raymond M. Eagan, III  
No. 00930/10 Roberto Carlos Arias-Rivera a/k/a Roberto Carlos  
Arias vs. State of Maryland  
No. 01292/10 Qwentra O. McCallister vs. Willie G. McCallister  
No. 02627/10\* In Re: Ta'Niya C.  
No. 01782/08 Calvin Boswell vs. State of Maryland  
No. 01839/10 Christopher William Johnson vs. State of Maryland  
No. 01985/10 Purnell Nelson vs. State of Maryland  
No. 00908/10 Shawn Tunstall vs. State of Maryland  
No. 02013/10 Davon Kevin Williams vs. State of Maryland  
No. 02030/10 James William Dick vs. State of Maryland

\*8-207(a)

On the day of argument, counsel are instructed to register in the Office of the Clerk **no later than 9 a.m.** The Court is located at 361 Rowe Boulevard, in the Robert C. Murphy Courts of Appeals Building. After October, 2011, the Court will recess until November, 2011.

LESLIE D. GRADET  
Clerk

**ADMINISTRATIVE ORDER**

Pursuant to Maryland Rule 8-522(a), I hereby direct that oral argument in the month of October be limited to 20 minutes per side, subject to the discretion of the hearing panel to allow additional argument, not exceeding a total of 30 minutes per side.

This directive applies only to cases scheduled in October, 2011.

Chief Judge's signature appears on  
original Administrative Order

Dated: August 29, 2011

[11-20-33]

# 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 07

### DEPARTMENT OF HUMAN RESOURCES

#### Subtitle 02 SOCIAL SERVICES ADMINISTRATION

##### 07.02.13 Post-Adoption Reunion Services

Authority: Family Law Article, §§5-101, 5-356—5-360, 5-3A-39—5-3A-43,  
5-3B-28—5-3B-30, 5-4B-01—5-4B-12, 5-4C-01—5-4C-07,  
Annotated Code of Maryland  
42 U.S.C. §671; 45 CFR §1355.21

#### Notice of Final Action

[11-154-F]

On August 30, 2011, the Secretary of Human Resources adopted amendments to Regulation **.04** under **COMAR 07.02.13 Post-Adoption Reunion Services**. This action, which was proposed for adoption in 38:13 Md. R. 759 (June 17, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

THEODORE DALLAS  
Secretary of Human Resources

## Title 08

### DEPARTMENT OF NATURAL RESOURCES

#### Subtitle 02 FISHERIES SERVICE

##### 08.02.04 Oysters

Authority: Natural Resources Article, §4-1009.1, Annotated Code of  
Maryland

#### Notice of Final Action

[11-195]

On September 13, 2011, the Secretary of Natural Resources adopted amendments to Regulation **.13** under **COMAR 08.02.04 Oysters**. This action, which was proposed for adoption in 38:16 Md. R. 949—950 (July 29, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Subtitle 03 WILDLIFE

### 08.03.03 Open Seasons, Bag Limits for Game Birds and Game Animals

Authority: Natural Resources Article, §§10-405 and 10-410, Annotated Code  
of Maryland

#### Notice of Final Action

[11-197-F]

On September 13, 2011, the Secretary of Natural Resources adopted amendments to Regulations **.01**, **.07**, and **.08** under **COMAR 08.03.03 Open Seasons, Bag Limits for Game Birds and Game Animals**. This action, which was proposed for adoption in 38:16 Md. R. 951—952 (July 29, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Subtitle 03 WILDLIFE

### 08.03.14 Waterfowl Outfitting and Guiding

Authority: Natural Resources Article, §10-309, Annotated Code of Maryland

#### Notice of Final Action

[11-178-F]

On September 13, 2011, the Secretary of Natural Resources adopted amendments to Regulation **.03** under **COMAR 08.03.14 Waterfowl Outfitting and Guiding**. This action, which was proposed for adoption in 38:15 Md. R. 900 (July 15, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

JOHN R. GRIFFIN  
Secretary of Natural Resources

# Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

## Subtitle 24 BOARD OF PUBLIC ACCOUNTANCY

### 09.24.05 Examinations

Authority: Business Occupations and Professions Article, §§2-207, 2-303, and 2-305, Annotated Code of Maryland

#### Notice of Final Action

[11-193-F]

On September 13, 2011, the Board of Public Accountancy adopted amendments to Regulation .03 under COMAR 09.24.05 Examinations. This action, which was proposed for adoption in 38:16 Md. R. 952—953 (July 29, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

THOMAS J. MURPHY  
Chairman  
Board of Public Accountancy

# Title 10 DEPARTMENT 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 Final Action

[11-167-F]

On September 12, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01, .03, and .15 under COMAR 10.09.10 Nursing Facility Services. This action, which was proposed for adoption in 38:14 Md. R. 802—803 (July 1, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

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 Final Action

[11-174-F]

On September 12, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .07-1 under COMAR 10.09.10 Nursing Facility Services. This action, which was proposed for adoption in 38:15 Md. R. 902 (July 15, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

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

## Subtitle 32 BOARD OF PHYSICIANS

### 10.32.03 Delegation of Duties by a Licensed Physician — Physician Assistant

Authority: Health Occupations Article, §§14-205, 14-306, and 15-101—15-403, Annotated Code of Maryland

#### Notice of Final Action

[11-169-F]

On September 12, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01—, .04, .08—, .12, .15, and .16, the repeal of existing 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. This action, which was proposed for adoption in 38:14 Md. R. 803—812 (July 1, 2011), has been adopted with the nonsubstantive changes shown below.

**Effective Date: October 3, 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:

Regulations .05A and B(6)(b) and .06F: These changes are being made in order to make the regulations consistent with the statutory language.

Regulation .06C(3): This language is being deleted because it is not relevant or necessary since under the statute a physician assistant should not be performing anesthesia until approval has been received from the Board.

#### **.05 Delegation Agreements — Contents.**

*A. Before a physician may delegate medical acts and before a physician assistant may perform medical acts, the physician assistant and primary supervising physician shall [[submit to]] file with the Board:*

(1)—(2) (proposed text unchanged)

*B. The delegation agreement shall include the following information:*

(1)—(5) (proposed text unchanged)

*(6) The delegated medical acts which the physician assistant will perform, including:*

(a) (proposed text unchanged)

(b) [[Advanced]] Any advanced duties;

(7)—(9) (proposed text unchanged)  
C.—E. (proposed text unchanged)

**.06 Delegation Agreements — Approval.**

A.—B. (proposed text unchanged)  
C. *General Anesthesia and Neuroaxial Anesthesia.*

(1)—(2) (proposed text unchanged)

(3) *If the Board disapproves the delegation under §C(1) of this regulation, the primary supervising physician and physician assistant*[[.]]

[[*(a) Shall immediately cease to perform the advanced duty; and*]]

[[*(b) May*]] *may* appeal the decision using the procedure described in Regulation .12 of this chapter.

D.—E. (proposed text unchanged)

F. *Temporary Practice Letter.*

(1) *Eligibility. A primary supervising physician who has* [[submitted]] *filed a delegation agreement under §E(1) of this regulation for approval to perform one or more advanced duties in a setting other than a special facility is eligible for a temporary practice letter if the primary supervising physician and the physician assistant meet the following criteria:*

(a)—(b) (proposed text unchanged)

(2)—(3) (proposed text unchanged)

G. (proposed text unchanged)

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

## Title 11 DEPARTMENT OF TRANSPORTATION

### Subtitle 11 MOTOR VEHICLE ADMINISTRATION — ADMINISTRATIVE PROCEDURES

#### 11.11.05 Motor Vehicle Fees

Authority: Transportation Article, §§ 12-104(b) and 12-301, Annotated Code of Maryland, and as cited in Regulations .02—.06 of this chapter.

##### Notice of Final Action

[11-181-F]

On September 1, 2011, the Administrator of the Motor Vehicle Administration adopted amendments to Regulation .03 under **COMAR 11.11.05 Motor Vehicle Fees**. This action, which was proposed for adoption in 38:15 Md. R. 903 (July 15, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

## Subtitle 15 MOTOR VEHICLE ADMINISTRATION — VEHICLE REGISTRATION

### 11.15.16 Issuance, Renewal, Display, and Expiration of Registrations

Authority: Transportation Article, §§12-104(b), 13-403, 13-410, 13-412, 13-904, 13-912, and 13-950 — 13-952, Annotated Code of Maryland.

##### Notice of Final Action

[11-183-F]

On September 1, 2011, the Administrator of the Motor Vehicle Administration adopted amendments to Regulation .05 under **COMAR 11.15.16 Issuance, Renewal, Display, and Expiration of Registration**. This action, which was proposed for adoption in 38:15 Md. R. 903 — 904 (July 15, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

## Title 13A STATE BOARD OF EDUCATION

### Subtitle 01 STATE SCHOOL ADMINISTRATION

#### 13A.01.02 State Superintendent of Schools

Authority: Education Article, §§2-205(g), 2-303, 5-301, and 7-409, Annotated Code of Maryland

##### Notice of Final Action

[11-170-F]

On August 30, 2011, the Maryland State Board of Education adopted new Regulation .05 under **COMAR 13A.01.02 State Superintendent of Schools**. This action, which was proposed for adoption in 38:14 Md. R. 814—815 (July 1, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

BERNARD J. SADUSKY, ED.D.  
Interim State Superintendent of Schools

## Subtitle 06 SUPPORTING PROGRAMS

### 13A.06.01 Programs for Food and Nutrition

Authority: Education Article, §§5-214, 7-601—7-605, and 7-701—7-704,  
Annotated Code of Maryland

*Federal Statutory Reference:* 42 U.S.C. §§1751—1762a, 1765, 1766, 1766a,  
1769a, 1772, 1773, 1776, 1779, 1788

*Federal Regulatory Reference:* 7 CFR 210, 215, 220, 225—227, 235, 240,  
245, 250

#### Notice of Final Action

[11-145-F]

On August 30, 2011, the Maryland State Board of Education adopted amendments to Regulations **.01—.03** under **COMAR 13A.06.01 Programs for Food and Nutrition**. This action, which was proposed for adoption in 38:12 Md. R. 723—725 (June 3, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

BERNARD J. SADUSKY, ED.D.  
Interim State Superintendent of Schools

## Title 17 DEPARTMENT OF BUDGET AND MANAGEMENT

### Subtitle 04 PERSONNEL SERVICES AND BENEFITS

#### 17.04.13 State Employees' Health Benefits

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

#### Notice of Final Action

[11-192-F]

On September 14, 2011, the Secretary of Budget and Management adopted amendments to Regulations **.01** and **.03** under **COMAR 17.04.13 State Employees' Health Benefits**. This action, which was proposed for adoption in 38:16 Md. R. 973—974 (July 29, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

T. ELOISE FOSTER  
Secretary of Budget and Management

## Title 22 STATE RETIREMENT AND PENSION SYSTEM

### Subtitle 01 GENERAL REGULATIONS

#### 22.01.14 Applications for Service Retirement

Authority: State Personnel and Pensions Article, §21-110, Annotated Code of  
Maryland

#### Notice of Final Action

[11-161-F]

On September 7, 2011, the Maryland State Retirement and Pension System adopted new Regulations **.01—.03** under a new chapter, **COMAR 22.01.14 Applications for Service Retirement**. This action, which was proposed for adoption in 38:14 Md. R. 818—819 (July 1, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

R. DEAN KENDERDINE  
Executive Director  
State Retirement Agency

### Subtitle 07 COMPLIANCE WITH THE INTERNAL REVENUE CODE

#### 22.07.02 Code Compliance

Authority: State Personnel and Pensions Article, §21-110, Annotated Code of  
Maryland

#### Notice of Final Action

[11-173-F]

On September 7, 2011, the Maryland State Retirement and Pension System adopted new Regulation **.04** under **COMAR 22.07.02 Code Compliance**. This action, which was proposed for adoption in 38:14 Md. R. 819—820 (July 1, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

R. DEAN KENDERDINE  
Executive Director  
State Retirement Agency



## Title 30

# MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

### Notice of Final Action

[11-182-F]

On September 13, 2011, the Maryland Emergency Medical Services Board adopted amendments to:

- (1) Regulation .12 under **COMAR 30.04.02 Advanced Life Support Education Programs**;
- (2) Regulation .17 under **COMAR 30.04.03 Basic Life Support Education Programs**;
- (3) Regulation .15 under **COMAR 30.04.04 Emergency Medical Dispatcher Education Programs**; and
- (4) Regulations .03, .04, .07, and .10 under **30.08.02 Designation of Trauma and Specialty Referral Centers**.

This action, which was proposed for adoption in 38:15 Md. R. 922—929 (July 15, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

ROBERT R. BASS, M.D.  
Executive Director  
Maryland Institute for Emergency  
Medical Services Systems (MIEMSS)

## Title 31

# MARYLAND INSURANCE ADMINISTRATION

### Subtitle 04 INSURERS

#### **31.04.17 Filing of Forms for Approval**

Authority: Insurance Article, §§2-109, 8-433(a), 12-203, 13-110(a), 14-109(3)(iv), 14-110(a)(2)(iii), 14-126, 14-405(b)(8) and (9), and 14-410(c),  
Annotated Code of Maryland

### Notice of Final Action

[11-177-F]

On August 30, 2011, the Insurance Commissioner adopted amendments to Regulation .13 under **COMAR 31.04.17 Filing of Forms for Approval**. This action, which was proposed for adoption in 38:15 Md. R. 929—930 (July 15, 2011), has been adopted as proposed.

**Effective Date: October 3, 2011.**

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 05

# DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## Subtitle 02 BUILDING AND MATERIAL CODES

### 05.02.01 Model Performance Code

Authority: Public Safety Article, §§12-201—12-204, Annotated Code of Maryland

#### Notice of Proposed Action

[11-268-P-I]

The Secretary of Housing and Community Development proposes to amend Regulations .01—.04 under **COMAR 05.02.01 Model Performance Code**.

#### Statement of Purpose

The purpose of this action is to update the referenced codes as required by Public Safety Article, §12-201, Annotated Code of Maryland, and to encourage the construction of high performance homes. These amendments will adopt: (1) the 2012 Edition of the International Building Code, (2) the 2012 Edition of the International Residential Code for One and Two Unit Family Dwellings, and (3) 2012 Edition of the International Energy Conservation Code, as modified by the Department, as the Model Performance Code.

#### 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 Ed Landon, Codes Administration, Division of Credit Assurance, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-514-7444, or email to landon@mdhousing.org, or fax to 410-987-8902. Comments will be accepted through October 24, 2011. A public hearing has been scheduled for September 30, 2011, at 1 p.m., at 100 Community Place, Crownsville, Maryland 21032.

## Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the 2012 International Building Code, the 2012 International Residential Code for One- and Two-Family Dwellings, the 2012 International Energy Conservation Code, the 2012 International Mechanical Code, the 2011 National Electrical Code, and the 2012 International Plumbing Code have been declared documents generally available to the public and appropriate for incorporation by reference. For this reason, they will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of these documents are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). These documents may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

## .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) "*High performance home*" has the meaning stated in *Public Safety Article, §12-509(a), Annotated Code of Maryland*.

[3] (4) — [(9)] (10) (text unchanged)

## .02 General.

A. (text unchanged)

B. Application.

(1) These regulations may not be binding upon any subdivision of the State unless the subdivision adopts the Model Performance Code, by law, ordinance, or resolution of its governing body referring to the Model Performance Code.

(2) *For industrialized buildings approved by an approved testing facility under COMAR 05.02.04 after the effective date of these regulations:*

(a) *This chapter and the codes incorporated by reference apply to any approved building provided that construction begins prior to 6 months after the Department's adoption of the 2015 edition of the International Building Code; and*

(b) *The approved testing facility shall state in its approval letter to the Department and the manufacturer of the building:*

(i) *The date of approval; and*

(ii) *That approval will expire for a building unless construction begins prior to 6 months after Department's adoption of the 2015 edition of the International Building Code.*

(3) *For industrialized buildings approved by an approved testing facility under COMAR 05.02.04 prior to the effective date of these regulations, the previous version of COMAR 05.02.01 and the 2009 International Building Code shall apply provided that construction begins prior to 6 months after the effective date of these regulations.*

C. (text unchanged)

D. *The Department encourages home builders to construct new high performance homes.*

**.02-1 Incorporation by Reference.**

A. (text unchanged)

B. Documents Incorporated.

(1) [2009] 2012 International Building Code (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001).

(2) [2009] 2012 International Plumbing Code (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001).

(3) National Electrical Code, [2008] 2011 Edition (National Fire Protection Association, One Batterymarch Park, Quincy, Massachusetts 02269).

(4) [2009] 2012 International Residential Code for One- and Two-Family Dwellings (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001).

(5) [2009] 2012 International Mechanical Code (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001).

(6) [2009] 2012 International Energy Conservation Code (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001).

**.03 Model Performance Code.**

A. The standards incorporated by reference in Regulation .02-1 of this chapter, and modified as follows, constitute the Model Performance Code for building construction in the State:

(1) For industrialized building construction:

(a) International Building Code with the following modifications:

(i) Chapter 1. Delete Section 101.2.1 Appendices and replace with the following:

101.2.1 Appendices: [Provisions in Appendix C, GROUP U—Agricultural Buildings; Appendix F, Rodent Proofing; Appendix G, Flood Resistant Construction; Appendix H, Sign; and Appendix I, Patio Covers, are adopted as part of the IBC. Provisions in Appendix A, Employee Qualifications; Appendix B, Board of Appeals; Appendix D, Fire Districts; Appendix E, Supplementary Accessibility Requirements; Appendix J, Grading; and Appendix K,

Administrative Provisions, do not apply] *All the provisions in the Appendices are adopted as part of the IBC except those in Appendices A, B, D, E, and K;*

(ii) — (vi) (text unchanged)

(b) — (d) (text unchanged)

(e) International Residential Code for One- and Two-Family Dwellings with the following modifications:

(i) Chapter 1. Delete the Section 102.5 Appendices and replace with the following:

102.5 Appendices: [Provisions in Appendix A, Appendix B, Appendix C, Appendix D, Appendix F, Appendix N, and Appendix Q are adopted as part of the IRC. Provisions in Appendix E, Appendix G, Appendix H, Appendix I, Appendix J, Appendix K, Appendix L, Appendix M, Appendix O, and Appendix P do not apply] *All the provisions in the Appendices are adopted as part of the IRC except those in Appendices E, J, and L;*

(ii) Chapter 11 of the IRC is deleted and replaced with the [2009] 2012 International Energy Conservation Code; and

(f) [2009] 2012 International Energy Conservation Code.

(2) For all other building construction:

(a) — (e) (text unchanged)

(f) [2009] 2012 International Energy Conservation Code with modifications related to building standards, as adopted under COMAR 05.02.07.04.

B. (text unchanged)

**.04 Modifications to Model Performance Code.**

A. — D. (text unchanged)

E. The administrative sections of Article 1 of the [2006] 2012 International Building Code are entirely administrative and may require alteration to adapt them to local use. Alterations to these sections of Article 1 are therefore excluded from the requirement of concurrence by the Secretary. However, any alterations shall be forwarded to the Secretary for the Department's records.

RAYMOND A. SKINNER

Secretary of Housing and Community Development

## Subtitle 02 BUILDING AND MATERIAL CODES

### 05.02.02 Maryland Accessibility Code

Authority: Housing and Community Development Article, §§2-111 and 3-103; Public Safety Article, §12-202; Annotated Code of Maryland

#### Notice of Proposed Action

[11-280-P]

The Secretary of Housing and Community Development proposes to amend Regulations **.05**, **.07**, and **.08** under **COMAR 05.02.02 Maryland Accessibility Code**.

#### Statement of Purpose

The purpose of this action is to comply with the 2010 American with Disabilities Act Standards (2010 ADA Standards) and the Federal Standards by updating the referenced standards in the Maryland Accessibility Code. The Department of Justice's revised regulations for Title II and III of the ADA were published in the Federal Register on September 15, 2010. These final rules went into effect on March 15, 2011, and were published in the 2011 edition of the Code of Federal Regulations (CFR). Compliance with the 2010 ADA Standards becomes effective on March 15, 2012.

#### 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 Ed Landon, Codes Administration, Division of Credit Assurance, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-514-7444, or email to landon@mdhousing.org, or fax to 410-987-8902. Comments will be accepted through October 24, 2011. A public hearing has been scheduled for September 30, 2011, at 1 p.m., at 100 Community Place, Crownsville, Maryland 21032.

**.05 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) “[ADAAG]” “*2010 ADA Standards*” means the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (*ADAAG*) developed by the United States Architectural and Transportation Barriers Compliance Board, and adopted by the United States Department of Justice in [Appendix A to 28 CFR 36] *the 2010 Standards, including both the Title III regulations at 28 CFR Part 36, Subpart D, and the 2004 ADAAG at 36 CFR Part 1191, Appendices B and D.*

(4) — (9) (text unchanged)

(10) “Designated disability advisory group” means an individual, group of individuals, agency, or organization designated in writing by a local government or, in the absence of a written designation of a local government, by the Secretary, to advise the Department with respect to standards substantially equivalent to [ADAAG] *the 2010 ADA Standards* under Regulation .08 of this chapter and waiver requests under Regulation .09 of this chapter.

(11) — (23) (text unchanged)

**.07 Applicable Standards.**

A. (text unchanged)

B. New Construction, Alterations, Additions, and Changes of Use of State and Local Government Buildings and Facilities.

(1) All State and local government-owned buildings and facilities, including public transit facilities, shall comply with the standards prescribed in Title II of ADA and 28 CFR [35] 35.151, and *the 2004 ADAAG at 36 CFR Part 1191, Appendices B and D.*

(2) The federal regulations require that all State and local government-owned buildings comply [either] with *either*:

(a) (text unchanged)

(b) [ADAAG] *The 2010 ADA Standards*, except that the elevator exemption set forth at [§§4.1.3(5) and 4.1.6(1)(j) of ADAAG] §206.2.3 of *the 2010 ADA Standards* does not apply.

(3) (text unchanged)

C. New Construction, Alterations, Additions, and Changes of Use of All Other Buildings and Facilities. The new construction of, alteration of, addition to, or change of use of buildings and facilities, including buildings and facilities owned or used by private entities such as private clubs and religious organizations, shall comply with:

(1) [ADAAG] *The 2010 ADA Standards* and all federal accessibility regulations promulgated to carry out Title III of the ADA and set forth in 28 CFR Part 36, Subpart D, and *the 2004 ADAAG at 36 CFR Part 1191, Appendices B and D*; and

(2) (text unchanged)

D. (text unchanged)

**.08 Standards Substantially Equivalent to [ADAAG] 2010 ADA Standards.**

A. Applicability.

(1) Standards substantially equivalent to [ADAAG] *the 2010 ADA Standards* may be used only when a building or facility elects to or is required by these regulations to comply with [ADAAG] *the 2010 ADA Standards*.

(2) (text unchanged)

B. Substantially Equivalent Standards for State and Local Government Buildings and Facilities. A State-owned or government-owned building or facility which has elected to comply with the [ADAAG] *2010 ADA Standards* instead of the UFAS may depart from particular technical and scoping requirements of [ADAAG] *the 2010 ADA Standards* by using alternative designs or technologies that are substantially equivalent to [ADAAG] *the 2010 ADA Standards*, or that provide greater access to and usability of the building or facility.

C. Substantially Equivalent Standards for Other Buildings and Facilities. Other buildings and facilities that are required to comply with [ADAAG] *the 2010 ADA Standards* may depart from particular technical and scoping requirements of [ADAAG] *the 2010 ADA Standards* by using alternative designs and technologies that are substantially equivalent to [ADAAG] *the 2010 ADA Standards*, or that provide greater access to and usability of the building or facility.

D. Determination of Substantial Equivalency.

(1) (text unchanged)

(2) The Department shall issue a written determination to the responsible party identified in the submission as to whether the Department considers that the alternative design or technology is substantially equivalent to [ADAAG] *the 2010 ADA Standards*, or provides greater access to or usability of the building or facility than the applicable [ADAAG] *2010 ADA Standards*.

(3) — (6) (text unchanged)

RAYMOND A. SKINNER

Secretary of Housing and Community Development

**Subtitle 02 BUILDING AND MATERIAL CODES**

**05.02.07 Maryland Building Performance Standards**

Authority: Public Safety Article, §§12-501—12-508, Annotated Code of Maryland

**Notice of Proposed Action**

[11-267-P-I]

The Secretary of Housing and Community Development proposes to amend Regulations .03 and .04 under COMAR 05.02.07 **Maryland Building Performance Standards**.

**Statement of Purpose**

The purpose of this action is to update the International Building Code as required by Public Safety Article, §12-503, Annotated Code of Maryland, to adopt the 2012 Edition of the International Building Code and the 2012 Edition of International Residential Code for One and Two Unit Family Dwellings, as modified by the Department as the Maryland Building Performance Standards.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposal to adopt the 2012 Edition of the International Building Code, the 2012 Edition of International Residential Code for One and Two Unit Family Dwellings, 2012 edition of the International Energy Conservation Code, and 2012 edition of the International Green construction Code, as the Maryland Building Performance Standards has some economic impact. This proposal essentially updates the current standards as required by Public Safety Article, §12-503, Annotated Code of Maryland. In addition, International Green Construction Code is added to the standards which will have minimal or no impact. The Department will be required to provide training to the building code officials to keep them informed of the revisions and the updated standards.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$90,000 annually for 3 years
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

- A. Cost to provide training to 250 building officials for 3 years.

**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 Ed Landon, Codes Administration, Division of Credit Assurance, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-514-7444, or email to landon@mdhousing.org, or fax to 410-987-8902. Comments will be accepted through October 24, 2011. A public hearing has been scheduled for September 30, 2011, at 1 p.m., at 100 Community Place, Crownsville, Maryland 21032.

**Editor's Note on Incorporation by Reference**

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the 2012 International Building Code, the 2012 International Residential Code for One- and Two-Family Dwellings, and the 2012 International Energy Conservation Code have been declared documents generally available to the public and appropriate for incorporation by reference. For this reason, they will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of these documents are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). These documents may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

**.03 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (6) (text unchanged)

(7) “High performance home” has the meaning stated in Public Safety Article, §12-509(a), Annotated Code of Maryland.

[(7)] (8) — [(14)] (15) (text unchanged)

**.04 Incorporation by Reference.**

A. In this chapter, the following documents are incorporated by reference:

(1) [2009] 2012 International Building Code (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001);

(2) [2009] 2012 International Residential Code for One- and Two-Family Dwellings (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001); and

(3) [2009] 2012 International Energy Conservation Code (International Code Council, 500 New Jersey Avenue, N.W., 6th Floor, Washington, DC 20001).

B. Modifications to the [2009] 2012 International Building Code.

(1) — (2) (text unchanged)

(3) Chapter 1. Delete the Section 101.2.1 Appendices and replace with the following:

101.2.1 Appendices: [Provisions in Appendix C, GROUP U—Agricultural Buildings; Appendix F, Rodent Proofing; Appendix G, Flood Resistant Construction; Appendix H, Sign; and Appendix I, Patio Covers, are adopted as part of the IBC. Provisions in Appendix A, Employee Qualifications; Appendix B, Board of Appeals; Appendix D, Fire Districts; Appendix E, Supplementary Accessibility Requirements; Appendix J, Grading; and Appendix K, Administrative Provisions, do not apply unless specifically adopted by authorities having jurisdiction] *All the provisions in the Appendices are adopted as part of the IBC except those in Appendices A, B, D, E, and K.*

[(4)] Repealed.

[(5)] Repealed.]

[(6)] (4) — [(8)] (6) (text unchanged)

[(9)] Repealed.]

[(10)] (7) — [(15)] (12) (text unchanged)

C. Modifications to the [2009] 2012 International Residential Code for One- and Two-Family Dwellings:

(1) Chapter 1. Delete the Section 102.5 Appendices and replace with the following:

102.5 Appendices: [Provisions in Appendix A; Appendix B; Appendix C; Appendix D; Appendix F; Appendix N; and Appendix Q, are adopted as part of the IRC. Provisions in Appendix E; Appendix G; Appendix H; Appendix I; Appendix J; Appendix K; Appendix L; Appendix M; Appendix O; and Appendix P, do not

apply unless specifically adopted by authorities having jurisdiction] *All the provisions in the Appendices are adopted as part of the IRC except those in Appendices E, J, and L.*

(2) Chapter 11 of the IRC is deleted and replaced with the [2009] 2012 International Energy Conservation Code.

[(3) Repealed.]

[(4)] (3) — [(6)] (5) (text unchanged)

D. Modifications to the [2009] 2012 International Energy Conservation Code. Add a note to Section C101, Scope and General Requirements: Additional requirements concerning energy conservation for buildings and structures may be required by the Energy Conservation Building Standards, Public Utilities Article, §§7-401—7-408, Annotated Code of Maryland, as amended.

*E. The Department encourages:*

- (1) *Home builders to construct new high performance homes; and*
- (2) *Local jurisdictions to amend these standards to allow builders to construct high performance homes.*

RAYMOND A. SKINNER  
Secretary of Housing and Community Development

## Title 08

# DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### 08.02.15 Striped Bass

Authority: Natural Resources Article, §§4-206 and 4-215, Annotated Code of Maryland

##### Notice of Proposed Action

[11-278-P]

The Secretary of Natural Resources proposes to amend Regulations .06, .07, and .12 under **COMAR 08.02.15 Striped Bass**.

##### Statement of Purpose

The purpose of this action is to achieve a series of core management principles in the commercial striped bass fishery. These principles include:

- (1) Sustainability;
- (2) Harvest Accountability;
- (3) Enforceability; and
- (4) Cost Recovery.

Sustainability refers to the ability of the fishery to endure over time and to remain productive and viable biologically, ecologically, and economically. To ensure sustainability in Maryland's commercial striped bass fishery, it is essential that all harvested striped bass are accurately accounted for. The rules and requirements that the Department of Natural Resources (DNR) implements to ensure harvest accountability must be functionally enforceable with significant consequences for noncompliance. Finally, to be economically sustainable, the commercial fishery must support itself by ensuring that costs for management and enforcement measures are covered by the industry.

The Department has determined that the commercial striped bass fishery in the Maryland portion of Chesapeake Bay is not currently meeting these management principles. In February of 2011, Maryland experienced significant levels of illegal commercial fishing activity for striped bass. More than 26,000 pounds of fish were confiscated from illegally set gill nets. DNR is also concerned that measures to ensure harvest accountability are not sufficient to prevent the filing of

inaccurate reports by check stations or by individual fishermen. Furthermore, there remains substantial misuse and illegal application of striped bass tags.

As a result of this evaluation, the Department is proposing both regulatory and administrative changes to the striped bass fishery. The proposed regulatory actions and administrative changes are described as follows:

##### Regulatory Actions:

(1) Permanent Marking of Gill Nets. This action would require that an individual's license number be placed on every cork on a gill net or permanently affixed every 50 feet if a float line is used rather than corks. Any net on board a vessel must be marked in such a manner. This will address the deployment of illegal gill nets as it would be illegal to transport and deploy unmarked gear. This action would apply to Chesapeake Bay only.

(2) Gill Net Reels. Outside of the striped bass gill net season, striped bass would be prohibited from being on board any vessel with a gill net or gill net reel. This idea would help to ensure that net reels are not used to illegally harvest striped bass outside of gill net season. This action would apply to Chesapeake Bay fisheries only.

(3) Fishing Trip Notification. The intent of this action is for watermen to inform DNR of their intent to fish for striped bass on a given day and to inform DNR of their planned destination and volume of harvest prior to completing each day's trip. This system, referred to as "hail-in/hail-out" will allow DNR to more effectively monitor, validate, and enforce fishing activity and harvest. The action would require a licensee to contact the Department with specified fishing trip information prior to leaving the dock (i.e., fishing license number, region of fishing activity, and time of departure) and again prior to returning to the dock (i.e., fishing license number, landing point, check station where striped bass will be checked in, and estimated number of fish harvested) as described in a public notice.

(4) Check Station Audits. This action would clarify that check stations shall comply with Departmental audits. The Department will design random, unannounced audits of striped bass check stations. These audits, where DNR personnel remain on site at check stations, will work in tandem with the "hail-in/hail-out" system to ensure effective monitoring and validation of striped bass harvest. This action would apply to all Maryland-registered check stations.

(5) Administrative Penalties. This action would allow the Department to suspend an individual's striped bass permit for up to 2 years for violating the provisions of the striped bass chapter, COMAR 08.02.15. This provision would not impact a harvester's fishing authorization, but would ensure the Department's ability to administratively suspend a striped bass permit for noncompliance with striped bass regulations, including not filing or filing inaccurate harvest reports. This action would apply to Chesapeake and Atlantic fisheries.

(6) Enhanced Penalties for Check Stations/Dealers. Businesses are required to be available for inspection. The action will enhance existing penalties by adding the ability to suspend an authorization for failure to allow inspection of fish, reporting violations, or other violations of provisions of the chapter. This action would apply to all Maryland-registered check stations.

(7) Hearing Correction. The action would implement a new law passed by the Maryland General Assembly during the 2011 session (H.B. 396/S.B. 414). The new law eliminates the requirement that the Department hold a hearing before it suspends or revokes a recreational or commercial fishing license and requires only that the Department provide written notice to the licensee of a right to a hearing on request.

Potential Regulatory Action:

Vessel Monitoring Systems. The Department is exploring implementing a voluntary pilot vessel monitoring system. Commercial striped bass fishermen who volunteer to participate in this program would have a vessel monitoring system installed on their vessel. These systems would allow DNR, and the industry, to evaluate the use of vessel monitoring systems. In addition, these systems would allow DNR to monitor vessel activity and would work in tandem with the "hail-in/hail-out" to allow enhanced harvest monitoring and validation. Participants in this program may receive an individual quota and be relieved of certain regulatory and administrative requirements (e.g., daily catch limits, tagging requirements, seasonal closures, etc.) as an incentive to participate in this program.

Pending Regulations:

Currently, there are two regulation proposals:

(1) Striped Bass Penalties. Penalties based on H.B. 1154/S.B. 635 for revocation of striped bass authorizations for violations that are egregious, knowingly committed, and/or repeated.

(2) Enhanced Points. Enhanced points are proposed as a result of changes to the Department's points and suspensions regulations based on discussions with the Department's Tidal and Sport Fisheries Advisory Commission's Penalty Workgroup.

Nonregulatory Actions:

(1) Quota Hold Back. In the course of its evaluation of the commercial striped bass fishery, the Department found that problems exist with under-reporting and falsifying harvest reports, the illegal application or misuse of striped bass tags, and complying with the regulation that requires an individual to personally check in his/her own harvest. As a result, the Department is less certain that all harvested striped bass are accounted for and that the established quota is not exceeded. The Department will determine a percentage of the annual quota to be held back as a buffer against this management uncertainty. The amount of quota held back will be reviewed annually, and adjusted based upon the industry's compliance with accountability and enforcement measures. This action would apply to Chesapeake Bay only.

(2) Enforce Check-In by Permittees. The Department will begin to vigorously enforce the regulation that requires an individual to check in his/her own catch. This will increase accountability and limit illegal application of striped bass tags. This action would apply to Chesapeake and Atlantic fisheries.

(3) Enforcement Access to Striped Bass Tag Number Sequences. The Department is developing an application by which Natural Resources Police can access the sequence of tag numbers supplied to each striped bass harvester. This system will allow an NRP officer in the field to enter a tag number into a smartphone and access the associated harvester's name, license number, and declared gear. This action would apply to Chesapeake and Atlantic fisheries.

(4) Required Electronic Reporting for Check-In Stations. Check-In stations will be required to report electronically. This will work in tandem with random check-in station audits and the "hail-in/hail-out" system to enhance the monitoring and validation of harvest, and facilitate enforcement efforts. This action would apply to all Maryland-registered check stations.

(5) Cost Recovery. While not part of this regulatory package, the Department is exploring options to recover the management and enforcement costs from the commercial striped bass industry. For example, the Department is working to develop a mechanism by which watermen can purchase their own striped bass tags, rather than have them paid for by the Department. This action would apply to Chesapeake and Atlantic fisheries.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action has an economic impact on the Department and regulated industry.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
<hr/>		
A. On issuing agency:		
(1) Gill net marking and gill net and reel restriction	NONE	None
(2) Fishing trip notification	(E+)	Indeterminable
(3) Check station audits	(E+)	Indeterminable
(4) Administrative penalties	NONE	None
(5) Enhanced penalties for dealer audits	NONE	None
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
<hr/>		
D. On regulated industries or trade groups:		
(1) Marking of gill nets	(+)	Indeterminable
(2) Gill net and net reel restrictions	NONE	None
(3) Fishing trip notification	NONE	None
(4) Check station audits	NONE	None
(5) Enhanced penalties	(-)	Indeterminable
(6) Enhanced penalties for dealer audits	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A(1). The Department will monitor gill net marking using current enforcement personnel and practices.

A(2). The agency may incur additional costs to monitor the hail-in/hail-out system. The costs depend on the system used.

A(3). The Department will incur an indeterminable expenditure because of the increase in auditing, which will require additional work by personnel. The hail-in/hail-out system would save the agency expenditures because the audits could be more effectively made.

A(4). The agency already suspends permittees. This would be handled by existing staff using the existing penalty process.

A(5). The agency already can suspend dealer licenses for similar

violations during an inspection, this only adds the ability to inspect fish during the audit and penalize administratively for violations. Existing staff and processes would be used.

D(1). The action may have a small, short-term negative impact on the industry as each marker would need to be marked or markers would need to be affixed to a net. The impact is indeterminable since costs will vary depending on a waterman's gear type and whether the waterman currently has the materials to mark or not. The action may also have a larger, long-term positive economic impact on the commercial fishery if the goal of decreasing poaching is achieved.

D(2). The action is not expected to have an economic impact because gill net fishermen should not be keeping striped bass outside of the season.

D(3). The industry should not have an economic impact as the action only requires them to contact the Department by means that they should have on board for safety purposes prior to leaving and returning to dock.

D(4). Because the industry is already subject to audits, there should not be any fiscal impact.

D(5). A permittee would be negatively impacted if the permittee violates the law and is suspended from fishing. It is not possible to know how many permittees will violate the law.

D(6). A dealer may have a negative economic impact if the dealer is suspended because of a failed audit, but it is not possible to determine how many dealers would fail an audit.

#### Economic Impact on Small Businesses

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

Violators of law may have a negative economic impact if they are suspended from dealer or permitted activities in accordance with the proposed action. The action may have a small, short-term negative impact on the industry since each marker would need to be marked or markers would need to be affixed to a net. The impact is indeterminable as costs will vary depending on a waterman's gear type and whether the waterman currently has the materials to mark or not. The action may also have a larger, long-term positive economic impact on the commercial fishery if the goal of decreasing poaching is achieved.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Commercial Striped Bass, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, Annapolis, MD 21401, or call 410-260-8300, or email to [fisheriespubliccomment@dnr.state.md.us](mailto:fisheriespubliccomment@dnr.state.md.us), or fax to 410-260-8310. Comments will be accepted through October 24, 2011.

Open houses will be held concerning this proposal. At the open house, information will be displayed and individuals will be able to have one-to-one exchanges with Fisheries staff so that they may ask questions, express concerns, and make suggestions relating to the proposal. The open houses will be held on:

- October 4, 2011, from 3—8 p.m. at BG Louis G. Smith Armory, 7111 Ocean Gateway, Easton, MD 21601; and
- October 6, 2011, from 3—8 p.m. at Earleigh Heights Volunteer Fire Company, 161 Ritchie Highway, Severna Park, MD 21146

#### .06 Monitoring.

##### A. Reporting Requirements.

- (1) — (6) (text unchanged)

(7) *A striped bass permittee shall contact the Department with specified fishing trip information prior to leaving the dock and prior to returning to the dock as described in a public notice disseminated in accordance with Regulation .12H of this chapter.*

##### B. Inspection.

(1) A tidal fish licensee, check station, or dealer shall make available daily information, landing tickets, allocation permits, *fish*, and tags for immediate inspection on request of a Department representative.

(2) A Department representative may at reasonable times conduct an administrative inspection of the contents of any facility, vessel, or vehicle where striped bass may reasonably be stored if the facility, vessel, or vehicle is owned or operated by a seafood dealer licensed under Natural Resources Article, §4-702, Annotated Code of Maryland.

(3) Failure to comply with the inspection *or an audit* may result in suspension or revocation of a seafood dealer's license as follows:

- (a) — (c) (text unchanged)

(4) Before the suspension or revocation of [a] *an individual's* seafood dealer's license, [the Department shall provide a contested case hearing in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.] *the individual is entitled to a contested case hearing upon request in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland.*

##### C. (text unchanged)

*D. Penalties. In addition to any other penalties provided in this subtitle, an individual's striped bass permit or seafood dealer authorization may be suspended for up to 2 years for:*

- (1) *A conviction for violating any provision of this chapter; or*
- (2) *A violation of any reporting requirement of this chapter.*

#### .07 Commercial Fishery.

##### A. — C. (text unchanged)

##### D. Drift Gill Net Fishery Limitations.

- (1) (text unchanged)

- (2) In the tidal waters of the Chesapeake Bay and its tributaries:

- (a) (text unchanged)

(b) The total length of drift gill net aboard a boat may not exceed 3,500 yards and may not be contained in more than ten containers; [and]

(c) The amount of striped bass on board a vessel may not exceed 2,000 pounds on any day, regardless of the number of licensees with a striped bass allocation permit for gill net on board the vessel[.]; and

(d) *A gill net may not be used to harvest fish or possessed aboard a vessel, unless the gill net has:*

(i) *Each marker, cork, or float marked with the licensee's commercial tidal fish number; or*

(ii) *A float line with a marker permanently affixed every 50 feet bearing the licensee's commercial tidal fish number.*

- (3) — (7) (text unchanged)

(8) *Gill Net and Gill Net Reels — Chesapeake Bay and Its Tidal Tributaries. Except during the commercial striped bass gill net season as specified in §A of this regulation or disseminated by public notice in accordance with Regulation .12H of this chapter, an individual may not catch and possess striped bass if a gill net or gill net reel is aboard the vessel.*

##### E. — G. (text unchanged)

#### .12 General Restrictions.

##### A. — G. (text unchanged)

##### H. Season Limitations. The Secretary:

- (1) — (3) (text unchanged)

(4) May modify or close a season or catch limit [or], set a monthly catch limit [or], modify a size limit, or require specific



vessel trip information by publishing notice in a daily newspaper of general circulation at least 48 hours in advance of the time of modification, stating the effective hour and date; and  
(5) (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

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

### 08.18.03 Noise Level Limits of Vessels

Authority: Natural Resources Article, §8-725.4, Annotated Code of Maryland

#### Notice of Proposed Action

[11-277-P]

The Secretary of Natural Resources proposes to amend Regulations .03 and .08 under **COMAR 08.18.03 Noise Level Limits of Vessels**.

#### Statement of Purpose

The purpose of this action is to ensure safe boating on the waterway. This action was considered after receiving numerous complaints concerning excessive vessel noise from high performance boats. More than 50 percent of citizen complaints for excessive vessel noise emanate from Deep Creek Lake and the Northeast River, Elk River, Bohemia River, and C&D Canal. As a result of two public hearings in the spring of 2011 and emails and phone calls to the DNR Boating Services Unit, the overwhelming comments are in favor of this 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 Michael Grant, Regulations Coordinator, Department of Natural Resources, Boating Services Unit, 580 Taylor Avenue, E-4, Annapolis, MD 21401, or call 410-260-8013, or email to mgrant@dnr.state.md.us, or fax to 410-260-8453. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

#### .03 Noise Level Limits.

A. A person may not operate or give permission to operate a vessel on the waters of the State that emits a maximum noise level exceeding 90 dB(a).

B. *On the waters of Deep Creek Lake and from the mouth of the Northeast and Elk Rivers to include all tributaries including the Bohemia River and the C&D Canal, a person may not operate a vessel in such a manner to exceed the following vessel noise levels:*

(1) *For engines manufactured before January 1, 1993, the noise level may not exceed 90dB(a).*

(2) *For engines manufactured on or after January 1, 1993, the noise level may not exceed 88dB(a).*

#### .08 Mufflers.

A person may not own, operate, or give permission to operate on the waters of the State a vessel manufactured after January, 1990, that is not equipped with a muffler or system which muffles or suppresses engine noise to the established limits in Regulation .03 of this chapter. *On the waters of Deep Creek Lake and from the mouth of the Northeast and Elk Rivers to include all tributaries including the Bohemia River and the C&D Canal, a vessel shall operate with a continuous muffler or noise suppression system and may not operate a device that bypasses, reduces, or eliminates the effectiveness of a muffler or engine noise suppression device or system.*

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 01 PROCEDURES

#### 10.01.21 Medical Orders for Life-Sustaining Treatment (MOLST) Form — Procedures and Requirements

Authority: Health-General Article, §§2-104, 5-608, 5-608.1, and 5-609,  
Annotated Code of Maryland

#### Notice of Proposed Action

[11-270-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.07 under a new chapter, **COMAR 10.01.21 Medical Orders for Life-Sustaining Treatment (MOLST) Form — Procedures and Requirements**.

#### Statement of Purpose

The purpose of this action is to implement Ch. 434, Acts of 2011, by creating a Medical Orders for Life-Sustaining Treatment (MOLST) form and instructions for the use of the form, and by adopting related procedures and requirements.

#### 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 West Preston Street, Baltimore, MD 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 24, 2011. A public hearing has not been scheduled.

**.01 Scope.**

This chapter sets out the Medical Orders for Life-Sustaining Treatment (MOLST) form, instructions, and certain related procedures and requirements developed by the Department of Health and Mental Hygiene, in conjunction with the Board of Physicians and the Maryland Institute for Emergency Medical Services Systems.

**.02 Definitions.**

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

B. Terms Defined.

(1) "Advance directive" has the meaning stated in Health-General Article, §5-601(b), Annotated Code of Maryland.

(2) "Assisted living program" has the meaning stated in COMAR 10.07.14.02.

(3) "Authorized decision maker" means the health care agent, guardian of the person, or surrogate decision maker who is making health care decisions on behalf of a patient in accordance with the Health Care Decisions Act, Health-General Article, §§5-601—5-618, Annotated Code of Maryland.

(4) "EMS DNR order" means an emergency medical services do not resuscitate order as defined in Health-General Article, §5-601(i), Annotated Code of Maryland.

(5) "Guardian of the person" means a person appointed by a court to be a guardian of the person of a disabled individual in accordance with Estates and Trusts Article, §13-705, Annotated Code of Maryland.

(6) "Health care" has the meaning stated in Health-General Article, §4-301(f), Annotated Code of Maryland.

(7) "Health care agent" means an agent as defined in Health-General Article, §5-601(c), Annotated Code of Maryland.

(8) "Health Care Decisions Act" means Health-General Article, §§5-601—5-618, Annotated Code of Maryland.

(9) "Health care facility" has the meaning stated in Health-General Article, §5-608.1(a), Annotated Code of Maryland.

(10) "Health care provider" has the meaning stated in Health-General Article, §5-601(l), Annotated Code of Maryland.

(11) "Home health agency" has the meaning stated in COMAR 10.07.10.02.

(12) "Hospice" means a hospice care program as defined in COMAR 10.07.21.02.

(13) "Hospital" has the meaning stated in Health-General Article, §19-301(f), Annotated Code of Maryland.

(14) "Kidney dialysis center" has the meaning stated in COMAR 10.05.04.01

(15) "Medical Orders for Life-Sustaining Treatment (MOLST) form" means the form required to be developed pursuant to Health-General Article, §5-608.1, Annotated Code of Maryland.

(16) "Medical record" has the meaning stated in Health-General Article, §4-301(h), Annotated Code of Maryland.

(17) "Minor" means an individual younger than 18 years old who is not married, not the parent of a child, and not otherwise authorized by law to consent to medical treatment.

(18) "Nurse practitioner" has the meaning stated in Health-General Article, §5-601(p), Annotated Code of Maryland.

(19) "Nursing home" means a comprehensive care facility or extended care facility as defined in COMAR 10.07.02.01.

(20) "Patient" has the meaning stated in Health-General Article, §4-301(j), Annotated Code of Maryland.

(21) "Physician" has the meaning stated in Health-General Article, §5-601(r), Annotated Code of Maryland.

(22) "Practitioner" means a physician or a nurse practitioner.

(23) "Substantial change in health status" means a change in a patient's health or functional status that:

(a) Demonstrates an improvement or decline in the patient's status that requires the need for interdisciplinary review or revision of the patient's health care; and

(b) Is not a temporary change that is self-limited.

(24) "Surrogate" means an individual who makes health care decisions for a patient pursuant to Health-General Article, §5-605, Annotated Code of Maryland.

**.03 Nature and Contents of the MOLST Form and Instructions.**

The content of the form and the form's instructions are as follows:

**This document appears at the end of the Proposed Action on Regulations section of this issue of the Maryland Register.**

**.04 Use of the MOLST Form.**

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Defined Terms.

(a) "Completing a MOLST form" means:

(i) Certifying, when applicable, the bases for the orders contained therein;

(ii) Completing section one for all patients and only those sections two through nine of the form that are related to the patient's current medical condition and wishes for care; and

(iii) Signing and dating the MOLST form.

(b) "Updating a MOLST form" means to revise an existing MOLST form by voiding the existing form and completing a new MOLST form in accordance with the form's instructions.

B. Beginning on October 1, 2011, the following health care facilities are required to accept, update if appropriate, and complete the MOLST form for each patient during the admission process in accordance with the form's instructions:

(1) An assisted living program;

(2) A home health agency;

(3) A hospice;

(4) A kidney dialysis center; and

(5) A nursing home.

C. An assisted living program or a nursing home shall also complete the MOLST form for a patient:

(1) Admitted before October 1, 2011; and

(2) Who continues to reside in the assisted living program or nursing home as of April 1, 2012.

D. Beginning on October 1, 2011, a hospital shall:

(1) Accept and update if appropriate, a completed MOLST form in accordance with the form's instructions; or

(2) Complete a MOLST form for a patient during the patient's inpatient stay if the patient is to be discharged or transferred to another health care facility.

E. When initially completing a MOLST form or updating an existing MOLST form, a health care facility shall:

(1) Offer the patient or authorized decision maker and any physician or nurse practitioner selected by the patient or authorized decision maker the opportunity to participate in completing or updating the MOLST form;

(2) Note in the medical record when a patient or an authorized decision maker declines to participate in completing or updating the MOLST form, indicating the date and time of discussion, with whom the form was discussed, and a summary of the discussion;

(3) Inform the patient or authorized decision maker that the MOLST form will become part of the medical record and can be accessed through the procedures used to access a medical record; and

(4) Give the patient or authorized decision maker a copy of the completed form within 48 hours or sooner if the patient is discharged or transferred.

F. A practitioner who completes or updates a MOLST form shall do so in accordance with the form's instructions.

G. Except as otherwise provided in the Health Care Decisions Act, a practitioner shall complete, or update a MOLST form in a manner that is consistent with:

(1) The known decisions of:

(a) A competent patient; or

(b) An authorized decision maker; and

(2) Any known advance directive if the patient is incapable of making an informed decision.

#### .05 Resolving Conflicts Between MOLST Forms.

A. If the medical records of a patient contain more than one MOLST form, the orders contained in the most recent MOLST form shall be followed unless and until the form is updated.

B. If MOLST forms completed on different dates contain conflicting orders, a health care provider shall:

(1) To the extent feasible, discuss any conflicts with the patient or authorized decision maker; and

(2) Complete an updated MOLST form to reflect the current wishes of the patient or authorized decision maker.

C. If an updated MOLST form is completed, all older forms shall be voided in accordance with the form's instructions.

#### .06 Reproduction and Alteration of the MOLST Form.

A. A health care provider may freely copy, store electronically, and subsequently print or otherwise reproduce the form.

B. A health care provider may not alter the contents or format of the form.

#### .07 Immunity.

A health care provider that, in good faith, authorizes the provision, withholding, or withdrawing of treatment in furtherance of orders contained in a MOLST form is entitled to the immunity provided under Health-General Article, §5-609, Annotated Code of Maryland.

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

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.09 Medical Laboratories

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

#### Notice of Proposed Action

[11-269-P-I]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .07 under **COMAR 10.09.09 Medical Laboratories**.

#### Statement of Purpose

The purpose of this action is to update the rates in the fee schedule for laboratory services.

#### 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 savings of \$85,520 to the Department due to the reduction of the laboratory services rates.

#### II. Types of Economic Impact.

Revenue (R+/R-)

Expenditure  
(E+/E-)

Magnitude

A. On issuing agency:

(E-)

\$85,520

B. On other State agencies:

NONE

C. On local governments:

NONE

Benefit (+)

Cost (-)

Magnitude

D. On regulated industries or trade groups:

(-)

\$85,520

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 proposed regulation will have a cost savings of \$85,520 for the Department.

D. The proposed regulation will reduce the reimbursement amount for laboratory services to community providers by approximately \$85,520.

#### 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@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

#### Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Medical Laboratories 2011 Provider Manual and Fee Schedule has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

#### .07 Payment Procedures.

A.—C. (text unchanged)

D. The fee schedule is contained in the Medical Assistance Provider Fee Manual, dated October 1, 1986, which is used in conjunction with "Physician's Current Procedural Terminology", and

the Health Care Financing Administration's Common Procedure Code System (HCPCS). All the provisions of these documents, unless specifically [excepted] *noted*, are incorporated by reference in this section, with the Medical Laboratories [2001] 2011 Provider Manual and Fee Schedule.

E.—P. (text unchanged)

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

# Title 11 DEPARTMENT OF TRANSPORTATION

## Subtitle 02 TRANSPORTATION SERVICE HUMAN RESOURCES SYSTEM

### 11.02.08 Disciplinary Action

Authority: Transportation Article, §§2-102 and 2-103.4, Annotated Code of Maryland

#### Notice of Proposed Action

[11-275-P]

The Secretary of Transportation proposes to amend Regulations .01 — .07-1, .09, and .10, repeal existing Regulation .08, and adopt new Regulation .08 under **COMAR 11.02.08 Disciplinary Action**.

#### Statement of Purpose

The purpose of this action is to remove the exceptions process from the Department of Budget and Management and to make final all appeals heard by the Office of Administrative Hearings. The action also changes the time frames for imposing disciplinary actions.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action will increase expenditures for a permanent position to act as a settlement conference officer.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$67,150/year
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	

F. Direct and indirect effects  
on public: NONE

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

A. The proposed action will increase expenditures for a permanent position to act as a settlement conference officer.

#### 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 Tonya J. Morant, Policy Administrator, Maryland Department of Transportation, Office of Human Resources, 7201 Corporate Center Drive, PO Box 548, Hanover, MD 21076, or call 410-865-1202, or email to [tmorant@mdot.state.md.us](mailto:tmorant@mdot.state.md.us), or fax to 410-865-1393. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

#### .01 General.

A. In the case of Career Service employees, disciplinary action may include, as appropriate:

(1) — (5) (text unchanged)

(6) Termination under charges from a Career Service position;

or

(7) Disqualification from future employment in the Transportation Service; or]

[(8)] (7) (text unchanged)

B. (text unchanged)

C. *Before a Career Service employee may be disciplined for performance-related reasons, the appointing authority or designee shall:*

(1) *Investigate the employee's performance, including the employee's most recent performance appraisal; and*

(2) *Provide notice to the employee, in writing, of the deficiency and provide an explanation of the employer's position, which shall include:*

(a) *Specific instances of unacceptable performance by the employee on which the proposed action is based;*

(b) *The performance criteria and factors of the employee's position involved in each specification of unacceptable performance; and*

(c) *A description of the effort made by the employer to assist the employee in improving performance.*

D. *An appointing authority or designated representative may impose any disciplinary action for a Career Service employee no later than 30 days after the appointing authority or designated representative acquires knowledge of the misconduct for which the disciplinary action is imposed. The 30-day period includes the time necessary for the appointing authority or designated representative to conduct its investigation and meet the other requirements in §B of this regulation.*

[C.] E. — [E.] G. (text unchanged)

#### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Day" or "Days" means a calendar day or calendar days.

(3) "Designated representative" means an attorney, an employee organization representative, or any other individual authorized in writing by a party to represent the party.

[(2)] (4) (text unchanged)

(5) “Party” means an employee or a group of employees having a grievance or other right of appeal or the Maryland Department of Transportation.

[(3) “Secretary of DBM” means the Secretary of the Department of Budget and Management.]

[(4)] (6) — [(5)] (7) (text unchanged)

## **.02-1 Official Written Reprimand.**

A. The appointing authority or the appointing authority’s designee may give an employee an official written reprimand [for disciplinary reasons connected with misconduct, negligence, inefficiency, or insubordination.] *because of unacceptable job performance or work-related conduct.*

B. *Time Limit for Imposition of an Official Written Reprimand.* An official written reprimand shall be imposed within the time frame set forth in Regulation .01D of this chapter.

[B.] C. (text unchanged)

[C.] D. Appeal of an Official Written Reprimand. An employee may appeal an official written reprimand in accordance with the [grievance provisions as] *procedures* set forth in [COMAR 11.02.09.] Regulation .10 of this chapter.

## **.03 Disciplinary Suspension.**

A. An appointing authority or the appointing authority’s designee may suspend an employee without pay [for disciplinary reasons connected with misconduct, negligence, inefficiency, or insubordination.] *because of unacceptable job performance or work-related conduct.*

B. Disciplinary Suspension of Fair Labor Standards Act (FLSA) Exempt Employees.

(1) — (2) (text unchanged)

[(3) FLSA exempt employees may be suspended for one or more full workdays as permitted by the FLSA, rather than for increments of 5 workdays, for:

(a) Infractions of safety rules of major significance;

(b) Serious violations of workplace conduct rules such as sexual harassment, violence, or drug or alcohol violations; or

(c) Violations of State or federal laws.]

C. (text unchanged)

D. *Time [Limits] Limit for Imposition of Suspension.* [An appointing authority or the appointing authority’s designee shall suspend an employee within 5 working days following the day of an alleged infraction or within 5 working days of the appointing authority or the appointing authority’s designee acquiring knowledge of the alleged infraction. The appointing authority or the appointing authority’s designee may approve an additional 5 working days, if necessary, to protect the interests of the Department] *A disciplinary suspension shall be imposed within the time frame set forth in Regulation .01D of this chapter.*

E. Exceptions to §D of this regulation are actions taken by [accident review boards] *Accident Review Boards* of the Department. Each board has 20 calendar days for review of accidents, and then suspensions shall be imposed as set forth in [§D of this regulation] Regulation .01D of this chapter.

F. Written Notice. The appointing authority or the appointing authority’s designee shall notify an employee in writing, on a Transportation Service [suspension] *Suspension* form, of the reasons for the suspension and the appropriate appeal route, including the time frames for appeal.

[G.] (proposed for repeal)

G. *Appeal of a Disciplinary Suspension.* An employee may appeal a disciplinary suspension in accordance with the procedures set forth in Regulation .10 of this chapter.

## **.04 Disciplinary Loss of Leave.**

A. Disciplinary Loss of Leave. The appointing authority or the appointing authority’s designee may, for disciplinary purposes, remove up to 5 days of personal or annual leave, or personal and annual leave, from an employee’s accumulated leave balance. Personal leave shall be removed before annual leave. Disciplinary loss of leave [is for reasons connected with misconduct, negligence, inefficiency, or insubordination] *may be imposed because of unacceptable job performance or work-related conduct.*

B. *Time [Limits] Limit for Imposition of Loss of Leave.* Loss of leave shall be imposed [in] *within* the [same] time frame [as] set forth in [Regulation .03D and E] *Regulations .01D and .03E* of this chapter.

C. Written Notice. The appointing authority or the appointing authority’s designee shall notify an employee in writing on a Transportation Service [loss of leave] *Loss of Leave* form of the reasons for the loss of leave and the appropriate appeal route, including the time frame for appeal.

D. Appeal of *Disciplinary Loss of Leave*. [The procedures for appeal are the same as set forth in Regulation .03G of this chapter.] *An employee may appeal a disciplinary loss of leave in accordance with the procedures set forth in Regulation .10 of this chapter.*

## **.05 Involuntary Demotion.**

A. (text unchanged)

B. *Time Limit for Imposition of an Involuntary Demotion.* An involuntary demotion shall be imposed within the time frame set forth in Regulation .01D of this chapter.

[B.] C. Written Notice. The appointing authority or the appointing authority’s designee shall provide an employee in writing with the reason or the reasons for the demotion, the proposed new classification and grade level, the future effective date of the demotion, and the appropriate appeal route, including the time frame for appeal [to the Office of Administrative Hearings].

[C.] D. (text unchanged)

[D.] (proposed for repeal)

E. *Appeal of an Involuntary Demotion.* An employee may appeal an involuntary demotion in accordance with the procedures set forth in Regulation .10 of this chapter.

## **.05-1 Suspension Pending Charges for Termination of a Career Service Employee.**

A. (text unchanged)

B. Written Notice. The appointing authority or the appointing authority’s designee shall notify the employee in writing of the reason or reasons for the suspension pending charges for termination, the effective date of the suspension, and the appropriate appeal route, including the time frame for appeal [to the Office of Administrative Hearings].

C. (text unchanged)

D. *Time Limit for Imposition of Suspension Pending Charges for Termination.* A suspension pending charges for termination shall be imposed within the time frame set forth in Regulation .01D of this chapter.

[D.] E. Appeal of Suspension Pending Charges.

(1) [The employee may appeal a suspension pending charges to the Office of Administrative Hearings in writing within 5 work days of receipt of written notice.] The Office of Administrative Hearings shall afford the employee a hearing, at which time the employee may:

(a) — (c) (text unchanged)

(2) [The procedures for appeal are the same as set forth] *An employee may appeal a suspension pending charges for termination in accordance with the procedures set forth in Regulation .10 of this chapter.*

**.06 Termination of a Career Service Employee.**

A. (text unchanged)

B. Cause for Termination. One or more than one of the following causes is sufficient reason for termination, though termination may be for a cause or causes other than those enumerated:

(1) The employee is incompetent or inefficient in the performance of job duties *and is unable to perform at acceptable levels after proper guidance, training, and recommendations for improvement have been provided to the employee;*

(2) (text unchanged)

(3) The employee has performed the job duties in a [careless or negligent manner] *careless, negligent, or willful manner, including causing damage to, or waste of, State property, State resources, or property of a member of the public;*

(4) (text unchanged)

(5) The employee has a physical or mental impairment which prevents the employee from performing the essential functions of the job, with or without reasonable accommodations *as determined by the Department Medical Advisor in accordance with applicable laws;*

(6) — (12) (text unchanged)

[(13) The employee has caused damage to, or waste of, State property, State resources, or property of a member of the public.]

[(14)] (13) — [(21)] (20) (text unchanged)

C. (text unchanged)

D. Charges Shall be Filed with the Secretary of Transportation. The Secretary shall provide the employee, in writing, with a statement of the charges and specifications for termination, and the appropriate appeal route, including the time frame for appeal [to the Office of Administrative Hearings].

[E.] (proposed for repeal)

E. *Time Limit for Imposition of Charges for Termination. Charges for termination shall be imposed within the time frame set forth in Regulation .01D of this chapter.*

F. *Appeal of Charges for Termination. An employee may appeal charges for termination in accordance with the procedures set forth in Regulation .10 of this chapter.*

G. *The Secretary shall issue an order upholding the employee's termination from Transportation Service in the following instances:*

(1) *If no appeal is received by the Secretary or the Secretary's designee within 15 days of receipt of the charges; and*

(2) *If no agreement is reached during the settlement conference and no appeal is received by the Office of Administrative Hearings within 15 days following the settlement conference.*

**.07 Discipline or Termination of an Executive Service or Commission Plan Employee.**

A. (text unchanged)

B. Appeal of Discipline or Termination.

(1) An Executive Service or Commission Plan employee may appeal the discipline or termination in writing to the Office of Administrative Hearings within [5 work] 15 days of receipt of the discipline or termination notice. [The] *However, the employee has the burden of proof at the Office of Administrative Hearings, and the hearing is limited to the legal and constitutional basis for the discipline or termination.*

(2) [The procedures for appeal are the same as set forth in Regulation .10A and B of this chapter] *If the employee does not appeal the action within 15 days or if the employee does not appear for a scheduled hearing, the action is final.*

**.07-1 Nondisciplinary Administrative Terminations of Police Officers of the Department.**

A. Termination.

(1) — (2) (text unchanged)

(3) On approval of the termination by the Secretary or the Secretary's designee, the appointing authority shall send the police

officer written notice of the termination and the appropriate appeal route, including the time frame for appeal[, to the Office of Administrative Hearings].

B. Appeal of Termination.

[(1) A police officer of the Department may appeal a nondisciplinary administrative termination to the Office of Administrative Hearings within 5 work days of receipt of the termination notice.

(2) A hearing is limited to the legal and constitutional basis for the termination.

(3) The procedures for appeal of termination are the same as provided for in Regulation .10 of this chapter.]

(1) *The procedures for appeal of termination are the same as provided for in Regulation .10 of this chapter.*

(2) *The hearing at the Office of Administrative Hearings is limited to the legal and constitutional basis for the termination.*

**.08 Rejection on Promotional Probation**

A. *An employee may be rejected on promotional probation in accordance with COMAR 11.02.02.05.*

B. *Time Limit for Imposition of Rejection on Promotional Probation. A rejection on promotional probation shall be imposed within the time frame set forth in Regulation .01D of this chapter.*

C. *Written Notice. The employee shall be provided written notice of the rejection on promotional probation in accordance with COMAR 11.02.02.05.*

D. *Appeal of Rejection on Promotional Probation. An employee may appeal a rejection on promotional probation in accordance with procedures set forth in Regulation .10 of this chapter.*

**.09 Authority to Conduct Hearings and Appeals.**

[A.] The Office of Administrative Hearings shall conduct hearings and issue [final decisions in the following types of cases:] *a final decision for Department of Transportation personnel cases.*

[(1) An appeal of a denial of a salary increase due to performance appraisal;

(2) An appeal of a grievance in accordance with COMAR 11.02.09; and

(3) An appeal of discipline or termination of an Executive Service or Commission Plan employee in accordance with Regulation .07 of this chapter.]

[B.] — [C.] (proposed for repeal)

**.10 Appeal Procedure.**

A. [An appeal shall be in writing, with a copy to the appointing authority or the appointing authority's designee, and filed within the specified time frames] *A Career Service employee may appeal an Official Written Reprimand, Suspension without Pay, Loss of Leave, Involuntary Demotion, Suspension pending charges for Termination, Charges for Termination, and Rejection on Promotional Probation, in writing, to the Secretary or the Secretary's designee within 15 days of receipt of the written notice.*

B. If an employee does not appeal the action within the specified time [frame or if the employee does not appear at the scheduled hearing,] *frames, the action is final.*

C. *Filing an Appeal.*

(1) *An appeal is considered filed on the date the appeal is received by the Secretary or the Secretary's designee.*

(2) *The employee shall include with the appeal, the reason for the appeal, the requested remedy, and a copy of the notice of disciplinary action, with any documentation that was attached.*

(3) *A copy of the appeal shall be forwarded to the Appointing Authority.*

D. *Settlement Conference.*

(1) *The Secretary or the Secretary's designee will schedule a settlement conference within 30 days from the receipt of the written*

appeal. The Secretary or the Secretary's designee shall send written notice of a settlement conference to the parties by mail or facsimile.

(2) The settlement conference notice shall contain:

(a) The date, time, place, and the nature of the conference;

(b) A statement that notice must be received 3 business days before the conference date if special arrangements are needed to accommodate an individual with a disability;

(c) A statement that notice must be received 3 business days before the conference date if an interpreter is needed; and

(d) A statement that failure to participate in good faith or to attend a conference may result in a decision adverse to a party.

(3) A party or a designated representative shall be present for all scheduled settlement conferences.

(4) If a designated representative participates in a settlement conference instead of a party, the designated representative shall have the authority to negotiate or settle the matter appealed.

(5) The designation of the representative shall be in writing.

(6) If neither the employee nor the designated representative appears at the scheduled settlement conference, the action is final.

(7) When the employee's designated representative is another State employee, the appointing authority of the designated representative shall assure that the designated representative is given reasonable time during work hours to investigate appeals and participate in settlement conferences and hearings relating to an appeal. An employee may not leave the employee's post of duty to represent another employee at a grievance appeal or a disciplinary appeal conference or hearing without permission from the employee's supervisor.

(8) The appointing authority shall assure that the employee is given reasonable time during work hours to investigate appeals and participate in settlement conferences and hearings relating to an appeal.

(9) At the exclusive discretion of the Secretary or the Secretary's designee, a settlement conference may be conducted by telephone, video, or other electronic means if each party has an opportunity to participate in the entire proceeding. Except as authorized by the Secretary or the Secretary's designee, documents for a telephone, video, or electronic conference shall be received by the Secretary or the Secretary's designee and each party at least 3 business days before the scheduled conference.

(10) If an agreement is not reached during the settlement conference, the employee shall have 15 days from the date of the settlement conference to appeal, in writing, to the Office of Administrative Hearings, with a copy to the Secretary or the Secretary's designee.

#### *E. Postponement of a Settlement Conference.*

(1) The Secretary or the Secretary's designee shall only consider a postponement of a settlement conference:

(a) If the requesting party provides a written request 3 business days before the scheduled conference and establishes good cause for the postponement;

(b) In the case of an emergency as defined in §E(3) of this regulation; or

(c) Under unusual circumstances as determined by the Secretary or the Secretary's designee.

(2) The Secretary or the Secretary's designee may require documentation of the reasons for the postponement from the party requesting the postponement.

(3) Emergency postponements are granted only when the emergency is a sudden, unforeseen occurrence requiring the immediate attention of the requesting party.

(4) If the postponement is requested due to a medical emergency, the party requesting the postponement shall submit written medical documentation by one of the medical providers specified in COMAR 11.02.03.07G(6). Failure to provide the

required documentation may result in a decision adverse to the requesting party.

#### *[C.] F. Appeal Hearing.*

(1) [Involuntary Demotion, Charges for Termination, and Disqualification from Future Employment.] *Official Written Reprimand, Suspension without Pay, Loss of Leave, Involuntary Demotion, Charges for Termination, and Rejection on Promotional Probation.* An administrative law judge of the Office of Administrative Hearings shall hear the appeal within 90 days and shall render a final decision within 45 days of the hearing.

(a) An administrative law judge of the Office of Administrative Hearings shall hear an appeal of involuntary demotion, charges for termination, and disqualification from future employment within 90 days of the appeal, and shall render a proposed decision to the Secretary of DBM within 45 days of the hearing.

(b) The Secretary of DBM or a designated representative shall allow either party 15 days from the date of the proposed decision to file exceptions to the proposed decision.

(c) On receipt of the exceptions, the Secretary of DBM or a designated representative shall afford, within 30 days, the parties the opportunity to be heard to offer argument regarding the administrative law judge's proposed decision.

(d) After hearing the arguments, the Secretary of DBM or a designated representative shall render the final and binding decision on the action within 45 days. This decision shall uphold, modify, or reverse the administrative law judge's proposed decision.

(e) If no exceptions are filed, the Secretary of DBM or a designated representative shall issue a final decision within 30 days of the proposed decision.

#### *(2) Disciplinary Loss of Leave or Suspension Without Pay.*

(a) An administrative law judge of the Office of Administrative Hearings shall hear an appeal of a disciplinary loss of leave or a suspension without pay, and shall issue a proposed decision to the Secretary of Personnel within 45 days of the hearing.

(b) The Secretary of DBM or a designated representative shall allow either party 15 days from the date of the proposed decision to file exceptions to the proposed decision.

(c) On receipt of the exceptions, the Secretary of DBM or a designated representative shall afford, within 30 days, the parties the opportunity to be heard to offer argument regarding the administrative law judge's proposed decision.

(d) After hearing the arguments, the Secretary of DBM or a designated representative shall render the final and binding decision on the action within 45 days. This decision shall uphold, modify, or reverse the administrative law judge's proposed decision.

(e) If no exceptions are filed, the Secretary of DBM or a designated representative shall issue a final decision within 30 days of the date of the proposed decision.]

#### *[(3)] (2) Suspension Pending Charges for Termination.*

(a) [An administrative law judge of the Office of Administrative Hearings shall hear an appeal of a suspension pending charges for termination within 5 work days of the receipt of an appeal, and shall issue a proposed decision to the Secretary of DBM within 5 work days of the hearing] *An administrative law judge of the Office of Administrative Hearings shall hear the appeal within 45 days, at which time the employee may:*

(i) *Rebut the reasons given for the suspension;*

(ii) *Allege mitigating circumstances; and*

(iii) *Offer alternatives to the suspension.*

(b) [The Secretary of DBM or a designated representative shall allow either party 10 work days from the date of the proposed decision to file exceptions to the proposed decision.] *The administrative law judge shall issue a final decision within 15 days of the hearing.*

[(c) On receipt of the exceptions, the Secretary of DBM or a designated representative shall afford, within 10 work days, the parties the opportunity to be heard to offer argument regarding the administrative law judge's proposed decision.

(d) After hearing the arguments, the Secretary of DBM or a designated representative shall render the final and binding decision on the suspension within 5 work days. This decision shall uphold, modify, or reverse the administrative law judge's proposed decision.

(e) If no exceptions are filed, the Secretary of DBM or a designated representative shall issue a final decision within 15 days of the date of the proposed decision.]

[D.] *G. Representation.* An employee may be represented at a grievance hearing or appeal hearing by an [attorney or other person designated by the employee] *attorney, an employee organization representative, or any other individual authorized, in writing, by the employee to represent him or her.*

[E.] *H.* — [G.] *J.* (text unchanged)

[H.] — [I.] (proposed for repeal)

[J.] *K. Burden of Proof.*

(1) (text unchanged)

(2) The appointing authority or the appointing authority's designee bears the burden of proof in the following cases:

[(a) Appeal of official written reprimand;

(b) Appeal of disciplinary loss of leave;

(c) Appeal of suspension without pay;

(d) Appeal of involuntary demotion;

(e) Appeal of rejection on promotional probation;

(f) Appeal of charges for termination of a Career Service employee;

(g) Appeal of disqualification from future employment of a Career Service employee who has completed initial probation;

(h) Appeal of less than standard performance appraisal rating or denial of salary increase due to performance appraisal;

(i) Appeal of suspension pending charges for termination.]

*(a) Disciplinary cases involving a Career Service employee;*

*(b) Appeal of a less than Meets Standards performance appraisal rating; and*

*(c) Appeal of a denial of a salary increase due to a performance appraisal rating.*

(3) The employee bears the burden of proof in the following cases:

[(a) Grievance hearings, except for appeal of a less than standard performance appraisal rating, denial of salary increase due to performance appraisal, or official written reprimand;]

*(a) Grievance hearings, except for appeal of a less than Meets Standards performance appraisal rating and denial of salary increase due to performance appraisal rating;*

(b) — (c) (text unchanged)

(d) Disqualification from future employment of a Career Service employee [who has not completed probation];

(e) — (f) (text unchanged)

[K.] *L.* (text unchanged)

BEVERLEY K. SWAIM-STALEY  
Secretary of Transportation

## Subtitle 11 MOTOR VEHICLE ADMINISTRATION— ADMINISTRATIVE PROCEDURES

### Notice of Proposed Action

[11-274-P]

The Administrator of the Motor Vehicle Administration proposes to amend:

(1) Regulation .03 under COMAR 11.11.05 Motor Vehicle Fees;

(2) Regulation .02 under COMAR 11.11.11 Ignition Interlock Vehicle Exemption for Financial Hardship; and

(3) Regulations .01, .03, .05, and .07 under COMAR 11.11.13 Ignition Interlock Program.

### Statement of Purpose

The purpose of this action is to amend regulations to conform to H.B. 1276, Ch. 557, Acts of 2011. These amendments set an ignition interlock participation fee, enhance provisions to allow an exemption for ignition interlock participants with financial difficulties, allow for an employer exemption from ignition interlock requirements, allow individuals to re-enter the ignition interlock program in lieu of suspension or revocation after removal for violations, and require that suspensions are not effective until after a hearing.

### 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 an estimated increase of \$570,392 in revenue to the Transportation Trust Fund for approximately 12,136 ignition interlock participants for fiscal year 2012 paying an ignition interlock enrollment fee due to the statute requiring the Motor Vehicle Administration (MVA) to recover the costs associated with the Ignition Interlock Program. The estimated cost to the public is \$570,392 in total additional participation fees.

### II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
<hr/>		
A. On issuing agency:		
Ignition Interlock participation fee	(R+)	\$570,392
B. On other State agencies:	NONE	
C. On local governments:	NONE	
<hr/>		
	Benefit (+)	
	Cost (-)	Magnitude
<hr/>		
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:		
Ignition Interlock participation fee	(-)	\$570,392



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

A. The estimated revenue increase of \$570,392 for FY 2012 is based on the \$47 ignition interlock participation fee multiplied by the estimated 12,136 drivers joining the Ignition Interlock Program ( $12,136 \times \$47 = \$570,392$ ).

F. The estimated \$570,392 cost to the public is based on 12,136 individuals paying the \$47 ignition interlock participation fee to the Administration ( $12,136 \times \$47 = \$570,392$ ).

**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 Tracey C. Sheffield, Regulations Coordinator, MVA, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call 410-768-7545, or email to [tsheffield@mdot.state.md.us](mailto:tsheffield@mdot.state.md.us), or fax to 410-768-7506. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

**11.11.05 Motor Vehicle Fees**

Authority: Transportation Article, §§12-104(b) and 12-301, Annotated Code of Maryland, and as cited in Regulations .02—.06 of this chapter

**.03 Driver's License and Identification Card Fees.**

Service	Section	Fee
A. — F. (text unchanged)		
G. <i>Ignition Interlock Participation Fee</i>	16-404.1	47
[G.] H. — [H.] I. (text unchanged)		

**11.11.11 Ignition Interlock Vehicle Exemption for Financial Hardship**

Authority: Transportation Article, §§12-104(b) and 16-205, Annotated Code of Maryland

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) "Financial hardship" means documented proof:

(a) Acceptable to an administrative law judge, *the Administration, or an approved ignition interlock vendor* that a person is *eligible for or* receiving assistance under the provisions of COMAR 07.02.04.03A and B, 07.03, 07.06.06, 07.06.09, 10.02.03, 10.09.24, 10.09.25, or 10.22.01, or under the provisions of Health-General Article, §§7-406, 7-503, 7-801(3), 7-802(d), or 10-708, Annotated Code of Maryland; or

(b) [Acceptable to any approved ignition interlock vendor that a person has an income level of:

- (i) \$26,580 for a family of one;
- (ii) \$35,820 for a family of two;
- (iii) \$45,060 for a family of three;
- (iv) \$54,300 for a family of four;
- (v) \$65,540 for a family of five; or

(vi) \$65,540, plus \$9,240 for each additional family member over five] *that a person meets the income guidelines for the Federal Supplemental Nutrition Assistance Program or the Maryland Food Supplement Program.*

(4) (text unchanged)

**11.11.13 Ignition Interlock Program**

Authority: Transportation Article, §§12-104(b), 16-205.1, 16-404.1, and 27-107, Annotated Code of Maryland

**.01 Purpose.**

The Ignition Interlock System Program established by the Administration under Transportation Article, §16-404.1, Annotated Code of Maryland, *requires certain individuals who are convicted of a certain offense under certain circumstances to participate in the Program, requires certain individuals to participate in the Program as a condition of modification of a license suspension or revocation, and* allows certain individuals with an alcohol-related driving offense or conviction to participate in the Program as a condition of continued licensure. The purpose of this chapter is to establish the eligibility requirements for participation in the Program, to monitor the participants, and to define the administrative action to be taken if a participant violates the conditions or requirements of the Program.

**.03 Requirements for Enrollment in the Program.**

A. To enroll as a participant in the Program, an individual shall:

(1) — (3) (text unchanged)

(4) Surrender all Maryland driver's licenses, including a temporary license, or submit a signed statement certifying no driver's license is in the individual's possession; [and]

(5) Submit the service provider's completed sealed enrollment form to a full service Administration office; [and]

(6) *Pay the required ignition interlock participation fee as set forth in COMAR 11.11.05; and*

(7) [obtain] *Obtain* a driver's license with an interlock-restriction.

B. (text unchanged)

C. *An employer waiver, allowing the participant to drive an employer vehicle in the course of the participant's employment during normal working hours, may be granted by the courts, or by the Administration, with submission of documentation of current employment and the need for the participant to operate the motor vehicle in the course of employment, in a form that is acceptable to the Administration.*

[C.] D. An individual who elects to participate in the Program under Transportation Article, §16-205.1(b)(3)(vii), Annotated Code of Maryland:

(1) (text unchanged)

(2) Shall meet the enrollment requirements set forth in §A of this regulation [within 30 days of the date on the Order of Suspension].

[D.] E. — [F.] G. (text unchanged)

H. *The Administration ignition interlock participation fee may be waived for participants experiencing financial hardship as set forth in COMAR 11.11.11.02.*

[G.] I. (text unchanged)

J. *An individual whose license or privilege to drive is suspended or revoked as a result of a final decision of the Office of Administrative Hearings is not eligible to participate in the Program under Transportation Article, §16-404.1(e), Annotated Code of Maryland, if the application of the individual to participate in the Program is based, all or in part, on a request to reconsider the suspension or revocation imposed as a result of the final decision of the Office of Administrative Hearings.*

**.05 Removal from the Program.**

A. — E. (text unchanged)

*F. If a person is removed from the program before successfully completing the program, that person may request that the Administration allow re-enrollment and entry into the program no earlier than 30 days from the date of the participant's removal.*

*G. A person who re-enters the program pursuant to this regulation shall be required to complete the full original period of assignment to the interlock program.*

**.07 Hearing Rights.**

[A.] (proposed for repeal)

[B.] *A. An individual participating in the program [from a referral source other than the Administration's modification authority specified in §A of this regulation,] who is notified by the Administration that the individual will be removed for [a violation] violations of the Program under this chapter, may:*

(1) — (2) (text unchanged)

*B. The interlock unit shall remain installed in the vehicle until a final decision is rendered at the hearing regarding the individual's participation in the interlock program.*

JOHN T. KUO  
Administrator

Motor Vehicle Administration

# Title 12

## DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

### Subtitle 02 DIVISION OF CORRECTION

**12.02.27 Inmate Discipline**

Authority: Correctional Services Article, §3-205, Annotated Code of Maryland

**Notice of Proposed Action**

[11-245-P]

The Secretary of Public Safety and Correctional Services proposes to repeal existing Regulations .02, .04, .09, .13, .16, .18, .19, .26, and .31, adopt new Regulations .02, .04, .09, .13, .16, .18, .19, .26, and .31, and amend Regulations .03, .05, .07, .08, 12, .15, .17, .20—.25, .27, .30, .32—.37, and .39 under COMAR 12.02.27 Inmate Discipline.

**Statement of Purpose**

The purpose of this action is to update current regulations to align with procedures followed by the Division of Correction.

**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 David Barthlow, Chief Hearing Officer, Maryland Division of Correction, 6776 Reisterstown Road, or call 410 585 3300. Comments will be accepted through October 23, 2011. A public hearing has not been scheduled.

**.02 Definitions.**

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

*B. Terms Defined.*

(1) "Assault" means an unlawful or impermissible threat or attempt to do bodily injury to another.

(2) "Assigned area" means a location where an inmate is authorized and permitted.

(3) "Battery" means the unlawful or impermissible touching or striking of an individual by another with or without consent.

(4) "Business day" means a day of the week excluding Saturday, Sunday, State Holiday, or day on which the Division of Correction's administrative offices are closed.

(5) "Calendar day" means a day of a week.

(6) "Category of Rule Violation" means inmate rule violations grouped according to the severity of the offense.

(7) "CMHC-J" means the Correctional Mental Health Center-Jessup.

(8) "Competent" means, when used in reference to a defendant inmate, the inmate is able to:

(a) Appreciate and understand the alleged rule violation; and

(b) Participate in a disciplinary hearing.

(9) "Controlled dangerous substance (CDS)" means:

(a) A substance listed in schedules I through V as defined in Criminal Law Article, §§ 5-101(f) and 5-401 through 5-406, Annotated Code of Maryland; or

(b) Other substance not identified in the Annotated Code of Maryland that has psychotropic or hallucinogenic properties.

(10) "Cumulative witness" means an individual who can only testify to facts already in the record of a hearing.

(11) "Department" means the Department of Public Safety and Correctional Services.

(12) "Disrespect" means an act of insolence that is arrogant, presumptuous, impudent, or insulting in manner, or demonstrates a lack of respect, directly or indirectly, toward another individual.

(13) "Disruptive act" means an act that may disturb the peace, prevent the orderly operation, or interfere with or threaten the security of a facility or the community.

(14) Escape means:

(a) The unlawful or unauthorized absence or departure from a facility or the grounds of a facility by an inmate;

(b) The unlawful or unauthorized absence or departure from an assigned area by an inmate while in the community;

(c) The unlawful or unauthorized failure to follow or departure from the staff itinerary for travel or movement by an inmate while in the community; or

(d) Failure by an inmate to return at a specified time to a place of assignment, custody, or confinement.

(15) "Facility representative" means a staff member designated by the warden, or a designee, to represent the interests of the facility at a preliminary review or hearing.

(16) "Fraud or misrepresentation" means an intentionally false, misleading, or deceptive act or expression or omission.

(17) "Hearing" means a facility inmate disciplinary administrative proceeding.

(18) "Hearing officer" means an impartial, non-advocate, fact-finder who presides over a hearing.

(19) "Hostage" means an individual whose freedom of movement is restricted without authority or justification.

(20) "Indecent exposure" means the willful display of the genitals, buttocks, or female breast to another individual as an act of disrespect, vulgarity, or sexual gratification.

(21) "Informal resolution" means the informal process, when there is evidence a rule violation has occurred, by which facility staff or a hearing officer and a defendant inmate reach an agreement to resolve the inmate's rule violation charged by either an:

(a) "Informal disposition" where by the inmate has:

(i) Waived a hearing and hearing rights for the rule violation charged;

(ii) Agreed to accept a sanction in accordance with the procedures of Regulation .39 of this chapter; and

(iii) Agreed to the placement of the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form as informal disposition in the inmate's case record file, or

(b) "Incident report" whereby the inmate has:

(i) Waived a hearing and hearing rights for the rule violation charged;

(ii) Agreed that no sanction will be imposed for the rule violation charged; and

(iii) Agreed to placement of the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form as an incident report in the inmate's case record file.

(22) "Inmate" means an individual who is under commitment to the Commissioner, the federal government, a local government, a municipality, or another state government and is housed in or otherwise in the actual or constructive custody of the Department or Division of Correction.

(23) "Inmate representative" means a staff member or inmate permitted in accordance with the procedures of this chapter to represent a defendant inmate during a hearing.

(24) "May not" means an absolute prohibition.

(25) "Order" means a command, direction, or instruction given by staff to an inmate that is consistent with the policies of the Department and Division of Correction.

(26) "Plea agreement" means a settlement arrangement between the defendant inmate and facility representative for a rule violation charged, which implementation is subject to the discretion of the hearing officer.

(27) "Preliminary review" means an initial appearance by a defendant inmate before the hearing officer for the purpose of reviewing the Notice of Inmate Rule Violation and Disciplinary Hearing form.

(28) "Restitution" means payment for documented, reasonable expenses associated with fraud, misrepresentation, or false information; or an illegal, unauthorized, or unreasonable expense incurred to the State; or the repair or replacement of altered, damaged, destroyed, stolen, or missing property, tools, or equipment.

(29) "Sanitation assignment" means an inmate job assignment imposed as a sanction for which neither work credits or pay is awarded to the defendant inmate.

(30) "Sexual act" means two or more individuals involved in an act for sexual arousal or gratification.

(31) "Staff" means a permanent, contractual, or temporary employee or other individual under contract or agreement providing goods or services to the Department or an agency, facility, or inmate.

(32) "Special needs inmate" means a defendant inmate whose ability to participate in a preliminary review or hearing is affected by illiteracy or a mental health, speech, hearing, or language condition.

(33) "Telecommunication device" means:

(a) A device that is able to transmit telephonic, electrical, digital, cellular, or radio communications;

(b) A part of a device that is able to transmit telephonic, electrical, digital, cellular, or radio communications, regardless of whether the part itself is able to transmit such communication; or

(c) An item including, but not limited to a:

(i) Cellular telephone;

(ii) Digital telephone;

(iii) Picture telephone;

(iv) Modem equipped device; and

(v) Component of or accessory for the items under §B(33)(c) of this regulation, such as a SIM card, Bluetooth equipment, charger, earpiece, or carrying case.

(34) Unauthorized Financial Account.

(a) "Unauthorized financial account" means a financial account other than a spending account or reserve account maintained under Correctional Services Article, §3-609, Annotated Code of Maryland or a bank savings account.

(b) "Unauthorized Financial Account" includes, but may not be limited to the following:

(i) Checking account;

(ii) Credit card account;

(iii) Green Dot card;

(iv) Debit card account;

(v) Money order; and

(vi) Gift card.

### **.03 Inmate Compliance Requirement and Sanctions — General.**

[A.] An inmate shall comply with the rules of:

(1) Conduct;

(2) The facility to which the inmate is assigned; and

(3) A program in which the inmate participates.]

A. An inmate who commits a rule violation under Regulation .04 of this chapter shall be subject to the inmate disciplinary process of the Department or Division of Correction.

B. An inmate shall comply with the rules of:

(1) The Department or Division of Correction;

(2) The facility to which the inmate is assigned; or

(3) A program to which the inmate is assigned.

[B.] C. [An inmate violating the rules under Regulation .04 of this chapter may be subject to disciplinary action.] The rules of conduct of the Department or Division of Correction [in accordance with] under Regulation .04 of this chapter shall apply to an inmate whether the inmate is on the grounds of a facility, in the community, or another location other than the facility or community.

[C.] D. Soliciting, conspiring to commit, attempting to commit, or aiding in the commission of a rule violation [of established rules is a violation and carries the same sanction as though the inmate committed the violation.] shall:

(1) Constitute a commission of that rule violation; and

(2) Subject the defendant inmate to the prescribed sanctions for that rule violation in accordance with the regulations of this chapter.

[D.] E. Sanctions.

(1) To maintain the orderly operation and security of [facilities] a facility, deter inmate misconduct, and [to] avoid disparate sanctioning of [inmates] an inmate, the Department or Division of Correction [may] shall establish under this chapter specific [sanctions as] penalties identified as sanctions to be imposed for an inmate rule [violations] violation.

(2) Whenever an inmate is released from the custody of the Department or Division of Correction, for example, due to a transfer to another jurisdiction's custody, mandatory release, detainer, hospitalization, parole supervision, pending legal matter, or mental health treatment and has a balance of disciplinary segregation remaining to serve, the disciplinary segregation period shall:

(a) Be stayed upon the inmate's release; and

(b) Resume upon the inmate's return to a Department or Division of Correction facility, irrespective of the reason for the return to Department or Division of Correction custody including service of a new sentence.

[(2)] (3) Inmate sanctions include[, but are not necessarily limited to]:

(a) (text unchanged)

(b) Revocation of good conduct and special projects credit;

[or] (c) Suspension of inmate privileges[.] or

(d) Restitution for lost, stolen, altered, damaged, or destroyed property of the State, a person, or an entity.

**.04 Inmate Rule Violation Summary.**

**A. Category of Inmate Rule Violations.**

(1) The category for a rule violation is determined by the severity of offense.

(2) The categories of rule violations are organized by the level of severity as follows:

(a) Category I—most severe;

(b) Category II;

(c) Category III;

(d) Category IV; and

(e) Category V—least severe.

**B. Category I Inmate Rule Violations. An inmate may not:**

(1) 100 – Engage in a disruptive act;

(2) 101—Commit assault or battery on staff;

(3) 102—Commit assault or battery on an inmate;

(4) 103 – Commit assault or battery on a person who is neither staff or an inmate, be involved in any manner with taking a hostage, or be involved in any manner with the willful killing of another person;

(5) 104 – Use intimidating, coercive, or threatening language;

(6) 105 – Possess, use, or manufacture a weapon;

(7) 106 – Escape when assigned maximum or medium security status;

(8) 107—Escape when assigned minimum security status;

(9) 108—Escape when assigned pre-release security status;

(10) 109—Escape while in the community;

(11) 110—Possess an implement or article that may be used in an escape;

(12) 111—Possess or use an unauthorized medication, drug, or substance identified as an intoxicant, excluding alcohol and a controlled dangerous substance from this rule violation;

(13) 112—Possess or use a drug or controlled dangerous substance;

(14) 113—Possess or use paraphernalia that may be for the use of an intoxicant, drug, or controlled dangerous substance;

(15) 114—Possess a controlled dangerous substance, intoxicant, drug, or alcohol in sufficient quantity or packaging materials that suggests an intent to distribute or distribution;

(16) 115—Refuse or fail to provide a required volume of urine necessary for urinalysis testing or provide a diluted or adulterated urine sample;

(17) 116—Possess, misuse, tamper with, damage, or destroy security equipment or property, detection equipment, or fire suppression equipment or alarm;

(18) 117—In any manner, arrange, commit, perform, or engage in a sexual act;

(19) 118—Make application for, obtain, possess articles or materials for the use of, or use an unauthorized financial account; possess currency in a facility where currency is not permitted; or possess currency in an amount that is greater than fifty dollars in excess of the authorized amount specified by the rules of a facility in which an inmate is permitted to possess currency;

(20) 119—In any manner, commit, perform, or engage in an act of indecent exposure or masturbation;

(21) 120—Disobey a specifically cited facility Category I rule not listed in this regulation as a rule violation;

(22) 121—Possess tobacco in sufficient quantity or the materials necessary for packaging tobacco, or other related products that suggests an intent to distribute or distribution; or

(23) 122—Possess a telecommunication device, SIM card, battery charger, carry case, or other device or article identified with a telecommunication device.

**C. Category II Inmate Rule Violations. An inmate may not:**

(1) 200—Vacant;

(2) 201—Refuse to participate in or engage in behavior that results in removal from the mandatory remediation Regimented Offender Treatment Center program;

(3) 202—Refuse to participate in or engage in behavior that results in removal from the mandatory Residential Substance Abuse Treatment Program;

(4) 203—Refuse to participate in or engage in behavior that results in removal from the mandatory education program;

(5) 204—Refuse to participate in or engage in behavior that results in removal from a mandatory remediation program not cited in the rule violations of this regulation;

(6) 205—Refuse a required medical examination or test or deoxyribonucleic acid (DNA) sampling collection; or

(7) 206—Disobey a specifically cited facility Category II rule not listed in this regulation as a rule violation.

**D. Category III Inmate Rule Violations. An inmate may not:**

(1) 300—Administer or receive a tattoo or possess tattoo paraphernalia;

(2) 301—Possess or use alcohol without authorization;

(3) 302—Possess equipment, material, or paraphernalia that may be used for manufacturing alcohol;

(4) 303—Refuse to submit to alcohol detection testing;

(5) 304—Possess, use, hoard, or accumulate medication without authorization;

(6) 305—Violate a law, statute, ordinance, or postal law;

(7) 306—Gamble or possess gambling paraphernalia;

(8) 307—Commit an act of extortion, bribery, or coercion;

(9) 308—Steal State property or possess State property identified as stolen;

(10) 309—Steal the property of an individual or possess property of an individual identified as stolen;

(11) 310—Violate a rule of a Department or Division of Correction program or directive that is not listed as a rule violation in this regulation;

(12) 311—Possess currency in an amount that is greater than \$20 but does not exceed \$50 in excess of the authorized amount specified by the rules of a facility in which an inmate is permitted to possess currency;

(13) 312—Interfere with or resist the performance of staff duties to include a search of a person, item, area, or location; or

(14) 313—Disobey a specifically cited facility Category III rule not listed in this regulation as a rule violation.

**E. Category IV Inmate Rule Violations. An inmate may not:**

(1) 400—Disobey an order;

(2) 401—Refuse to work, carry out an assignment, or accept a housing assignment;

(3) 402—Be in a location without authorization; leave an assigned location without authorization; be absent from or late reporting to an assigned location without authorization; loiter or linger in a location without authorization; or refuse or fail to obey or follow an order or a rule, policy, or procedure for inmate facility movement or inmate travel outside of a facility;

(4) 403—Provide false information or alter, misrepresent, or forge a document;

(5) 404—Possess currency in an amount that does not exceed \$20 in excess of the authorized amount specified by the rules of a facility in which an inmate is permitted to possess currency;

(6) 405—Demonstrate disrespect or use vulgar language;

(7) 406—Possess or pass contraband;

(8) 407—Perform an unauthorized personal service or conduct an unauthorized business;

(9) 408—Misuse, alter, tamper with, damage, or destroy State property or property of another;

(10) 409—Use a telephone without authorization, make a telephone call without authorization, call for a purpose not authorized, or be involved with an unauthorized three way telephone call;

(11) 410—Disobey a specifically cited facility Category IV rule not listed in this regulation as a rule violation; or

(12) 411—Possess tobacco in a limited quantity that may suggest personal use and there is no other evidence to suggest an intent to distribute or distribution.

F. Category V Inmate Rule Violations. An inmate may not:

(1) 500—Fail to possess or properly display, as directed by the rules of the facility, a required inmate identification badge;

(2) 501—Engage in reckless behavior or horseplay;

(3) 502—Fail to maintain:

(a) Personal cleanliness;

(b) The cleanliness of the facility and assigned housing area; or

(c) The cleanliness of an area outside the facility; or

(4) 503—Disobey a specifically cited facility Category V rule not listed in this regulation as a rule violation.

G. The term “disruptive act” under §B(1) of this regulation shall include:

(1) Disorderly conduct;

(2) Language use that is disruptive or incendiary;

(3) An unauthorized gathering;

(4) A demonstration or disturbance;

(5) Misuse or damage of property during a disruptive act;

(6) Setting a fire; or

(7) Possessing or using an explosive or flammable device.

H. The term weapon under §B(6) of this regulation shall include:

(1) An instrument for offensive or defensive combat that may be used in physically threatening, harming, or injuring an individual; and

(2) An unauthorized material, substance, article, instrument, or tool that may be manufactured into or used as a weapon regardless of it being used for a purpose other than as a weapon or whether its original character has been altered.

I. The term “threatening language” under §B(5) of this regulation shall include:

(1) A use of language that implies intimidation, coercion, or a threat of harm toward an individual or property;

(2) Regardless of the ability to carry out a threat; and

(3) May be conveyed:

(a) Verbally;

(b) In writing;

(c) By gesture;

(d) By drawing; or

(e) By display or projection of an image.

J. The term “contraband” under §E(7) of this regulation shall include property, an article, or a substance (other than a controlled dangerous substance) that an inmate, by law or correctional policy or procedure, is not permitted to possess, pass, or receive and that is:

(1) Allowable property that requires registration to be in the possession of an inmate;

(2) Otherwise allowable property or an authorized article in an area where an inmate is not permitted to possess or use the authorized article; or

(3) Allowable property that is identified as belonging to an individual other than the inmate in possession of the property.

K. A charge of “battery” under §B(2), (3) or (4) of this regulation:

(1) May not be automatically excused by a claim of “self-defense”; and

(2) A claim of “self-defense” may be considered in the disposition of a charge of battery.

L. Horseplay.

(1) The term “horseplay” under §F(2) of this regulation shall include unauthorized rowdy or rough:

(a) Consensual play;

(b) Amusement; or

(c) Recreation.

(2) A claim of the defense of “horseplay” to a charge that includes intentional physical contact between individuals may not be considered under §F(2) of this regulation and shall be considered a battery violation under §B(2)(3) or (4) of this regulation.

M. A charge of participation in a sex act under §B(18) of this regulation may not be excused by a claim of “consent”.

N. A charge of refusal under §E(2) of this regulation may not be excused by an unsubstantiated claim of “danger” or “threat of harm.”

O. The language “possess a telecommunication device” under §B(23) of this regulation shall include an inmate who:

(1) Willfully poses for the taking of an unauthorized picture or video recording by an individual using a telecommunication device or camera; and

(2) Failed to report the taking of the picture or video recording along with the name of the individual using the telecommunication device or camera to staff.

#### **.05 Prehearing Procedures — Investigating and Reporting an Inmate Rule [Violations] Violation.**

A. Investigation. When an [alleged] event occurs causing staff to believe that an inmate [rule violation occurs] has committed an inmate rule violation under Regulation .04 of this chapter, staff shall [immediately] initiate an investigation within one calendar day of the reported event to:

(1) — (3) (text unchanged)

(4) [Collect and preserve] Preserve physical evidence.

B. Notice of Inmate Rule Violation and Disciplinary Hearing [Report] Form.

(1) If there is [sufficient] evidence indicating that an [inmate] inmate’s conduct constitutes a rule violation [occurred and a violator is identified], staff shall [initiate a notice of inmate rule violation and disciplinary hearing report that includes] utilize the Notice of Inmate Rule Violation and Disciplinary Hearing form to draft a rule violation report and recommend the inmate rule violation to be charged [to] and shall include[, but is not necessarily limited to,] the:

(a) — (b) (text unchanged)

(c) [Identity] Identification of [the] an inmate [alleged to have committed the] accused of committing a rule violation; [and]

(d) Facts [concerning] of the alleged rule violation; and

(e) The inmate rule violation that the shift supervisor should charge.

(2) The reporting staff member shall forward the [notice of inmate rule violation and disciplinary hearing] report to the [designated] Notice of Inmate Rule Violation and Disciplinary Hearing form to a shift supervisor for review.

[C. Supervisor's Review. The supervisor shall:

(1) Review and appropriately complete the notice of inmate rule violation and disciplinary hearing report; and

(2) Forward the notice of inmate rule violation and disciplinary hearing report and attachments to the shift supervisor for review.]

[D.] C. Shift Supervisor Responsibilities. Upon receipt of a [notice of inmate rule violation and disciplinary hearing report from a supervisor] *Notice of Inmate Rule Violation and Disciplinary Hearing form reporting an inmate rule violation*, the shift supervisor shall:

(1) *Indicate on the Notice of Inmate Rule Violation and Disciplinary Hearing form if there was a use of force involved with the reported event;*

(2) *Indicate on the Notice of Inmate Rule Violation and Disciplinary Hearing form if there was a seizure of contraband involved in the reported event;*

[(1)] (3) Review the [notice of inmate rule violation and disciplinary report] *Notice of Inmate Rule Violation and Disciplinary Hearing form* to determine if the case warrants:

(a) — (c) (text unchanged)

[(2)] (4) If the decision is to conduct a hearing, indicate [,] *formal hearing in the appropriate place on the [notice of inmate rule violation and disciplinary hearing report] Notice of Inmate Rule Violation and Disciplinary Hearing form:*

(a) — (b) (text unchanged)

[(3)] (5) Upon completing the [notice inmate rule violation and disciplinary hearing report] *Notice of Inmate Rule Violation and Disciplinary Hearing form*, [immediately] forward the completed [notice of inmate rule violation and disciplinary report and attachments] *Notice of Inmate Rule Violation and Disciplinary Hearing form* to the shift commander and maintain possession of an attachment and other evidence that staff may have submitted with the *Notice of Inmate Rule Violation and Disciplinary Hearing form*.

[E.] D. Shift Commander Responsibilities: Upon receipt of the [notice of inmate rule violation and disciplinary hearing report] *Notice of Inmate Rule Violation and Disciplinary Hearing form*, the shift commander shall:

(1) Review the [notice of inmate rule violation and disciplinary hearing report] *Notice of Inmate Rule Violation and Disciplinary Hearing form* to determine if the alleged violator is a threat to security;

(2) (text unchanged)

(3) Complete the appropriate [sections] *section of the [notice of inmate rule violation and disciplinary hearing report and attachments] Notice of Inmate Rule Violation and Disciplinary Hearing form regarding the action taken and forward [them] the Notice of Inmate Rule Violation and Disciplinary Hearing form to the shift supervisor.*

E. Drafting and Serving a Corrected Notice of Inmate Rule Violation and Disciplinary Hearing form.

(1) *If staff determines that the Notice of Inmate Rule Violation and Disciplinary Hearing form is technically in error or evidentially insufficient after the defendant inmate has been served the Notice of Inmate Rule Violation and Disciplinary Hearing form, staff shall:*

(a) *Draft a new Notice of Inmate Rule Violation and Disciplinary Hearing form that may include the evidentiary information, evidentiary corrections, additional evidentiary information, or technical or formatting corrections; and*

(b) *After completion of the new Notice of Inmate Rule Violation and Disciplinary Hearing form, serve the Notice of Inmate Rule Violation and Disciplinary Hearing form on the defendant inmate.*

(2) *For a minor correction due to an error (for example a name or date or the absence of a signature or date) or new or additional information, staff may rely on a correspondence addressed to the defendant inmate explaining the correction or additional information.*

(3) *If a new Notice of Inmate Rule Violation and Disciplinary Hearing form is drafted, staff shall, if applicable, include in the new draft that it supersedes the previously served Notice of Inmate Rule Violation and Disciplinary Hearing form regarding the reported event and rule violation charged.*

(4) *Staff shall insure that a copy of the new Notice of Inmate Rule Violation and Disciplinary Hearing form or correspondence is present when the defendant inmate appears before the hearing officer.*

# **.07 Hearing Procedures — General.**

A. [Due Process.] Waiver. Unless specified otherwise, a defendant inmate who does not exercise, during the inmate disciplinary process, a right provided by due process [is] or fails, at the preliminary review of the inmate's *Notice of Inmate Rule Violation and Disciplinary Hearing form*, to raise a lack of compliance with a time requirement or procedure of a regulation of this chapter or Department or Division of Correction directive shall be considered to have waived that right or the claim of a failure to comply with a time requirement or procedure.

B. Authority of the Hearing Officer. The hearing officer [shall] may:

(1) *Weigh the evidence presented and make fact findings for an inmate disciplinary case being heard;*

(2) *Not make a finding of law;*

[(1)] (3) [Be the final arbiter for hearing proceedings, findings, decisions, and sanctions] *Make a determination regarding compliance with a time requirement or procedure under this chapter or a Division of Correction directive; and*

[(2)] (4) [Decide] *Determine whether the inmate has committed the rule violation charged and the number [of], [the] period [of], and [the] effective date of sanctions to be imposed.*

C. The hearing officer shall:

(1) Interpret policy and [procedures] *procedure;*

(2) — (4) (text unchanged)

D. Except where stated otherwise, a hearing officer:

(1) (text unchanged)

(2) [May not discuss the merits of a pending case with another non-specified individual without all hearing participants present] *May discuss a non-evidentiary matter without a hearing participant present that may include:*

(a) *Security or safety;*

(b) *A plea agreement;*

(c) *An informal resolution;*

(d) *A postponement;*

(e) *A time requirement or procedure of a regulation under this chapter or Department or Division of Correction directive; or*

(f) *Representation or witness request;*

(3) *May not discuss without all hearing participants present the evidentiary merits of a pending case, unless otherwise specified in §D(1) of this regulation; or*

(4) *May, in the presence of staff necessary for security and safety and without an inmate, question or take testimony from a witness or informant witness whose identity may not be revealed to an inmate or review or examine security sensitive evidence that may include a document, video record, or other record.*

E. Testimony.

(1) (text unchanged)

(2) The hearing officer shall use the following oath to swear in [an individual providing testimony] *a witness at a disciplinary hearing: "Do you solemnly promise and affirm under the penalties of perjury that the testimony you are about to give at this disciplinary hearing shall be the truth, the whole truth, and nothing but the truth?"*

(3) *After the administration of the oath, the witness shall provide an affirmative response before being permitted to testify.*

F. Facility Representative.

(1) The [respective] warden, or a designee, shall determine [which cases require a] if a pending disciplinary case requires facility [representative] representation.

(2) (text unchanged)

G. Witnesses.

(1) It shall be the responsibility of the defendant inmate or facility representative, and not that of the hearing officer, to call a requested witness as part of the case presentation during a hearing.

(2) A witness shall:

(a) Not be compelled to appear or give testimony at a hearing;

(b) Be permitted to testify if that testimony is not a threat to security or safety; and

(c) Provide testimony that is relevant, material, and non-cumulative to a hearing.

(3) A witness may be questioned by the defendant inmate representative, the defendant inmate in the absence of a representative, or facility representative if the hearing officer determines the question:

(a) Not to be disrespectful or offensive;

(b) Not to be a threat to security or safety;

(c) Not to be repetitive or cumulative; and

(d) To be relevant and material.

(4) The hearing officer may question a person giving testimony at a hearing.

(5) The hearing officer may call a witness to testify or be questioned regarding:

(a) An evidentiary matter;

(b) A fact in evidence; or

(c) A policy, procedure, or practice.

H. Facility Hearing Officer.

(1) The warden, or a designee, may designate facility staff to act as a hearing officer.

(2) A facility hearing officer conducting a hearing shall be empowered with the duties and responsibilities of a hearing officer as enumerated by this chapter.

(a) The facility hearing officer may conduct a hearing in the absence of a hearing officer or when a hearing officer is conducting facility hearings.

(b) The facility hearing officer shall conduct a hearing in accordance with the procedures of this chapter.

I. Preliminary Review.

(1) An inmate shall appear before a hearing officer for a preliminary review of the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form.

(2) A preliminary review shall be conducted before an evidentiary hearing being held.

(3) Matters to be addressed at the preliminary review may include, but are not limited to:

(a) A rule violation charged;

(b) Representation request;

(c) Witness request;

(d) Evidence request;

(e) Postponement request;

(f) A time requirement or procedure in accordance with a regulation of this chapter or Department or Division of Correction directive;

(g) An attachment to or other evidence submitted with the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(h) A plea agreement or informal resolution; and

(i) A plea by the defendant inmate to each rule violation charged.

(4) At the conclusion of the preliminary review, the hearing officer shall inquire of the hearing participants if the participants are prepared to proceed with a hearing on the rule violation charged.

(a) If a hearing participant is not prepared to proceed, the hearing officer shall provide the hearing participants an opportunity to comment on the issue.

(b) The hearing officer shall determine the merits of a hearing participant's claim of not being prepared to proceed and may postpone the case at the request of a participant.

(c) If the hearing officer does not find that a postponement of the proceeding is warranted, the hearing officer shall proceed with a hearing.

(d) If a hearing is postponed at the request of a participant, facility staff shall reschedule the hearing for a date when circumstances permit.

J. Plea Agreement.

(1) The facility representative may negotiate with the defendant inmate a plea agreement for a rule violation charged.

(2) The facility representative or defendant inmate is not obligated to offer or accept a plea agreement.

(3) The plea agreement shall be presented to the hearing officer during the preliminary phase of a hearing.

(4) A hearing officer is not obligated to accept a plea or sanction negotiated through a plea agreement.

(5) A plea agreement shall include:

(a) The waiver of a hearing and hearing rights by the defendant inmate;

(b) A recommendation to the hearing officer regarding the period and sanctions to be imposed;

(c) The hearing officer shall, before entering a guilty plea, advise the defendant inmate that:

(i) The hearing officer is not obligated to accept the sanction recommended under the plea agreement;

(ii) The hearing officer may increase the period of the recommended sanction; or

(iii) The hearing officer and warden may impose an additional sanction; and

(d) A voluntary plea of guilty is entered into the hearing record by the defendant inmate to a rule violation charged.

(6) The hearing officer upon accepting a plea of guilty shall determine a sanction to impose.

(7) In the absence of a plea agreement, the hearing officer shall:

(a) Continue with the preliminary review; or

(b) Proceed to the evidentiary phase of the hearing if the preliminary review has been completed.

K. Informal Resolution.

(1) A shift supervisor or hearing officer on review of a Notice of Inmate Rule Violation and Disciplinary Hearing form may offer a defendant inmate an informal resolution in lieu of a hearing for a rule violation charged under Regulations .06 and .16 of this chapter.

(2) The offer to the defendant inmate of an informal resolution may only be made when the offense charged is a:

(a) Category IV rule violation; or

(b) Category V rule violation.

(3) Upon discovery that an informal resolution action is not in compliance with the procedures of this regulation, Regulation .06 or .16 of this chapter, the warden, or a designee, may remand the matter to a hearing officer for further action.

(4) The hearing officer upon receipt of a remanded informal resolution action shall:

(a) Determine if there was an error in the informal resolution action;

(b) Conduct a preliminary review and hearing of the rule violation charged if finding an error in the informal resolution process did occur; and

(c) If finding no error occurred affirm the informal resolution action in a written decision.

*L. Inmate Handcuffing.*

(1) For the purposes of maintaining security, control, and safety during a hearing, inmate hearing participants shall be handcuffed.

(2) The defendant inmate shall be handcuffed from behind unless prohibited by a documented medical reason.

(3) If security staff determines that security, control, and safety permits or due to a documented medical reason, an inmate representative or witness may be handcuffed from the front.

*M. Forfeiture of Property.*

(1) Unauthorized property, to include property whose ownership cannot be determined, authorized property used for unauthorized purposes, and unauthorized currency found in the possession of an inmate, may be forfeited to the State.

(2) The policy and procedures of a facility, directive, or regulation of the Department or Division of Correction shall determine what property is unauthorized for an inmate to possess and may be forfeited to the State.

(3) An inmate under the requirements of this chapter may not possess currency in:

(a) A facility not permitting an inmate to possess currency;

(b) Excess of the amount of currency permitted by the rules of a facility permitting an inmate to possess currency; or

(c) Violation of a policy, procedure, or directive or regulation of the Department or Division of Correction.

(4) Unauthorized property in the possession of an inmate may be referred for forfeiture and disposal by a facility through the inmate disciplinary process as enumerated under this chapter.

(5) Forfeiture of property under the procedures of this chapter is an administrative disposition by a hearing officer and may not be imposed as a sanction.

(6) A disciplinary hearing conducted under the procedures of this chapter may authorize the forfeiture of property under the following conditions:

(a) Facility staff shall provide to a defendant inmate, prior to the inmate's disciplinary hearing, required notice in a format approved by the Department or Division of Correction advising the defendant inmate that the property is:

(i) Confiscated; and

(ii) Recommended for forfeiture to the State.

(b) A hearing officer shall, during the defendant inmate's disciplinary hearing, where forfeiture of property has been requested by a facility, advise the inmate of the forfeiture request and permit the inmate the opportunity to address the matter of forfeiture.

(c) After making a decision regarding the defendant inmate's rule violations charged, the hearing officer shall advise the inmate of the forfeiture disposition regarding the unauthorized property and:

(i) If the hearing officer concludes the defendant inmate possessed unauthorized property of value in violation of a policy or procedure of a facility, directive, or regulation of the Department or Division of Correction, the written record of the proceedings shall include documentation of the property to be forfeited to the State for the use of or sale by the State;

(ii) If the hearing officer concludes the defendant inmate possessed unauthorized property of little or no value in violation of a policy or procedure of a facility, directive, or regulation of the Department or Division of Correction, the written record of the proceedings shall include documentation of the property to be forfeited to the State and referred to the facility for disposal of the

property under the facility's procedures for the disposal of unauthorized property; and

(iii) In the event a hearing officer finds a defendant inmate not guilty or dismisses the charge and determines the inmate is not permitted to possess the property or cannot determine ownership of the property, the hearing officer shall forfeit the property to the State as enumerated under §§M(6)(c)(i) and (ii) of this regulation.

*(7) Property Ownership.*

(a) A hearing officer, before the conclusion of a disciplinary hearing, shall make a determination of property ownership before rendering a forfeiture disposition.

(b) When determining property ownership and potential forfeiture of that property, a hearing officer shall consider if the defendant inmate found in possession of the property can or cannot prove ownership of the property.

(i) If the hearing officer can determine through the evidence presented at the disciplinary hearing that the inmate had authorized ownership of the property, but the property was being used for an unauthorized purpose, the hearing officer shall forfeit the property to the State as established under §§M(6)(c)(i) and (ii) of this regulation.

(ii) If the hearing officer determines through the evidence presented during the disciplinary hearing that the inmate possessed unauthorized property and the rightful ownership of that property cannot be determined, the hearing officer shall forfeit that property to the State as established under §§M(6)(c)(i) and (ii) of this regulation.

(iii) If the hearing officer is able to determine through the evidence presented during the disciplinary hearing that the property in the defendant inmate's possession belonged to another person without the authorization of that person, the hearing officer shall make a disposition that the property be returned to the rightful owner.

(iv) If the hearing officer is able to determine through the evidence presented during the disciplinary hearing that the property in the defendant inmate's possession belonged to another person with the permission of that person, the hearing officer shall refer the property to the facility for investigation and appropriate action taken against the person authorizing the defendant inmate to possess the property and the property shall be forfeited to the State.

*(c) Currency Ownership.*

(i) If an inmate is found in possession of unauthorized currency and no other individual can claim rightful ownership, the hearing officer shall forfeit that currency to the State as established under §§M(6)(c)(i) and (ii) of this regulation.

(ii) If an inmate is found in possession of unauthorized currency and the hearing officer determines that the currency was the property of an individual who did not authorize the defendant inmate to possess the currency, the hearing officer shall make a disposition that the currency is to be returned to the rightful owner.

(iii) If the hearing officer determines that the rightful owner of the unauthorized currency found in the possession of the defendant inmate knowingly transferred the currency to the defendant inmate, the hearing officer shall refer the currency to the facility for investigation and appropriate action to be taken against the transferring individual and the currency shall be forfeited to the State.

(8) A warden, or a designee, may not disturb a hearing officer's disposition regarding unauthorized property, but may appeal that disposition to the Commissioner, or a designee, to determine if the disposition is in compliance with this regulation.

(9) An appeal under §M(7) of this regulation shall suspend the property disposition until a decision is made by the Commissioner, or



a designee, as to the propriety of the hearing officer's decision concerning forfeiture.

*N. Security Sensitive Information.*

(1) When preparing a disciplinary case based on a defendant inmate's conduct in an event, facility staff before providing information to a defendant inmate through a Notice of Inmate Rule Violation and Disciplinary Hearing form, record, report, document, or other form of evidence, shall evaluate and determine if that information is security sensitive.

(a) To determine if information is security sensitive, facility staff shall consider the potential negative impact divulging the information could have on facility security operations or intelligence gathering, the Department or Division of Correction investigation methods and techniques, public safety, or an individual providing the information. When determining if information is security sensitive, facility staff may consider that the information:

(i) Was provided by an inmate informant or individual whose identity, if revealed, would be harmful to the safety or security of that inmate or individual;

(ii) Reveals the method, technique, or factual detail of a security or intelligence investigation;

(iii) Would reveal to the defendant inmate the method, quality, and extent of coverage from facility security monitoring equipment or systems;

(iv) Relates to or reveals facility security staffing plans, emergency plans, or security operations; or

(v) Was obtained by a law enforcement agency, a State or federal intelligence office or unit, or the Department's Internal Investigation Unit.

(b) If facility staff have a reasonable belief that releasing the information arising from an investigation of a defendant inmate's conduct in an event would compromise facility security operations or intelligence gathering, the Department or Division of Correction investigation methods and techniques, public safety, or an individual providing the information, facility staff shall present the information to a shift supervisor for evaluation as to whether the information is security sensitive.

(c) A shift supervisor, notified under §N(1)(b) of this regulation, shall:

(i) Evaluate the information in terms of being security sensitive as provided under §N(1)(a) of this regulation;

(ii) If there is a reasonable belief that the information is security sensitive, classify the information as security sensitive; and

(iii) Document the rationale for classifying the information as security sensitive.

(d) Once a shift supervisor classifies information as being security sensitive, facility staff may not provide a defendant inmate with the information classified as security sensitive.

*(2) Hearing Officer Review.*

(a) A hearing officer shall review information classified as security sensitive under §N(1) of this regulation.

(b) The hearing officer shall determine if the classification of the information as security sensitive is in accordance with the requirements of this regulation.

(i) If the hearing officer determines that the information has been properly classified as security sensitive, the hearing officer shall inform the defendant inmate that the information is security sensitive and is not available to the defendant inmate as enumerated under the procedures of Regulation .26 of this chapter.

(ii) If raised by the defendant inmate, the hearing officer shall provide the hearing participants the opportunity to address the merits of the classification of the information as security sensitive.

(iii) After discussing a security sensitive classification of information under §N(2)(b)(ii) of this regulation, the hearing officer shall advise the hearing participants as to a decision regarding the

merits of the classification of the information as being security sensitive.

(c) A hearing officer may not reveal information deemed classified as security sensitive under the provisions of this regulation.

(d) If a hearing officer does not determine that the information is security sensitive, the hearing officer shall:

(i) Postpone the defendant inmate's disciplinary hearing;

(ii) Refer the information classified as security sensitive by the shift supervisor to the Commissioner, or a designee, through the facility representative or hearing coordinator for a review as to whether or not the information is security sensitive; and

(iii) Provide the Commissioner, or a designee, a written explanation as to the reasons the hearing officer did not determine the information is security sensitive.

(e) A postponement of the defendant inmate's disciplinary hearing for the review by the Commissioner, or a designee, is good cause for the delay of the defendant inmate's disciplinary hearing.

(f) Once a decision by the Commissioner, or designee, regarding the classification of the information as security sensitive has been received by the facility, the defendant inmate's disciplinary hearing shall be rescheduled.

(g) When the defendant inmate's disciplinary hearing resumes, the facility representative or hearing coordinator shall provide a hearing officer the Commissioner's, or a designee's, decision as to the classification of the information as security sensitive.

(h) If the Commissioner or a designee determines the information not to be security sensitive, the hearing officer shall upon the defendant inmate's appearance before the hearing officer present that information to the inmate as enumerated under the procedures of Regulation .24 of this chapter.

*(3) Presentation of Security Sensitive Information at a Hearing.*

(a) The hearing officer shall inform a defendant inmate of the presence of security sensitive information at a hearing. The hearing officer may:

(i) Not provide detail regarding investigation methods or techniques used to obtain the security sensitive information, the specific content of security sensitive information, or from whom the security sensitive information security sensitive was obtained; and

(ii) May summarize the content of the security sensitive information that specifically constitutes the rule violation charged as long as that summary does not compromise security or safety.

(b) The specific content and details of information obtained through a facility security monitoring system may not be revealed to a defendant inmate, however, the hearing officer may summarize for the defendant inmate the security sensitive information that specifically constitutes the rule violation charged as long as that summary does not compromise security or safety.

(c) The hearing officer may provide a defendant inmate with specific content information from a document the defendant inmate authored.

(d) A hearing officer may not provide a defendant inmate with information for review that constitutes security operations:

(i) Directive;

(ii) Policy;

(iii) Procedure;

(iv) Photographic record not classified for inmate examination; or

(v) Other material, file, record, or document not classified for inmate examination.

(e) A hearing officer may summarize for a defendant inmate security operations material, file, record, or document not classified for inmate examination that have been deemed relevant to the outcome of a hearing as long as that summary does not reveal the specific content of the security sensitive information under review.

(f) When a hearing officer is presented security sensitive information obtained from a confidential informant, the hearing officer shall ensure compliance with the procedures as enumerated under Regulation .21 of this chapter.

(4) When issuing a written decision that includes security sensitive information, a hearing officer shall summarize for the record the security sensitive information relied on in the process of rendering a decision and ensure that the summary does not reveal the content of that security sensitive information.

(5) Post Hearing Procedures.

(a) A facility representative or hearing coordinator, at the conclusion of a defendant inmate's hearing, shall forward, with the records of the defendant inmate's hearing, evidence identified as security sensitive to the facility warden for the warden's, or a designee's, review of the hearing officer's decision.

(b) The warden, after the review of a defendant inmate's disciplinary case, shall ensure that security sensitive information presented at the defendant inmate's disciplinary hearing is returned to the facility staff responsible for the storage and preservation of the information and not be placed in the defendant inmate's case record file.

(c) Security sensitive information presented at a defendant inmate's hearing shall be preserved by a facility.

**.08 Prehearing Procedures — Facility Representative.**

A. The facility representative assigned to an inmate rule violation case as a hearing participant shall:

[A.] (1) Prepare the facility's case for presentation at the hearing that may include, but is not limited to:

(a) Reviewing a facility disciplinary case for evidentiary sufficiency;

(b) Correcting a technical, procedural, evidentiary, or formatting error found in a Notice of Inmate Rule Violation and Disciplinary Hearing form;

(i) The facility representative may consult with a shift supervisor as to what action is required to correct the Notice of Inmate Rule Violation and Disciplinary Hearing form or return the Notice of Inmate Rule Violation and Disciplinary Hearing form to a shift supervisor for the purpose of the supervisor taking corrective action; or

(ii) The facility representative may, without consultation of a shift supervisor, take that action necessary to correct the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(c) Correcting or adding a rule violation charge to the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(d) Determining what questions to ask of a scheduled witness who may appear and the arguments to make in support of the facility case;

(e) Determining the need for a witness to be called in support of the facility's case; and

(f) Determining the need for evidence to be presented in support of the facility's case; and

(2) Ensure, upon the defendant inmate's appearance before the hearing officer, that the inmate has a copy of a Notice of Inmate Rule Violation and Disciplinary Hearing form in which:

(a) A corrective action has occurred; or

(b) A rule violation charge has been corrected or added.

B. [If appropriate,] In addition, a facility representative may:

(1) [make] Make an offer to a defendant inmate of an informal [disposition] resolution for the inmate's rule violation charged; [and]

[C.] (2) [If authorized by the warden, or a designee, offer] Make a plea agreement presentation, negotiated with the defendant inmate, to the hearing officer [, in accord with the defendant inmate, a] for a rule violation charged that includes a recommendation as to

the decision [resolution] and [sanctions] sanction for the rule violation charged[.];

(3) Make the case presentation for the facility to the hearing officer in support of the defendant inmate's rule violation charged;

(4) Question a witness permitted to testify; and

(5) Appeal a hearing officer's decision or sanction to the warden if it is believed the action was in error.

**.09 Prehearing Procedures — Service of Notice of Inmate Rule Violation and Disciplinary Hearing Form.**

A. When a shift supervisor refers a defendant inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form for a hearing or a defendant inmate has declined an offer of informal resolution in lieu of a hearing, the shift supervisor shall:

(1) Direct staff to schedule the inmate for an appearance before a hearing officer;

(2) Designate staff to serve the defendant inmate with a copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(3) Inform the staff to only serve a copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form on the defendant inmate; and

(4) Retain possession of an attachment to or other evidence that may have been submitted by staff with the Notice of Inmate Rule Violation and Disciplinary Hearing form which may include, but is not limited to a:

(a) Report;

(b) Record;

(c) Form;

(d) Statement;

(e) Document; and

(f) Photograph.

B. At service of a copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form, staff may not permit the defendant inmate an opportunity to review or receive a copy of an attachment or other evidence that may by mistake have been forwarded with Notice of Inmate Rule Violation and Disciplinary Hearing form.

C. Staff shall serve the Notice of Inmate Rule Violation and Disciplinary Hearing form on the defendant inmate within one business day after the date when the following events have concluded in the specified order:

(1) The investigation of the reported event has been completed;

(2) The Notice of Inmate Rule Violation and Disciplinary Hearing form has been completed; and

(3) The review of the Notice of Inmate Rule Violation and Disciplinary Hearing form by a shift supervisor has been completed.

D. For the purposes of this chapter, the date of the shift supervisor's review when the rule violation to be charged is determined shall be considered the date of the defendant inmate's rule violation.

E. Delay of Service.

(1) Good cause shall justify the delay of service by staff on a defendant inmate.

(2) If a defendant inmate has escaped and subsequently returned to custody of the Division of Correction, staff shall serve a Notice of Inmate Rule Violation and Disciplinary Hearing form within 3 business days of the inmate's return to the facility.

(3) Unless the warden, or a designee, otherwise directs, staff may not serve the Notice of Inmate Rule Violation and Disciplinary Hearing form on a defendant inmate who is housed:

(a) As a patient in a community hospital; or

(b) In a facility medical infirmary.

(4) Staff shall serve a defendant inmate who has been released from either a community hospital or facility medical infirmary with a Notice of Inmate Rule Violation and Disciplinary Hearing form

within 3 business days of the inmate's return to the inmate population of the facility.

(5) Service shall be delayed on a defendant inmate who is assigned to mental health housing and determined to be incompetent by mental health staff.

(6) Service shall be rendered on a defendant inmate assigned to mental health housing only when mental health staff have determined the inmate to be competent.

(7) When good cause exists that delays service of the Notice of Inmate Rule Violation and Disciplinary Hearing form within the time requirement of this regulation, staff shall:

(a) Serve the Notice of Inmate Rule Violation and Disciplinary Hearing form on the defendant inmate as soon as the cause of delay no longer exists;

(b) Make a record of the cause that delayed service; and

(c) Inform the hearing officer of the cause if the delay is raised by the defendant inmate at the preliminary review or hearing.

(8) The hearing officer shall determine during a preliminary review whether there is good cause to justify a service delay of a Notice of Inmate Rule Violation and Disciplinary Hearing form.

F. Staff serving the Notice of Inmate Rule Violation and Disciplinary Hearing form, unless prevented by a security or safety reason or a time constraint, shall:

(1) Inform the defendant inmate that staff are present to serve the Notice of Inmate Rule Violation and Disciplinary Hearing form and:

(a) Provide the inmate an opportunity to read the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(b) Advise the inmate of the opportunity to request representation or a witness on the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(c) Advise the inmate of the opportunity to request evidence on the Notice of Inmate Rule Violation and Disciplinary Hearing form; and

(d) Provide the inmate an opportunity to sign for receipt of the Notice of Inmate Rule Violation and Disciplinary Hearing form;

(2) Make a record of a cause that may prevent service of the Notice of Inmate Rule Violation and Disciplinary Hearing form; and

(3) Sign and date the record of service in the designated section provided on the Notice of Inmate Rule Violation and Disciplinary Hearing form for the name of the serving staff.

G. A defendant inmate when served with a Notice of Inmate Rule Violation and Disciplinary Hearing form shall:

(1) Notify the serving staff if the defendant inmate is unable to read or understand the document;

(2) If requesting representation for the hearing, list the representative by name in the designated section of the Notice of Inmate Rule Violation and Disciplinary Hearing form provided for the name of a representative;

(3) If requesting a witness for the hearing, list the witness by name in the designated section of the Notice of Inmate Rule Violation and Disciplinary Hearing form provided for the name of a witness;

(4) If requesting evidence for the hearing, list the evidence by name in the designated section of the Notice of Inmate Rule Violation and Disciplinary Hearing form provided for the name of the evidence;

(5) Sign and date for receipt of the inmate's copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form in the designated section provided for the inmate's signature and date of receipt; and

(6) Return the facility's copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form to the serving staff.

H. Defendant Inmate's Refusal to Sign or Return the Notice of Inmate Rule Violation and Disciplinary Hearing form.

(1) A defendant inmate's refusal to sign at service for receipt of the inmate's copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form shall be considered waiver of the Division of Correction's obligation enumerated in this regulation to timely serve the Notice of Inmate Rule Violation and Disciplinary Hearing form.

(2) The failure of a defendant inmate to return at service the facility's copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form to the serving staff shall be considered waiver of the service process enumerated in this regulation.

I. With the return of the facility's copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form by the defendant inmate to the serving staff, the serving staff shall then:

(1) Provide the inmate with a copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form; and

(2) Return the facility's copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form to the shift supervisor.

J. The shift supervisor shall, upon receipt of the Notice of Inmate Rule Violation and Disciplinary Hearing form, review the Notice of Inmate Rule Violation and Disciplinary Hearing form and:

(1) Ensure that the service process of the Notice of Inmate Rule Violation and Disciplinary Hearing form has been completed;

(2) Ensure that the content of the Notice of Inmate Rule Violation and Disciplinary Hearing form has not been altered by the defendant inmate; and

(3) Forward the Notice of Inmate Rule Violation and Disciplinary Hearing form to designated staff for data entry and scheduling the defendant inmate for an appearance before a hearing officer for a preliminary review of the Notice of Inmate Rule Violation and Disciplinary Hearing form.

## **.12 Prehearing and Hearing Procedures — Preliminary and Evidentiary Phase — Inmate Appearance or Waiver of Appearance Before a Hearing Officer.**

A. A defendant inmate [may elect to] referred by the shift supervisor for a formal hearing or who declined an offer of an informal resolution in lieu of a hearing for a rule violation charged shall appear before a hearing officer for a preliminary review of the Notice of Inmate Rule Violation and Disciplinary Hearing form.

B. [If a defendant inmate elects to appear before a hearing officer, the warden, or a designee, responsible for scheduling the hearing for the defendant inmate shall schedule the hearing to take place within 7 days of the date the initial investigation of the inmate rule violation and the notice of inmate rule violation and disciplinary hearing report are completed] A defendant inmate shall appear before the hearing officer for a preliminary review of the rule violations charged within 7 business days after the date when the following events have concluded in the specified order:

(1) The investigation of the reported event and misconduct is completed;

(2) The Notice of Inmate Rule Violation and Disciplinary Hearing form is completed; and

(3) The Notice of Inmate Rule Violation and Disciplinary Hearing form is reviewed by a shift supervisor.

C. For the purposes of this chapter, the date of the shift supervisor's review when the rule violation to be charged is determined shall be considered the date of the defendant inmate's rule violation.

D. Good cause shall justify the delay of the defendant inmate's timely appearance and, in such a case, staff shall:

(1) Schedule the inmate's appearance as soon as circumstances permit;

(2) Make a record of the cause that delayed the appearance; and

(3) *Provide the reason for the delay if raised at the inmate's hearing.*

E. *The hearing officer shall determine whether a cited cause justified a delayed appearance.*

[C.] F. A defendant inmate [may voluntarily waive the right to appear at a hearing and rights associated with the conduct of a hearing.] *who willfully fails or voluntarily elects not to appear before a hearing officer for a preliminary review or hearing shall be:*

(1) *Deemed to have waived an appearance before the hearing officer and the process provided for the conduct of a preliminary review and hearing; and*

(2) *Heard on the rule violation charged in the inmate's absence.*

[D.] G. For a voluntary waiver under this regulation, the following apply:

(1) The defendant inmate shall use the waiver of appearance form to communicate *to the hearing officer* the defendant inmate's waiver of appearance *at the preliminary review or a hearing* [to the hearing officer];

(2) Upon receipt of the waiver of appearance form, the hearing officer shall determine if the defendant inmate has properly waived [the right to appear] *an appearance at the preliminary review or* [a hearing];

(3) (text unchanged)

(4) After determining the defendant inmate has [properly] waived [the right to appear] *an appearance at the preliminary review or a hearing*, the hearing officer shall:

(a) [Shall conduct] *Conduct a hearing on the rule violation charged* [the case without] *and consider the evidence presented by the facility representative without the presence of the defendant inmate* [present at the hearing];

(b) [Shall make] *Make fact findings and* a decision based on the [facts and] evidence presented; and

(c) [May impose the appropriate] *Impose a sanction or sanctions if finding that a rule violation occurred.*

[E.] H. (text unchanged)

[F.] I. [A] *The hearing officer may determine that the defendant inmate waived* [the right to appear] *an appearance at or participation in the preliminary review or hearing* [at a hearing and other hearing rights] if the defendant inmate:

(1) (text unchanged)

(2) Willfully delays or [does not] *fails to appear* [at the hearing];

(3) (text unchanged)

(4) Violates security procedures for escort to the *preliminary review or hearing location*;

(5) [Once in the hearing room, voluntarily leaves the hearing before a decision of the case] *Elects to leave the preliminary review or hearing prior to conclusion of the proceedings*;

(6) Becomes disruptive [in the hearing area];

(7) Exhibits behavior that is a safety issue for those in the hearing room;

[(8)] (7) [Becomes a security or safety threat at the hearing] *Poses a threat to the safety or security of the facility or others*; or

[(9)] (8) Is involuntarily removed at the direction of the hearing officer or under the authority of [the correctional] staff because of conditions under [§F(6)—(8)] *§I(6)—(7)* of this regulation.

[G.] J. If the defendant inmate is [on] *assigned to mental health* [status] *housing* and the hearing officer has been advised that the defendant inmate has waived [rights to a hearing] an appearance, the hearing officer shall:

(1) (text unchanged)

(2) Postpone the *preliminary review or hearing if the competence of the inmate to make a waiver is in question* and require the facility to conduct and document a mental health prehearing

assessment for [consideration by] *the consideration of the hearing officer when the* [hearing] *proceeding is reconvened*; and

(3) [If, at the time the hearing is reconvened, the record of the mental health prehearing assessment is provided and the defendant inmate refuses to appear, determine the competency of the defendant inmate according to Regulation .18 of this chapter before proceeding with the hearing without the inmate present at the hearing] *Determine the competence of the defendant inmate in accordance with Regulation .18 of this chapter and proceed with the preliminary review or hearing without the presence of the inmate if the:*

(a) *Record of the mental health prehearing assessment is provided and the inmate is deemed competent*; and

(b) *Defendant inmate still refuses to appear.*

### **.13 Prehearing Procedures — Preliminary Phase—Dismissing a Charge of an Inmate Rule Violation.**

A. *A hearing officer may only dismiss a rule violation charged under the procedures established in this regulation.*

B. *Procedural Error. If the defendant inmate raises a time requirement or procedural violation by staff under this chapter or Department or Division of Correction directive and requests the rule violation charged be dismissed, a rule violation may only be dismissed if the hearing officer finds:*

(1) *A time requirement or procedure established in this chapter for the hearing process has been denied the inmate*;

(2) *The denial is not based on good cause*; and

(3) *The defendant inmate has demonstrated that the denial has substantially harmed the inmate's ability to make a case presentation as to the rule violation charged.*

C. *Failure to Substantiate a Rule Violation Charge.*

(1) *The hearing officer on review of a Notice of Inmate Rule Violation and Disciplinary Hearing form may only dismiss the rule violation charged if:*

(a) *The facts as stated in the report section of the Notice of Inmate Rule Violation and Disciplinary Hearing form considered in the light most favorable to the facility*; and

(b) *Reasonable inferences resulting from those facts do not support a finding that the defendant inmate has committed the rule violation.*

(2) *The hearing officer shall inform the hearing participants of the dismissal of, or denial of a dismissal for, a rule violation charged.*

D. *Technical Error.*

(1) *A non-evidentiary defect or error in the Notice of Inmate Rule Violation and Disciplinary Hearing form may not support a dismissal of the rule violation charged under this regulation.*

(2) *Examples of a defect or error may include, but are not limited to a:*

(a) *Rule violation number*;

(b) *Date or time reference*;

(c) *Defendant inmate's Department or Division of Correction identification number or name*; or

(d) *Signature of reporting staff.*

(3) *The defect or error shall be corrected by the hearing officer returning the Notice of Inmate Rule Violation and Disciplinary Hearing form to the facility representative or staff for correction.*

(4) *After correction, facility staff shall serve the corrected Notice of Inmate Rule Violation and Disciplinary Hearing form on the defendant inmate and schedule the inmate for an appearance before the hearing officer.*

(5) *The defect or error in a Notice of Inmate Rule Violation and Disciplinary Hearing form and the required return of the Notice of Inmate Rule Violation and Disciplinary Hearing form for correction shall be considered good cause for delay of the service of the Notice of Inmate Rule Violation and Disciplinary Hearing form and appearance of the defendant inmate before the hearing officer.*

*E. Absence of the Shift Supervisor's Review.*

(1) *The absence of a shift supervisor's review on the Notice of Inmate Rule Violation and Disciplinary Hearing form may not support a dismissal of the rule violation charged under this regulation.*

(2) *In the absence of a shift supervisor's review, the hearing officer shall return the Notice of Inmate Rule Violation and Disciplinary Hearing form to the facility representative or staff in accordance with the procedures of Regulation .17 of this chapter.*

(3) *The return of a Notice of Inmate Rule Violation and Disciplinary Hearing form to facility staff for a review by a shift supervisor shall be considered good cause for delay of the service of the Notice of Inmate Rule Violation and Disciplinary Hearing form and appearance of the defendant inmate before the hearing officer.*

*F. Failure to Serve the Defendant Inmate the Notice of Inmate Rule Violation and Disciplinary Hearing form.*

(1) *If raised by the defendant inmate during a preliminary review, the hearing officer shall determine if the facility staff have complied with service process.*

(2) *The hearing officer may rely on the defendant inmate's presentation regarding the claim of not being served, the written record of service if stated on the Notice of Inmate Rule Violation and Disciplinary Hearing form, or a rebuttal presentation by the facility representative in determining whether there was compliance by facility staff with the service process.*

(3) *The failure of the defendant inmate to be served a copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form prior to the inmate's appearance before the hearing officer may not support a dismissal under the procedures of this regulation.*

(a) *If the hearing officer determines a Notice of Inmate Rule Violation and Disciplinary Hearing form was not served on the defendant inmate, the hearing officer may refer the matter to facility staff in accordance with the procedures under Regulation .17 of this chapter; or*

(b) *If the defendant inmate waives service in writing, the hearing officer shall proceed with the preliminary review.*

(4) *The failure of staff to serve a copy of the Notice of Inmate Rule Violation and Disciplinary Hearing form on a defendant inmate shall be considered good cause for delay of the service of the Notice of Inmate Rule Violation and Disciplinary Hearing form and appearance of the defendant inmate before the hearing officer.*

**.15 Prehearing and Hearing Procedures — Preliminary and Evidentiary Phase — Written Record and Audio Recording [Requirement].**

A. [Written Record.] The hearing officer shall produce a written record [of] *that summarizes a hearing for each case [before] heard by the hearing officer.*

B. Audio Recording.

(1) Except [for the provisions under] *as provided in §B(3) of this regulation, the hearing officer shall:*

(a) (text unchanged)

(b) Document each case [recorded on the disciplinary proceedings tape log] *on the audio recording of a hearing that includes the:*

(i) *Defendant inmate's name and commitment number;*

(ii) *Date and time of hearing;*

(iii) *Name of the facility; and*

(iv) *Name of the hearing officer of record.*

(2) The absence of audio recording equipment [does not] *shall preclude conducting a hearing.*

(3) Under the conditions specified in §B(2) of this regulation, the hearing officer shall:

(a) (text unchanged)

[(b) Offer the defendant inmate the option of:

(i) Continuing without the audio recording;

(ii) Postponing the proceeding until it can be audio recorded; and

(c) If the defendant inmate:

(i) Elects to proceed without the audio recording, request that the defendant inmate sign a waiver and include the signed waiver in the written record of the hearing; or

(ii) Refuses to waive the audio recording or refuses to sign a waiver, postpone the hearing until it can be audio recorded and document the postponement.]

(b) *Postpone the case; and*

(c) *Advise the facility staff to reschedule the defendant inmate's appearance before a hearing officer when circumstances permit.*

(4) *The postponement of a facility disciplinary case due to an inability to audio record a preliminary review or hearing:*

(a) *May not support the dismissal of the facility disciplinary case; and*

(b) *Shall be considered good cause for the delay of the defendant inmate's appearance before the hearing officer or a hearing.*

**.16 Prehearing and Hearing Procedures — Preliminary and Evidentiary Phase — Informal Disposition or Reduction to Incident Report.**

A. *The hearing officer may only offer the defendant inmate an informal disposition for a Category IV rule violation or Category V rule violation charge in accordance with the procedures under Regulation .06 of this chapter.*

B. *The hearing officer may only offer the defendant inmate a reduction to incident report for a Category IV rule violation or Category V rule violation charge in accordance with the procedures under Regulation .06 of this chapter.*

**.17 Hearing Procedures — Preliminary Phase — Objection to Notice of Inmate Rule Violation and Disciplinary Hearing [Report] Form.**

A. [The hearing officer shall review the notice of inmate rule violation and disciplinary hearing report with the hearing participants.] *Only during the preliminary review of the Notice of Inmate Rule Violation and Disciplinary Hearing form, may a hearing officer consider an objection by a hearing participant to the Notice of Inmate Rule Violation and Disciplinary Hearing form.*

B. *The hearing officer may only consider an objection that is raised in accordance with the procedures of this regulation.*

C. *The hearing officer may permit a hearing participant an opportunity to comment on the merits of the objection.*

D. *The hearing officer, when weighing the merits of the objection, may:*

(1) *Consider a citation by a participant from a procedure of a regulation under this chapter or Department or Division of Correction directive; and*

(2) *Not consider a reference to a legal authority or other authority when reaching a decision regarding the merits of the objection.*

E. *The hearing officer shall be the arbiter in determining the merits of the objection.*

[B.] F. [Objections] *An objection with respect to the [notice of inmate rule violation and disciplinary hearing report are] Notice of Inmate Rule Violation and Disciplinary Hearing form shall be limited to [claims that:] the procedures under Regulation .13 §§D(1)—(4) and F(1)—(4) of this chapter.*

[(1) The notice of inmate rule violation and disciplinary hearing report form was not served;

(2) There is an error in the format or completion of the notice of inmate rule violation and disciplinary hearing report form that is not deemed a minor defect under Regulation .13 C(2) of this chapter; or

(3) The alleged inmate rule violation charged is incorrect.

C. If an issue under §B of this regulation is raised and not resolved, the hearing officer shall:

(1) Postpone the case;

(2) Refer the matter to the appropriate facility or staff member for resolution; and

(3) Notify the facility to reschedule the hearing upon resolution of the identified issues.]

**.18 Prehearing and Hearing Procedures—Preliminary and Evidentiary Phase — Special Needs Inmate.**

A. A special needs inmate is an inmate with a condition that may be due to:

(1) Mental health;

(2) A hearing or speech impairment;

(3) English language proficiency; or

(4) Illiteracy.

B. Mental Health Condition.

(1) If the defendant inmate's behavior indicates that the inmate may not be competent to participate in a preliminary review or hearing, the defendant inmate shall be referred by the hearing officer or facility representative or staff to mental health staff to assess the inmate's mental health status.

(2) The mental health staff shall:

(a) Conduct an assessment to determine the defendant inmate's ability to participate in the proceedings;

(b) Document the assessment; and

(c) Forward the assessment to the hearing officer.

(3) If the mental health pre-hearing assessment indicates that the defendant inmate is not competent to participate in the proceedings, the hearing officer:

(a) Shall postpone the proceedings;

(b) May consult with the mental health staff without hearing participants present; and

(c) Shall direct the facility representative or staff to reschedule the proceedings after notification that the mental health staff has determined the defendant inmate to be competent to participate.

(4) If the mental health prehearing assessment indicates that the defendant inmate is competent to participate in the proceeding, the hearing officer may:

(a) Proceed with the preliminary review or hearing; or

(b) Postpone the proceedings if:

(i) The hearing officer determines that, with due consideration of the assessment, the inmate's behavior at the proceedings indicates that the inmate is not competent to participate in the proceedings in which case the hearing officer shall state on the record the specific basis for that determination; or

(ii) The defendant inmate requires additional time to prepare for the proceedings.

(5) If the defendant inmate is determined to be competent to participate in a preliminary review or hearing, the hearing officer shall proceed with the preliminary review or hearing.

(6) If the hearing officer, at a hearing, finds the inmate guilty of the rule violation charged, the hearing officer may consider the inmate's competency at the time of the rule violation as a mitigating circumstance when determining the sanction.

C. Hearing or Speech Condition.

(1) If a defendant inmate, claiming to have or is identified as having a hearing or speech condition affecting the inmate's ability to participate in the proceedings, appears before the hearing officer

without a sign language interpreter, the hearing officer shall postpone the proceedings.

(2) If it cannot be verified at the proceedings that the inmate has a hearing or speech condition affecting the inmate's ability to participate in the proceedings, the hearing officer shall direct the facility representative or staff to consult with medical staff to determine if the inmate has such a hearing or speech condition.

(3) When the hearing officer determines that the inmate has a hearing and or speech condition described under §C(2) of this regulation, the hearing officer shall instruct the facility representative or staff to arrange for a sign language interpreter.

(a) If the State has a contract with a vendor to provide sign language interpreter services, only an interpreter provided through that vendor may assist the inmate at the proceedings.

(b) In the absence of a contract as specified in §C(3)(a) of this regulation or if a sign language interpreter is not available through the vendor, staff authorized by the Commissioner, or a designee, may act as the sign language interpreter.

(c) An inmate may not act as the interpreter.

(4) After making arrangements for a sign language interpreter, the facility representative or staff shall reschedule the inmate's appearance before the hearing officer.

D. Language.

(1) If a defendant inmate, who requests or is identified by staff as needing a language interpreter, appears before the hearing officer without an interpreter, the hearing officer shall postpone the proceedings.

(2) If it cannot be verified at the proceedings that because of an inability or limited ability to communicate in English the inmate needs a language interpreter to participate in the proceedings, the hearing officer shall direct the facility representative or staff to consult with the facility case management program to assist in determining the inmate's English language limitations.

(3) When the hearing officer determines that a language interpreter is needed, the hearing officer shall instruct the facility representative or staff to arrange for an interpreter and postpone the proceeding.

(a) If the facility has staff who are proficient in the language of the defendant inmate, the warden, or a designee, may assign that staff to act in the capacity of the defendant inmate's language interpreter at the hearing.

(b) In the absence of staff who may act as an interpreter, the facility shall contact the vendor contracted by the State to provide an interpreter.

(c) An inmate may not act as the interpreter.

(4) After arranging for a language interpreter, facility staff shall reschedule the inmate's appearance before the hearing officer.

E. Illiteracy.

(1) If a defendant inmate, who claims to be or is identified as being illiterate, appears before the hearing officer without representation, the hearing officer shall postpone the proceedings.

(2) If the facility representative or staff cannot verify at the proceedings that the inmate is illiterate, the hearing officer shall direct the facility representative or staff to consult with the facility's education program staff to determine if the inmate has an inability to read or write that would affect the inmate's ability to participate in the proceedings.

(3) If the hearing officer determines that the inmate has an inability or limited ability to read or write that would affect the inmate's ability to participate in the proceedings, the hearing officer shall direct the facility representative or staff to arrange representation for the inmate in accordance with the Regulation .19 of this chapter.

(4) After making arrangements for representation, facility staff shall reschedule the inmate's appearance before the hearing officer.

F. The hearing officer may grant a special needs defendant inmate additional time or greater procedural latitude to:

- (1) Prepare a case presentation before a hearing;
- (2) Request representation or a witness; or
- (3) Address other specific issues affected by the special needs of the inmate.

G. The delay or denial of a time requirement or procedure in accordance with this chapter due to the special needs of the defendant inmate shall be deemed good cause for that delay or denial and may not support a dismissal of a rule violation charged.

**.19 Prehearing and Hearing Procedures—Preliminary and Evidentiary Phase — Representation Request.**

A. A defendant inmate may request representation to assist the inmate during the preliminary review and case presentation phase of the inmate's hearing.

B. A defendant inmate's representation request shall be:

- (1) Made timely by the defendant inmate; and
- (2) In accordance with the procedures of this chapter.

C. A warden, or a designee, may designate a facility staff member under Regulation .08 of this chapter to act as a facility representative at the facility's defendant inmate preliminary reviews and hearings.

D. Inmate Representation Request.

(1) When served with the Notice of Inmate Rule Violation and Disciplinary Hearing form and requesting representation for a preliminary review or hearing, the defendant inmate shall list the name of the inmate's requested representative in the section designated on the Notice of Inmate Rule Violation and Disciplinary Hearing form for the name of a representative.

(2) The defendant inmate's failure to list by name a requested representative on the Notice of Inmate Rule Violation and Disciplinary Hearing form under §D(1) of this regulation, shall be considered a waiver by the defendant inmate of representation.

E. Upon the appearance of the defendant inmate at a preliminary review or hearing proceeding, the hearing officer shall review the defendant inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form to determine if the:

- (1) Inmate has requested representation; and
- (2) Request is in accordance with the procedures of this chapter.

F. Inmate representation is voluntary on the part of the requested individual and a request does not obligate that individual to appear at a proceeding.

G. If a requested individual declines to act as a defendant inmate's representative, a hearing officer may not compel that individual to appear or act in the capacity as the inmate's representative.

H. A hearing officer shall only permit an individual to appear as a representative for a defendant inmate who is either:

- (1) An inmate assigned to the general population of the facility where the proceeding is to be held; or
- (2) A staff member employed at the facility where the proceeding is to be held.

I. A hearing officer may not permit an individual to appear as a representative for a defendant inmate who is:

- (1) The facility warden, assistant warden, chief of security, or shift commander or supervisor;
- (2) Banned as a representative by the Commissioner, or a designee, or warden, or a designee;
- (3) Identified by security staff as a security or safety risk;
- (4) Serving a sentence of death;
- (5) Assigned to disciplinary or administrative segregation, cell restriction, protective custody, or mental health housing; or
- (6) In a location where staff escort or vehicular transportation to the proceeding is required.

J. A hearing officer shall, unless prohibited by a reason of security or safety, inform the hearing participants of the reason when denying a requested representative.

K. If a defendant inmate has failed to request representation on the Notice of Inmate Rule Violation and Disciplinary Hearing form and subsequently at an appearance before a hearing officer requests representation, the hearing officer may elect to waive §D(2) of this regulation and permit the representation request only if:

- (1) The requested individual qualifies under §F and §G of this regulation;
- (2) The requested individual is present at the location of the proceeding;
- (3) A postponement for case presentation preparation is not required; and
- (4) The defendant inmate is prepared to participate in the proceeding.

L. If a defendant inmate has requested representation in accordance with the procedures of this regulation, but the requested individual declines to accept the request and the inmate then requests the opportunity to obtain other representation, a hearing officer may:

- (1) Permit the inmate a one calendar day postponement to obtain other representation;
- (2) Not grant the inmate a subsequent postponement after an initial postponement if representation could not be obtained; or
- (3) Deny a postponement to obtain other representation and proceed with the proceeding.

M. A requested individual who appears as a defendant inmate's representative is obligated to remain as a participant in the preliminary review and hearing until the conclusion of the proceeding.

N. If the defendant inmate's representative, in the course of the proceeding, voluntarily refuses to continue as a representative in or is removed from the proceeding for a reason of conduct, security, or safety, the hearing officer shall:

- (1) Determine the defendant inmate has waived representation; and
- (2) Continue the proceeding without postponement to obtain other representation.

**.20 [Hearing] Prehearing Procedures — Preliminary Phase — Defendant Inmate Requests for Witnesses.**

A. — C. (text unchanged)

**.21 [Hearing] Prehearing Procedures — Preliminary Phase — Confidential Informants.**

A. — B. (text unchanged)

**.22 [Hearing] Prehearing Procedures — Preliminary Phase — Motions.**

A. [Hearing participants may present challenges through a motion alleging violation of the defendant inmate's rights or procedural aspects of the hearing process.] A hearing participant may only present a procedural challenge by means of a motion to the hearing officer during a preliminary review of a defendant inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form that is in accordance with the procedures established under this regulation.

B. A motion may only allege:

- (1) The violation of a pertinent time requirement or procedure of a regulation of this chapter;
- (2) The violation of a pertinent time requirement or procedure of a Department or Division of Correction directive; or
- (3) Insufficient evidence to substantiate a rule violation charged.

[B.] C. The hearing officer [shall]:

- (1) [Consider] Shall consider the [objection] motion;

(2) *Shall permit the hearing participants an opportunity to comment on the merits of the motion;*

(3) *When considering the merits of the motion, may:*

(a) *Consider a citation of a procedure under this chapter or Department or Division of Correction directive; and*

(b) *Not consider a reference to a legal authority or other authority when reaching a decision regarding the merits of a motion;*

[(2)] (4) *[Determine the relevance of the objection] Shall determine the merits of the motion; and*

[(3)] (5) (text unchanged)

**.23 [Hearing] Prehearing Procedures — Preliminary Phase — Postponement.**

A. — F. (text unchanged)

G. *A hearing officer may, with good cause and without the request of a hearing participant, postpone a case.*

**.24 [Hearing] Prehearing Procedures — Preliminary Phase— Review of Attachments.**

[A. When a defendant inmate is served with a notice of inmate rule violation and disciplinary hearing report the inmate is not entitled to review attachments at the time of service.]

[B.] A. [At the time] *When a defendant inmate appears before a hearing officer for the preliminary review of the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form, [the] a hearing officer, when security and safety permit, may provide [the] a defendant inmate an opportunity to review [attachments] an attachment and other evidence that may be submitted by the facility [to] with the [notice of inmate rule violation and disciplinary hearing report before hearing arguments concerning evidence or testimony on the case] Notice of Inmate Rule Violation and Disciplinary Hearing form.*

B. *An attachment may include, but is not limited to:*

(1) *Report;*

(2) *Document;*

(3) *Record;*

(4) *Form;*

(5) *Statement; and*

(6) *Photograph.*

C. [After] *If the defendant inmate is permitted to review [attachments] an attachment to the [notice of inmate rule violation and disciplinary hearing report] Notice of Inmate Rule Violation and Disciplinary Hearing form:*

(1) *If raised, the hearing officer may permit the hearing participants an opportunity to comment on the merits of the attachment or other evidence submitted by the staff;*

[(1)] (2) *If the defendant inmate is prepared to [begin the hearing] proceed, the hearing officer shall [conduct the disciplinary hearing] continue with the proceedings; or*

[(2)] (3) *If the defendant inmate is not prepared to [begin the hearing] continue with the proceedings because of issues with [the attachments] an attachment or other evidence submitted by the facility staff, the inmate may request [the hearing officer to postpone the hearing] a postponement of the proceedings to permit the defendant inmate [to] an opportunity to further prepare a case presentation for the hearing [based on the review of the attachments].*

[D.] (a) *If the defendant inmate makes a request under §[C(2)] C(3) of this regulation, the hearing officer may postpone the [hearing] proceedings [and the warden, or a designee, of the correctional facility responsible for scheduling disciplinary hearings shall reschedule the case to take place as soon as possible after the original date].*

(b) *When the proceedings are postponed to permit the defendant inmate additional time to prepare, facility staff shall reschedule the inmate's appearance for a hearing date when the circumstances permit.*

(c) *If the defendant inmate does not request a postponement, the hearing officer shall continue with the proceedings unless postponed by the hearing officer under Regulation .23G of this chapter.*

**.25 [Hearing] Prehearing Procedures—Preliminary Phase— Defendant Inmate Plea.**

A. — D. (text unchanged)

**.26 Prehearing and Hearing Procedures — Preliminary and Evidentiary Phase: Rules of Evidence Presentation.**

A. *A defendant inmate or facility representative may request evidence to present as part of a case presentation at a hearing.*

B. *A hearing officer shall deny a request for evidence or a witness otherwise qualified if security staff have reason to believe the evidence or witness poses a risk to facility security or safety.*

C. *A defendant inmate evidence request shall be:*

(1) *Made in a timely fashion by the defendant inmate; and*

(2) *In accordance with the procedures of this regulation.*

D. *Evidence Request.*

(1) *When served with a Notice of Inmate Rule Violation and Disciplinary Hearing form and if requesting evidence for a pending hearing, a defendant inmate shall list by name the requested evidence on the Notice of Inmate Rule Violation and Disciplinary Hearing form in the section of the Inmate Rule Violation and Disciplinary Hearing form designated for listing the evidence requested.*

(2) *The defendant inmate's failure to list the name of the requested evidence on the Notice of Inmate Rule Violation and Disciplinary Hearing form as enumerated in §D(1) of this regulation, shall be considered a waiver of that evidence by the defendant inmate.*

E. *Upon the appearance of a defendant inmate at a proceeding, a hearing officer shall review the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form to determine if a request for evidence has been made by the inmate and if that request is in compliance with the procedures of this regulation.*

F. *A hearing officer shall determine the relevancy and material value of the evidence requested and if there is a security or safety risk posed by permitting the evidence requested.*

G. *A hearing officer may allow the introduction of evidence at the hearing by a participant when security and safety permit and the request is in accordance with the procedures of this regulation.*

(1) *A hearing officer may not compel the production of evidence requested by a hearing participant.*

(2) *A hearing officer shall deny an evidentiary request deemed:*

(a) *Irrelevant;*

(b) *Immaterial;*

(c) *Cumulative; or*

(d) *A threat to safety or security.*

(3) *A hearing officer shall for a security and safety reason deny a request for evidence that includes, but is not limited to security:*

(a) *Documents;*

(b) *Records;*

(c) *Post orders;*

(d) *Emergency plans;*

(e) *Photographs;*

(f) *Video monitoring records;*

(g) *Equipment;*

(h) *Directives not authorized for review by an inmate;*

(i) *Testing equipment and supplies; or*

(j) *Confidential statements.*

(4) *A hearing officer shall, for a reason of security and safety, deny an evidence request for contraband that includes, but is not limited to:*

(a) *Tools;*

(b) *Drugs, medication, or alcohol;*



- (c) Weapons;
- (d) Controlled dangerous substance;
- (d) Cellular telephones;
- (e) Tobacco, or currency; or
- (f) Escape or drug paraphernalia.

(5) When a hearing officer determines the examination of security or contraband evidence is necessary, the hearing officer shall, in the presence of staff deemed necessary for security, conduct the examination without the presence of an inmate.

(6) When the hearing officer determines that the review of a video record is necessary, the hearing officer shall, in the presence of staff deemed necessary for security and the operation of the video equipment needed for the review, conduct the review without the presence of an inmate.

**H. Testimony.**

(1) A hearing participant may present witness testimony as an evidentiary presentation.

(2) A hearing participant is responsible, and not a hearing officer, to call a requested witness for the participant's case presentation.

(3) A hearing officer may call a witness to provide testimony or be questioned concerning:

- (a) Evidence presented;
- (b) A fact in evidence; and
- (c) A policy, procedure, or practice.

(4) A witness may not be compelled by a hearing officer to answer a question regarding testimony given.

(5) Only a defendant inmate representative, facility representative, or a hearing officer may question a witness giving testimony.

(6) In the absence of a representative, a defendant inmate may question a witness giving testimony.

(7) A hearing officer may limit the testimony and questioning of a witness consistent with:

- (a) The procedures in accordance with Regulation .20 of this chapter; or
- (b) Security and safety.

(8) If a witness, requested by a hearing participant, refuses to appear or testify, a hearing officer may not dismiss a rule violation charged for the failure of the witness to appear or testify.

I. When denying an evidentiary request, a hearing officer shall provide to the hearing participants an explanation for the denial, if security and safety permit.

J. A hearing officer may consider the defendant inmate's disciplinary conviction history or the lack thereof for each rule violation charged.

K. A hearing officer may not render a decision as to a rule violation charged based solely on a defendant inmate's disciplinary conviction history or the lack thereof for a rule violation charged.

L. Except for the Notice of Inmate Rule Violation and Disciplinary Hearing form, facility staff may not be required to provide, prior to a defendant inmate's appearance, the inmate with notification of the facility evidence to be presented as part of the facility case presentation at the hearing.

**.27 Hearing Procedures — Evidentiary Phase — Case Presentation.**

A. [The] At the conclusion of the preliminary review, a hearing officer shall determine if a defendant inmate and facility representative are prepared to proceed with a hearing and if prepared, the hearing officer shall [read] ensure that the rule violation report found in the [notice of inmate rule violation and disciplinary hearing report] Notice of Inmate Rule Violation and Disciplinary Hearing form, and attachments along with other related

documents or evidence submitted by the facility staff are read into or described for the hearing record.

B. A hearing participant may make a case presentation to a hearing officer that may include, but is not limited to:

- (1) An argument on the merits of the case;
- (2) Evidence in accordance with the procedures of Regulation .26 of this chapter; and
- (3) Challenges to and arguments regarding an evidentiary presentation.

**[B.] C. Facility Representative.**

(1) A facility representative may present:

- (a) Additional documents [relevant to the issues before] to the hearing officer that do not present a security risk;
- (b) (text unchanged)
- (c) [Testimonial evidence from witnesses approved] Testimony from a witness permitted by the hearing officer.

(2) — (3) (text unchanged)

**[C.] D. Defendant Inmate Presentation.**

(1) — (3) (text unchanged)

(4) The hearing officer may draw an adverse inference if the defendant inmate:

- (a) [does] Does not present a defense; or[.];
- (b) [after testifying, declines] Declines to respond to questioning by the hearing officer or the facility representative after testifying.

(5) If the defendant inmate is represented, only the inmate's representative may:

- (a) [present] Present the defendant inmate's case[.];
- (b) [examine] Examine evidence[.]; or
- (c) [question] Question a witness.

(6) If the defendant inmate is not represented, the defendant inmate may:

- (a) [present] Present the defendant inmate's case[.];
- (b) [examine] Examine evidence[, and]; or
- (c) [question] Question a witness.

(7) The defendant [inmate's use of a witness is limited to the witnesses] inmate may call a requested witness only if:

- (a) The [requested] request was made in accordance with the procedures of Regulation .20 of this chapter [on the notice of inmate rule violation and disciplinary hearing report]; and
- (b) [approved by the] The hearing officer permits the request.

(8) The defendant inmate may present evidence requested on the Notice of Inmate Rule Violation and Disciplinary Hearing form and permitted by the hearing officer.

[(8)] (9) The presentation by, or on behalf of, the defendant inmate is subject to the provisions established for the facility's presentation under [§B] §C of this regulation.

E. The hearing officer may use a conference call for the purpose of taking testimony by a witness.

- (1) When there is a concern for security or safety, testimony shall be taken by conference call.
- (2) The testimony of a witness requiring vehicular transport or staff escort to the hearing location may be taken by conference call.
- (3) For reasons of security and safety, a witness not identified as staff or an inmate shall testify by use of a conference call.
- (4) The hearing officer shall advise an individual giving testimony by conference call that the testimony is being audio recorded.

**[D.] F. Rebuttal and Closing Arguments.**

(1) The hearing officer shall provide the facility representative an opportunity to [offer evidence to] rebut the evidence presented by, or on behalf of, the defendant inmate.

(2) The hearing officer [shall] may provide the facility representative and the defendant inmate's representative or, if not

represented, the defendant inmate, an opportunity for a closing presentation.

G. *The hearing officer shall advise the hearing participants when deciding to close the evidentiary record.*

H. *Before closing the evidentiary record, the hearing officer may inquire if the hearing participants have any other matter to be considered and if raised by a hearing participant provide the hearing participants an opportunity to present an evidentiary matter not previously presented or considered.*

### **.30 Post Hearing Procedures — Case Record.**

A. Upon concluding a hearing, the hearing officer shall issue a written decision that includes:

(1) *A statement of the credible evidence relied on;*

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

[(2)] (3) The verdict for each [charge of an inmate] rule violation charged; and

[(3)] (4) The [sanctions, if applicable] *sanction for each rule violation with a guilty decision.*

B. [The hearing officer shall ensure that the staff at the defendant inmate's facility is notified to serve the defendant inmate with a copy of the hearing officer's written decision within 3 workdays of the completion of the hearing] *Facility staff shall serve the defendant inmate with a copy of the hearing officer's written decision within 3 business days following the date of a hearing officer's decision.*

C. If [the] a facility representative presents the facility's case, the facility representative shall follow [procedures] *the process established by the warden, or a designee, of the defendant inmate's facility for distribution of the hearing disposition that [include] includes:*

(1) — (2) (text unchanged)

D. [Written Records] *Inmate Case Record.*

(1) [Except for a case resulting in a not guilty decision, records related to a hearing, dismissal, and informal disposition shall be placed in the defendant inmate's base file] *An inmate's case record shall include the following information, if applicable, for a defendant inmate's disciplinary case:*

(a) *A guilty decision;*

(b) *A not guilty decision;*

(c) *A dismissal of the rule violation charged; and*

(d) *An informal resolution.*

(2) The defendant inmate's [base file] *case record shall [contain a record of] include the date and disposition of the hearing.*

(3) [Records] *A case record related to inmate discipline may be reviewed by:*

(a) (text unchanged)

(b) [Authorized individuals] *An individual authorized by statute; and*

(c) (text unchanged)

E. Audio Recordings.

(1) *The primary purpose for an audio recording of a hearing is for the use of the Department or Division of Correction in the conduct of the Agency's business and may not be considered a right, interest, benefit, or entitlement for a defendant inmate.*

[(1)] (2) The [hearing officer] *inmate hearings program shall ensure that:*

(a) [A] *The recording of a hearing is maintained [in a secure location for 5 years from the date of the final decision of the case] according to the records retention schedule; and*

(b) Access to [the hearing] *an audio recording [storage] is restricted.*

[(2)] (3) A copy of [a hearing] *an audio recording may be requested as provided under COMAR 12.11.02.*

[(3)] (4) A copy of [a hearing] *an audio recording may not be denied [and] or a fee [may not be] charged to a representative of:*

(a) — (f) (text unchanged)

### **.31 Post Hearing Procedures — Warden's Review.**

A. Review by the Warden.

(1) *The warden, or a designee, shall review a guilty, not guilty, and dismissal hearing decision and may review an informal disposition or incident report reduction hearing decision.*

(2) *The warden, or a designee, shall:*

(a) *Document the review; and*

(b) *Sign the document of review as the reviewing authority.*

(3) *Except as provided under §A(4) of this regulation, the warden, or a designee:*

(a) *May not review a hearing decision until the lapse of 15 calendar days from the date the inmate received a hearing officer's decision;*

(b) *May initiate an immediate review if receiving an appeal by a defendant inmate of a hearing officer's decision or sanction impose; or*

(c) *May initiate an immediate review of a sanction imposed, regardless of the time or procedural requirement of this regulation, if the intent is to modify by reduction that sanction.*

(4) *A warden, or a designee, may conduct an immediate review when a hearing disposition results in:*

(a) *Dismissal of the rule violations charged;*

(b) *Reduction to an incident report;*

(c) *An informal disposition; or*

(d) *A not guilty decision.*

(5) *A warden, or a designee, shall complete the review of a disciplinary case by the 30th calendar day following the date the defendant inmate received the hearing officer's decision.*

(6) *A warden, or a designee, may remand a hearing officer's decision to the hearing officer for clarification by the hearing officer, in writing, regarding:*

(a) *Hearing procedures;*

(b) *Evidence considered;*

(c) *Findings of fact;*

(d) *Hearing decision; and*

(e) *Sanctions imposed or not imposed.*

(7) *The time requirement and procedures for the warden's review enumerated in this regulation shall be suspended pending the review by the hearing officer of a warden's remand of a decision for clarification and not to resume until the warden receives the hearing officer's written response.*

(8) *A warden, or a designee, may appeal a hearing officer's decision to the Commissioner, or a designee, with a recommendation that the decision be reversed and the disciplinary case remanded for a new hearing.*

(a) *The time period and procedures for the warden's review enumerated in this regulation shall be suspended pending the review of a warden's, or a designee's, remand request appeal by the Commissioner, or a designee; and*

(b) *Resume on the date the Commissioner's, or a designee's, written decision is received by the warden, or a designee.*

B. Actions.

(1) *When reviewing a hearing officer's decision, the warden, or a designee:*

(a) *May not weigh the merits of the evidence in the record to reconsider the hearing officer's findings of fact;*

(b) *May not substitute judgment for that of the hearing officer as to findings of fact for the case under review;*

(c) *Shall review the evidence in the record and determine whether a reasonable-minded individual could have reached the decision rendered by the hearing officer in the hearing; and*

(d) Shall consider an alleged procedural violation identified in an appeal by a defendant inmate, facility representative, or staff member and determine whether the hearing was in compliance with the procedural requirements of this chapter.

(2) A warden, or a designee, conducting a review under this regulation, and without explanation, may:

(a) Reduce a sentencing matrix, alternative, credit revocation, or informal disposition sanction period regardless of a sanction period procedurally imposed in accordance with a regulation of this chapter;

(b) Impose an additional informal or alternative sanction regardless of sanctions and periods imposed by the hearing officer;

(c) Affirm the hearing officer's decision and or sanction imposed;

(d) Vacate the decision and sanction imposed and reduce a rule violation charged to an incident report;

(e) Affirm a decision, but modify the sanction imposed by:

(i) Reducing a sanction period to less than a period specified by a hearing officer or adjustment history sentencing matrix procedure under a regulation of this chapter;

(ii) Increasing a sentencing matrix sanction incorrectly imposed or impose an additional alternative sanction; or

(iii) Vacating or modifying an informal disposition; or

(f) Recommend to the Commissioner, or a designee, the remand of the case if a hearing officer's decision:

(i) Is arbitrary or capricious;

(ii) Is based on clearly erroneous findings of fact;

(iii) Is based on an erroneous interpretation of a policy, time requirement, or procedure;

(iv) Relies on evidence presented through fraud or misrepresentation; or

(v) Was made without evidence that should have been considered at the hearing by the hearing officer, but was not or had not been considered or presented during the course of the hearing.

#### C. Notification of the Defendant Inmate.

(1) Staff shall serve the completed warden's or designee's review documentation on the defendant inmate by the 30th calendar day following the date on which the hearing officer's decision was served on the defendant inmate.

(2) If the review form is not received by the defendant inmate on the 30th calendar day, the:

(a) Review process is complete; and

(b) Hearing officer's decision and sanction affirmed.

### .32 Post Hearing Procedures — Rehearing a Case.

A. Only the Commissioner, or a designee, may remand a defendant inmate disciplinary case for a new hearing.

B. The warden, or a designee, may without regard for a time requirement or procedure of a regulation of this chapter appeal to the Commissioner, or a designee, a hearing officer's decision, that may include a decision previously reviewed and affirmed by a warden.

[A.] C. [The] A warden, or a designee, may [reexamine] refer a hearing officer's decision [under review and] to the Commissioner, or a designee, with a recommendation for a remand [the case] if there is [just] cause to question the decision, regardless of [limitations stated elsewhere in this chapter] a time requirement or procedure of this chapter.

(1) The recommendation shall include the cause for the remand that is in accordance with Regulation .31B(2)(f) of this chapter.

(2) When forwarded to the Commissioner, or a designee, the appeal shall include copies of the hearing documents and related records for the case under appeal.

[B. The warden, or a designee, remanding a case shall forward the warden's decision to remand the case to the Commissioner, or a designee, for review and approval.]

[C.] D. If the Commissioner, or a designee, does not approve the warden's [decision] recommendation to remand the case for a new hearing:

(1) The Commissioner, or a designee, shall notify the warden that the hearing officer's original action is affirmed; and

(2) (text unchanged)

[D.] E. If the Commissioner, or a designee, approves the warden's [decision] recommendation to remand the case for a new hearing, the Commissioner, or a designee, shall notify the warden [of the affirmation].

[E.] F. (text unchanged)

#### G. Rehearing Procedure.

(1) The time requirements and procedures that are in accordance with this chapter for investigation, drafting and service of the Notice of Inmate Rule Violation and Disciplinary Hearing form, and the defendant inmate's appearance before the hearing officer are suspended for the process of a remanded hearing.

(2) Staff shall serve a defendant inmate with notification advising the inmate of the order that the Commissioner, or a designee, Secretary, or a court has remanded the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form for a new hearing.

(3) When serving the notice of a remand order on the defendant inmate, staff shall provide the inmate with a copy of the inmate's Notice of Inmate Rule Violation and Disciplinary Hearing form that is the basis for the rehearing order within 7 business days of the date a warden, or a designee, received notification of the order to rehear the case.

H. When the defendant inmate is served with the [review by warden form] completed notice of a remanded hearing order indicating that the [warden] Commissioner, or a designee, the Secretary, or a court has remanded the case for a new hearing, the defendant inmate shall:

(1) Indicate on the [review by warden form] notice of a remanded hearing order in the designated section a request by name for representation, [or] witnesses, or evidence for the inmate's remanded hearing; and

(2) Be provided a copy of the original [notice of inmate rule violation and disciplinary hearing report and related documents to be used in connection with the remanded case] Notice of Inmate Rule Violation Disciplinary Hearing form that is the basis of the remanded hearing order.

(3) A failure to list representation, a witness, or evidence by name on the notice of a remanded hearing order shall constitute a waiver of representation, a witness, or evidence by the defendant inmate for the rehearing.

(4) After service on a defendant inmate of both a copy of the notice of a remanded hearing order and the inmate's Notice of Inmate Rule Violation Disciplinary Hearing form that is the basis of the rehearing, the inmate shall be scheduled to appear before a hearing officer within 7 business days following the date the inmate received the notice of a remanded hearing order.

I. Once the remanded hearing is completed and if a warden disagrees with the decision of the hearing officer, the warden may not appeal the decision under the procedures of this regulation.

J. The warden may appeal a remanded hearing decision to the Commissioner, or a designee, in accordance with the procedures under Regulation .34 of this chapter.

**.33 Post Hearing Procedures — Appeal.**

A. Appeal to the Warden—Defendant Inmate.

(1) A defendant inmate may only appeal a hearing officer's guilty decision or [related] imposed sanction [resulting from a hearing].

(2) — (5) (text unchanged)

B. (text unchanged)

C. *The inmate appeal process under this chapter shall be considered concluded on the 30th calendar day following the date the inmate was served the hearing officer's decision.*

D. *A defendant inmate who elects to appeal a warden's affirmation of a hearing officer's decision or sanction in the inmate's disciplinary case may file an appeal to the Inmate Grievance Office as provided under COMAR 12.07.01.05 and .06C.*

**.34 Post Hearing Procedures — Review by the Commissioner.**

A. (text unchanged)

B. [A] *Without regard for a time requirement or procedure established under this chapter, a disciplinary case or hearing officer decision may be reviewed by the Commissioner, or a designee [including a case previously remanded by the warden for a new hearing that was rejected by the hearing officer].*

C. The Commissioner, or a designee, without regard for [procedures] a procedure or time [limits] requirement established under this chapter, may take [appropriate] an action, [including] that includes, but is not [necessarily] limited to:

(1) Remanding a decision for a [rehearing] new hearing or other action;

(2) Modifying or vacating a sanction;

(3) — (5) (text unchanged)

**.35 Adjustment History Sentencing Matrix.**

A. *The adjustment history sentencing matrix shall specify the disciplinary segregation or credit revocation penalties that may be imposed as sanctions on a defendant inmate found guilty of an inmate rule violation.*

B. *When a segregation and or credit revocation sanction is imposed, the imposition shall be according to the procedures for the adjustment history sentencing matrix.*

C. *The process of determining a sanction for imposition on a defendant inmate shall be based on identifying the appropriate sanction cell in the adjustment history sentencing matrix in which the sanction is found.*

D. *A hearing officer shall determine an appropriate sanction cell by using the defendant inmate's category of rule violation and adjustment history specified by the adjustment history sentencing matrix.*

E. *Category of Inmate Rule Violation. The categories of inmate rule violations shall be stated in the adjustment history sentencing matrix by the classification of inmate rule violations enumerated in Regulation .04 of this chapter.*

F. *Classification of Sanction. A sanction plotted in a sanction cell of the adjustment history sentencing matrix may be stated as either:*

(1) *Optional and may be imposed; or*

(2) *Mandatory and shall be imposed.*

G. *Severity of Sanction. The severity of a sanction plotted in a sanction cell is determined by:*

(1) *The category of a defendant inmate's rule violation; and*

(2) *The adjustment history of the defendant inmate.*

H. *When a defendant inmate is convicted of an inmate rule violation, a hearing officer shall:*

(1) *Review the adjustment history sentencing matrix;*

(2) *Identify the category of the inmate's rule violation;*

(3) *Determine the adjustment history of the inmate;*

(4) *Identify the appropriate sanction cell where the category of the rule violation and adjustment history of the inmate intersect in the adjustment history sentencing matrix; and*

(5) *When plotted, determine if the sanction is optional or mandatory for imposition.*

[A.] *I. Adjustment History. The adjustment history sentencing matrix shall classify inmate adjustment history as:*

(1) Poor, if the current inmate rule violation:

(a) Occurs 3 months or less since the date of the last guilty decision for the last inmate rule violation on record in the defendant inmate's [base] case record file or the Department or Division of Correction's data management system; or

(b) [Involves] *The current guilty decision involves a [guilty] finding [of] for an inmate rule violation listed under §§I(1)(b)(i)—(vii) of this regulation and the defendant inmate's [base file] case record or the Department or Division of Correction's data management system includes a previous guilty finding for [an] the current or another inmate rule violation listed under [§A(1)(b)(i)—(vi)] §§I(1)(b)(i)—(vii) of this regulation occurring in the stated time frame:*

(i) Killing, assaulting, battering, or using threatening language *if the previous inmate rule violation guilty decision is within 5 years or less of the current inmate rule violation;*

(ii) Engaging in a disruptive [activities] act *if the previous inmate rule violation guilty decision is within 3 years or less of the current inmate rule violation;*

(iii) Possessing a weapon or an article modified into a weapon, manufacturing a weapon, or possessing an implement, article, or tool that reasonably could be used as a weapon *if the previous inmate rule violation guilty decision is within [3] 4 years or less of the current inmate rule violation;*

(iv) Holding another individual hostage *if the previous inmate rule violation guilty decision is within [3] 5 years or less of the current inmate rule violation;*

(v) *Possession of a telecommunication device if the previous inmate rule violation guilty decision is within 4 years or less of the current inmate rule violation;*

[ (v) ] (vi) Unauthorized use, possession, or distribution of a substance that reasonably could be used as an intoxicant, a controlled dangerous substance, or a counterfeit substance, and paraphernalia used to administer an intoxicant, a controlled dangerous substance, or a counterfeit substance *if the previous inmate rule violation guilty decision is within 3 years or less of the current inmate rule violation; or*

[ (vi) ] (vii) Refusing or failing to submit to an authorized urine, breath, or medical test *if the previous inmate rule violation guilty decision is within 3 years or less of the current inmate rule violation;*

(2) — (4) (text unchanged)

[B. The adjustment history sentencing matrix shall include sanctions that consider the severity of the inmate rule violation based on the category of the most serious inmate rule violation in conjunction with the defendant inmate's adjustment history.

C. A sanction:

(1) Shall be based on the defendant inmate's adjustment history record at the time of the decision; and

(2) May not be affected by a later modification of the defendant inmate's disciplinary adjustment history record.]

[D.] *J. Overriding an Adjustment History Matrix Sanction.*

[ (1) A hearing officer may not override an adjustment history sentencing matrix sanction by suspending the specified sanction and imposing probation.]

[ (2) ] (1) A hearing officer, *if in disagreement with a sanction determined by the adjustment history sentencing matrix, may override [an adjustment history matrix sanction by categorizing a*

defendant inmate's adjustment history as poor if the defendant inmate is found guilty of any of the following inmate rule violations or conditions:] *the adjustment history of a defendant inmate identified by the procedures of the adjustment history sentencing matrix.*

- [(a) A rule violation involving assault or battery;
- (b) Escape or attempt to escape;
- (c) A rule violation committed while in the community;
- (d) A rule violation involving disruptive activities;
- (e) A rule violation involving a sensitive security situation;
- (f) Possession of a telecommunication device;
- (g) Possession of a weapon; or
- (h) A rule violation involving a visiting privilege.]

(2) *An override may be for the purpose of either enhancing or reducing the severity of a sanction due to an aggravating or mitigating factor, as specified in §§J 3—4 of this regulation, and shall be made by the hearing officer:*

*(a) Rejecting the adjustment history determined by the adjustment history sentencing matrix; and*

*(b) Selecting an alternative adjustment history from the adjustment history sentencing matrix.*

(3) *The override to enhance the severity of a sanction may be based on one or more of the following aggravating factors:*

- (a) A prior conviction history for the rule violation;*
- (b) An act of violence;*
- (c) Assault or battery;*
- (d) Escape, attempted escape, or escape paraphernalia;*
- (e) Weapon;*
- (f) Drug, controlled dangerous substance, or intoxicant;*
- (g) Telecommunication device;*
- (h) Disruptive act;*
- (i) Threat to security or safety;*
- (j) Coercive, intimidating, or threatening language;*
- (k) Sex act, masturbation, or indecent exposure;*
- (l) The inmate visiting privilege; or*
- (m) The need for progressive discipline.*

(4) *The override to reduce the severity of a sanction may be based on one or more of the following mitigating factors:*

- (a) No prior guilty conviction history of an inmate rule violation;*
- (b) The time period since a previous conviction for the current inmate rule violation;*
- (c) Minor severity of the inmate rule violation;*
- (d) The need for progressive discipline; or*
- (e) Acceptance of responsibility by the defendant inmate for the inmate rule violation found.*

(5) *A hearing officer may not override an adjustment history sentencing matrix sanction by suspending the specified sanction and imposing probation.*

(6) *When employing an override, a hearing officer shall cite in the written and audio inmate hearing records an aggravating or mitigating cause as specified under this regulation.*

*K. A sanction once imposed may not be affected by a later modification of the defendant inmate's disciplinary adjustment history record.*

**[E. Consecutive Sanctions.**

(1) Sanctions may be imposed consecutively to a current sanction being served at the time an inmate rule violation decision is determined.

(2) If a finding of guilt involves a number of inmate rule violations, the segregation periods may be imposed consecutively.

(3) If a sanction has not been specifically stated as concurrent or consecutive, the sanction imposed is consecutive.

(4) The adjustment history matrix sanction for the most serious inmate rule violation determines the period of the sanction.]

**F. Concurrent Sanctions.**

(1) Sanctions may be imposed concurrently with a sanction the defendant inmate may be serving at the time of an inmate rule violation decision.

(2) If a finding of guilt involves a number of inmate rule violations, the segregation periods for each inmate rule violation may be imposed concurrently.

(3) A hearing officer shall indicate the effective date of a concurrent sanction.

(4) The adjustment history sentencing matrix sanction for the most serious inmate rule violation determines the period of the sanction.

**G. Alternative Disciplinary Sanction.** An alternative disciplinary sanction may be imposed independently or in conjunction with:

(1) Other alternative disciplinary sanctions; and

(2) The applicable adjustment history sentencing matrix sanction.

**H. Sanctions become effective on the date determined by the hearing officer.]**

**.36 Interpreting Adjustment History Sentencing Matrix Sanctions.**

**A. Plotted Sanction.**

(1) *Only disciplinary segregation and credit revocation periods are plotted as sanctions in the adjustment history sentencing matrix.*

*(a) Sanctions are plotted in the sanction cells of the adjustment history sentencing matrix.*

*(b) After finding a defendant inmate guilty of an inmate rule violation, a hearing officer shall first determine the appropriate sanction cell identified by the intersection of the category of the inmate's rule violation horizontal column and adjustment history vertical column in the adjustment history sentencing matrix to establish the severity of a sanction that may or shall be imposed.*

(2) *A sanction plotted in a sanction cell may be stated as either a specific time period or the range of a sanction with a minimum to a maximum period that may be imposed.*

(3) *Sanctions plotted in the adjustment history sentencing matrix may be either optional or mandatory for imposition.*

**B. Numerical Value Plotted in the Adjustment History Sentencing Matrix.**

(1) *If the numerical value plotted in an adjustment history sentencing matrix sanction is stated as:*

*(a) "0", there is no sanction to impose for the inmate rule violation;*

*(b) "0 or ...", the sanction is optional and within the discretionary judgment of a hearing officer; or*

*(c) Not "0" or "0 or ...", a sanction within the range provided is mandatory and shall be imposed by a hearing officer.*

(2) *A hearing officer may not, in lieu of an imposition, suspend for a period of probation an adjustment history sentencing matrix sanction.*

(3) *A segregation or credit revocation period sanction not plotted in a sanction cell identified by the adjustment history sentencing matrix may not be imposed by a hearing officer.*

**[A.] C. Segregation Sanction.**

[(1) If the applicable adjustment history sentencing matrix sanction is:

*(a) "0", there is no sanction to impose for the violation;*

*(b) "0 or ...", the sanction is discretionary; or*

*(c) Not "0" or "0 or ...", a sanction within the range provided is mandatory and shall be imposed.]*

*(1) A segregation sanction may only be imposed when permitted under the procedures of the adjustment history sentencing matrix.*

(2) A hearing officer, when imposing a segregation sanction, may not impose a period of segregation less than the stated range of the sanction unless employing an adjustment history override as permitted under Regulation .35 of this chapter.

(3) When a segregation sanction is plotted in a sanction cell as a range, it is within the discretionary judgment of a hearing officer as to what period of the sanction may be imposed.

[(3)] (4) If a defendant inmate [is] was placed on administrative segregation [or cell restriction] for an inmate rule violation charged pending [a] the outcome of the inmate's disciplinary hearing, the hearing officer shall credit the defendant inmate for the period of administrative segregation [or cell restriction] from the date of placement on administrative segregation [or cell restriction] when determining the effective date for a sanction imposed on the inmate as either cell restriction or segregation.

#### D. Consecutive Segregation Sanction.

(1) A segregation sanction may be imposed consecutively by a hearing officer under the procedures enumerated in §D(2)—(3) of this regulation.

(2) A segregation sanction may be imposed consecutively to a segregation period imposed on a defendant inmate for a previous guilty finding of an inmate rule violation when a hearing officer determines the inmate's current guilty finding is separate and distinct (by date, time, or finding of fact) of the reported event that constituted the basis for the previous guilty finding.

(3) A segregation sanction may be imposed consecutively to another sanction when a guilty finding for an inmate rule violation charged involves one or more of the following aggravating factors:

- (a) Violence;
- (b) Assault or battery;
- (c) A willful and wrongful act causing injury to another;
- (d) Disruptive act;
- (e) Weapon;
- (f) Threat to security or safety;
- (g) Drug, controlled dangerous substance, or intoxicant;
- (h) Coercive, intimidating, or threatening language;
- (i) Telecommunication device;
- (j) Escape, attempted escape, or escape paraphernalia;
- (k) Visiting privilege;
- (l) Sex act, masturbation, or indecent exposure;
- (m) Collection or testing of a urine specimen; or
- (n) Tobacco where there is intent to distribute.

(4) When a finding of guilt involves more than one category of inmate rule violation that occurred during a single reported event, a segregation period may not be imposed consecutively for each rule violation unless that finding involves an aggravating factor cited in §D(3) of this regulation.

(5) If a sanction imposed by a hearing officer is not specifically stated as consecutive, the sanction shall be interpreted to read as concurrent.

#### E. Concurrent Segregation Sanctions.

(1) A segregation sanction may be imposed concurrently.

(2) When a finding of guilt involves more than one category of inmate rule violation that occurred during a single reported event, the segregation periods imposed for each inmate rule violation shall be concurrent.

(a) For purposes of imposing a sanction, when a finding of guilt involves more than one category of inmate rule violation that occurred during a single reported event, the most severe category of inmate rule violation shall determine the maximum period of the sanction to impose.

(b) A hearing officer may waive the concurrent period policy stated in this section and impose a consecutive segregation period if the guilty finding for a rule violation involves an aggravating factor cited in §D(3) of this regulation.

(3) A hearing officer shall indicate an effective date for a segregation sanction or sanctions imposed concurrently to another sanction.

(4) When a sanction imposed has not been specifically stated as either concurrent or consecutive, the sanction shall be interpreted to read as concurrent.

#### [B.] F. Credit Revocation [of Good Conduct or Special Projects Credit] Sanction.

(1) [The hearing officer may revoke good conduct or special projects credit indicated in the adjustment history sentencing matrix] A credit revocation may only be imposed as a sanction when permitted by the adjustment history sentencing matrix.

(2) [If a defendant inmate is guilty of multiple inmate rule violations in a single incident, the hearing officer shall only impose revocation of good conduct or special projects credit determined by the adjustment history sentencing matrix based on the most serious inmate rule violation] The revocation of credits plotted in a sanction cell of the adjustment history sentencing matrix is optional by a hearing officer unless that sanction is specifically cited as a mandatory revocation under the procedures §F(4) of this regulation.

(3) [If a defendant inmate's good conduct credit is less than the amount to be revoked, the deduction shall be applied in whole, or in part, against the defendant inmate's special projects credit balance] When a credit revocation sanction is plotted in a sanction cell as a range, it is within the discretion of a hearing officer as to the period of the sanction imposed.

(4) Mandatory Credit Revocation. A hearing officer shall impose as a sanction the minimum or greater credit revocation period plotted in the adjustment history sentencing matrix when a guilty finding for an inmate rule violation charged involves one or more of the following aggravating factors:

- (a) Violence;
- (b) Assault or battery;
- (c) Disruptive act;
- (d) Weapon;
- (e) Drug, controlled dangerous substance, or intoxicant;
- (f) A urine specimen;
- (g) Telecommunication device;
- (h) Escape, attempted escape, or escape paraphernalia;
- (i) Coercive, intimidating, or threatening language;
- (j) Sex act, masturbation, or indecent exposure;
- (k) Inmate visiting privilege; and
- (l) Tobacco, where there is an intent to distribute.

(5) When a finding of guilt involves more than one category of inmate rule violation that occurred during a single reported event, the hearing officer may only impose the period of plotted credits for the most severe category of inmate rule violation as the balance of credits to be revoked for the event.

(6) If a defendant inmate's good conduct credit balance is found to be insufficient for the period of a credit revocation imposed, a deduction for the negative balance of credits due shall be applied, in whole or in part, by staff against the balance of the inmate's earned special project credits.

G. A Sanction imposed becomes effective on the date determined by a hearing officer.

**.37 Adjustment History Sentencing Matrix.**

Category		Violation Free	Good	Fair	Poor
I	[GCC] Credits	30—60	60—90	90—120	120—ALL CREDITS
	SEG	30—60	60—[90] 120	90—[150] 180	[150] 180— 365
II	[GCC] Credits	ALL [GCC/SPC] CREDITS	ALL [GCC/SPC] CREDITS	ALL [GCC/SPC] CREDITS	ALL [GCC/SPC] CREDITS
	SEG	0	0	0 or 15 [—30]	30 [—60 ]
III	[GCC] Credits	5—10 [0 or ]	10—20 [0 or ]	20—30	30—60
	SEG	0 or 15 [—30]	0 or 30 [—60]	[60—90] 0 or 45	[90—150] 60
IV	[GCC] Credits	[0 or ] 5	5—10 [0 or ]	10—20 [0 or ]	20—40
	SEG	0 [or 15]	0 or 15 [—30 ]	0 or 30 [—60 ]	[60—90] 45
V	[GCC] Credits	[0] 5	[0 ] 5	[0 ] 10	[0—5] 15—30
	SEG	0	0	0 or 15	[15—] 30

**Symbols:**

[GCC] Credits = Good conduct or special projects credit range [(stated as optional periods)] that may be [revoked] optional or mandatory for revocation.

SEG = Disciplinary segregation period range [(stated as optional or mandatory periods)] that may be [imposed] optional or mandatory for imposition.

Numerical value in [any cell] a Sanction Cell = [Number of days (stated as optional or mandatory periods) that may be imposed.] *Number of days or credits (stated as optional or mandatory periods) that may be optional or mandatory for imposition or revocation.*

“0” or “0 or” = No matrix sanctions, or the matrix sanctions are optional.

**Definitions of Adjustment History:**

Violation-Free = No prior *rule* violation history

Good = 12 months since *the date of the last rule* violation

Fair = Less than 12 but more than 3 months since *the date of the last rule* violation

Poor = 3 months or less since the date of the last rule violation or the [hearing officer’s] override of the matrix adjustment history to poor history under the procedures of §I(1)(b) of Regulation .35 of this chapter

**.39 Alternative Disciplinary and Informal Sanctions.**

A. *Alternative disciplinary and informal sanctions are separate and distinct from the sanctions plotted in the adjustment history sentencing matrix.*

B. *An alternative disciplinary sanction may be imposed independently of or in conjunction with:*

(1) *Another alternative disciplinary sanction; or*

(2) *An adjustment history sentencing matrix sanction.*

C. *An informal sanction is included in an informal disposition accepted by a defendant inmate in accordance with the procedures of Regulation .06 of this chapter.*

D. The following [sanctions] may be imposed as sanctions for an informal [dispositions or] *disposition*, or in conjunction with [other] an adjustment history sentencing matrix [sanctions] *sanction*:

[A.] — [C.] (1) — (3) (text unchanged)

[D.] (4) Suspension of [any of] the following privileges:

[(1)] (a) Radio, compact disc or tape player, television, telephone, or commissary, excluding personal hygiene and legal correspondence items, privileges for a specific period not to exceed [15] 60 calendar days as an informal sanction or 3 months as an alternative sanction;

[(2)] (b) (text unchanged)

[(3)] (c) [Visiting] *Visitation* [privileges] *privilege*, except legal and clergy, for a specific period not less than 15 calendar days but not more than 2 months as an informal sanction or not less than 2 months but not more than 6 months as an alternative sanction; or

[(4)] (d) [Other] A specified facility [privileges] *privilege not included in this regulation* for a specific period not to exceed [45] 90 calendar days as an informal sanction or 3 — 6 months as an alternative sanction;

[E.] (5) Cell restriction for a specific period not to exceed 1 month an informal sanction or 2 months as an alternative sanction[; or].

[F. Forfeiture of property, that is confiscation of an article, item, or property determined to be contraband, including confiscation of unauthorized currency or currency in excess of allowable amounts.]

E. *The term cell restriction under §D(5) of this regulation:*

(1) *Includes the requirement that an inmate be restricted to a designated location and prohibited from participation in inmate privileges and activities to include recreation and commissary; but*

(2) *Does not prohibit the inmate from participation in:*

(a) *Work, program, or school assignments;*

(b) *Meals;*

(c) *Shower periods as permitted by a facility’s rules for an inmate designated cell restriction status;*

(d) *Visitation periods as permitted by a facility’s rules for an inmate designated cell restriction status;*

(e) *Facility passes;*

(f) *A religious service as permitted by a facility’s rules for an inmate designated cell restriction status; and*

(g) *Case management, medical, or psychological appointments.*

GARY D. MAYNARD

Secretary of Public Safety and Correctional Services

# **Title 13A STATE BOARD OF EDUCATION**

## **Notice of Proposed Action**

[11-273-P-I]

The Maryland State Board of Education proposes to amend:

(1) Regulation .02 under **COMAR 13A.02.06 General Financial Aid to Local School Systems**;

(2) Regulation .01 under **COMAR 13A.08.01 General Regulations**; and

(3) Regulation .01 under **COMAR 13A.08.02 Student Records**.

This action was considered at the July 19, 2011 meeting of the Maryland State Board of Education.

### **Statement of Purpose**

The purpose of this action is to update the Incorporation by Reference of the Maryland Student Records System Manual 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 Charles Buckler, Executive Director, Division of Student, Family, and School Support, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0311 (TTY 410-333-6442), or email to [cbuckler@msde.state.md.us](mailto:cbuckler@msde.state.md.us), or fax to 410-333-8148. Comments will be accepted through November 21, 2011. A public hearing has not been scheduled.

### **Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on December 6—7, 2011, at 200 West Baltimore Street, Baltimore, MD 21201.

#### **Editor's Note on Incorporation by Reference**

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Maryland Student Records System Manual 2011 has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

## **Subtitle 02 LOCAL SCHOOL ADMINISTRATION**

### **13A.02.06 General Financial Aid to Local School Systems**

Authority: Education Article, §§2-205, [8-2A-01—8-2A-03,] Annotated Code of Maryland

#### **.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (8) (text unchanged)

(9) “Documented retention and dropout prevention interventions” means documented actions taken by the local school system to keep the student in school, examples of which are specified in the Maryland Student Records System Manual [(2008)] 2011, incorporated by reference in COMAR 13A.08.02.01.

(10) — (16) (text unchanged)

## **Subtitle 08 STUDENTS**

### **13A.08.01 General Regulations**

Authority: Education Article, §2-205, Annotated Code of Maryland

#### **.01 Attendance.**

A. — D. (text unchanged)

E. Daily Attendance Record. A record of the daily attendance of each student shall be kept in accordance with regulations of the State Board of Education and the Maryland Student Records System Manual [(2008)] 2011, which is incorporated by reference in COMAR 13A.08.02.01.

### **13A.08.02 Student Records**

Authority: Education Article, §2-205(c), Annotated Code of Maryland

#### **.01 Incorporation by Reference.**

A system of information on enrollment, attendance, and promotion of students shall be maintained in accordance with the regulations of the State Board of Education and the Maryland Student Records System Manual [(2008)] 2011, which is incorporated by reference.

BERNARD J. SADUSKY, ED.D.  
Interim State Superintendent of Schools



# Title 20 PUBLIC SERVICE COMMISSION

## Subtitle 90 TAXICABS

### Notice of Proposed Action

[11-272-P]

The Public Service Commission proposes to amend:

(1) Regulation .19 under **COMAR 20.90.02 Control and Operation of Taxicabs in Baltimore City and Baltimore County;** and

(2) Regulation .17 under **COMAR 20.90.03 Control and Operation of Taxicabs in the City of Cumberland and the City of Hagerstown.**

This action was considered at a scheduled rule-making meeting held on August 9, 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 increase liability insurance limits for taxicab vehicles operating in Baltimore City, Baltimore County, Cumberland, and Hagerstown.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

**I. Summary of Economic Impact.** All taxicab permit holders would be subject to an increase in insurance premium depending on the taxicab permit holder's operating area, the size of the taxicab fleet, and the manner in which the permit holder operates. An owner operator would pay a lower premium than would a fleet operator with multiple vehicles.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	Indeterminable
B. On other State agencies:	(E+)	Indeterminable
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(+)	9% increase in premium
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 B. All taxicab permit holders would be subject to an

increase in insurance premium depending on the taxicab permit holder's operating area, the size of the taxicab fleet, and the manner in which the permit holder operates. An owner operator would pay a lower premium than would a fleet operator with multiple vehicles.

D. A typical driver with a good MVA driving record would incur a 9% increase in premium.

### 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 24, 2011. A public hearing has not been scheduled.

## 20.90.02 Control and Operation of Taxicabs in Baltimore City and Baltimore County

Authority: Public Utilities Article, §§2-113, 2-121, 4-503, 5-101, 6-202—6-207, 10-101—10-107, 10-109, 10-202—10-210, 10-301, 13-301, and 13-202, Annotated Code of Maryland

### .19 Insurance or Bond.

[A.] (proposed for repeal)

#### A. Liability Insurance.

(1) If the owner of a taxicab or taxicabs elects to use liability insurance as authorized under Public Utilities Article, §10-207, Annotated Code of Maryland, the minimum insurance coverage for each accident is either:

(a) All of the following:

(i) \$30,000 for injury to any one person;

(ii) \$60,000 for injury to two or more persons; and

(iii) \$15,000 for property damage; or

(b) \$75,000 combined single limit.

(2) The term of the insurance coverage under §A(1) of this regulation is 6 months or more.

#### B. Bond in Lieu of Insurance.

(1) If the owner of a taxicab or taxicabs elects to [enter into] use a bond as [provided in the law] authorized under Public Utilities Article, §10-207, Annotated Code of Maryland, the amount of the bond [shall be determined by the number of taxicabs covered by and described in the bond and shall be as] is as set out in the following table:

Number of Taxicabs	Required Amount of Bond
For one taxicab only	[\$60,000] \$75,000
2 to 5 taxicabs, inclusive	[75,000] 90,000
6 to 15 taxicabs, inclusive	[90,000] 105,000
16 to 30 taxicabs, inclusive	[105,000] 120,000
31 to 50 taxicabs, inclusive	[120,000] 135,000
51 to 80 taxicabs, inclusive	[135,000] 150,000
81 to 120 taxicabs, inclusive	[150,000] 165,000
121 to 170 taxicabs, inclusive	[165,000] 180,000
171 to 230 taxicabs, inclusive	[180,000] 195,000
231 to 300 taxicabs, inclusive	[195,000] 210,000

(2) The bonding company shall guarantee the prompt payment by the taxicab owner of indemnities for personal injuries or for property damage resulting from any accident due to the negligence of the owner or the driver of the covered vehicle, to the extent of the

damages sustained, but not to exceed, for any one accident [to] involving any taxicab[, \$25,000 for personal injuries to any one person, or \$50,000 for personal injuries to two or more persons, and \$10,000 for property damage.]:

- (a) \$30,000 for injury to any one person;
- (b) \$60,000 for injury to two or more persons; and
- (c) \$15,000 for property damage.

(3) *The Public Service Commission shall be shown as a certificate holder on the liability insurance policy, self-insurance certificate, security, or bond.*

[(3)] (4) The penalty of the *security or bond* may not be exhausted by successive recoveries but shall remain unimpaired until the *security or bond* shall be canceled after statutory notice to the Commission or by action of the Commission.

[(4)] (5) If the *self-insurance policy, security, or bond* is canceled or the taxicab operation terminated or interrupted at any time, the *security or bonding company* shall proceed to make settlement of all then outstanding indemnity claims, in conformity with the limitations of §B(2), of this regulation, except that the aggregate amount of the settlements may not exceed the penal sum of the bond.

[(5)] (6) Compliance with [the law] *Public Utilities Article, §10-207, Annotated Code of Maryland*, as to insurance shall be evidenced by depositing with the Commission the insurance policy, or a certificate from the insurance company signed by an authorized agent, that the policy has been issued, specifying the terms of the policy, description of the taxicab, and name of the assured.

[(6)] Cancellation or revocation of an insurance policy, certificate or bond required by these regulations may not be effective except after 5 days from the actual receipt of notice by the revoking party.]

*C. Notice of Cancellation. Written cancellation or revocation of an insurance policy, self-insurance certificate, security, or bond shall be submitted to the Commission 45 days before an insurance policy, self-insurance certificate, security, or bond may be canceled as required under Public Utilities Article, §10-207, Annotated Code of Maryland. Cancellation or revocation of an insurance policy or bond issued by the Maryland Automobile Insurance Fund shall be submitted to the Commission 30 days before an insurance policy or bond issued by the Maryland Automobile Insurance Fund may be canceled as required under Public Utilities Article, §10-207, Annotated Code of Maryland.*

### 20.90.03 Control and Operation of Taxicabs in the City of Cumberland and the City of Hagerstown

Authority: Public Utilities Article, §§2-113, 2-121, 4-503, 5-101, 6-102, 6-202—6-207, 10-101—10-107, 10-109, 10-202—10-208, 10-210, 10-301, 13-201, and 13-202, Annotated Code of Maryland

#### .17 Insurance or Bond.

[A.] (proposed for repeal)

##### A. Liability Insurance.

(1) *If the owner of a taxicab or taxicabs elects to use liability insurance as authorized under Public Utilities Article, §10-207, Annotated Code of Maryland, the minimum insurance coverage for each accident is either:*

- (a) *All of the following:*
  - (i) \$30,000 for injury to any one person;
  - (ii) \$60,000 for injury to two or more persons; and
  - (iii) \$15,000 for property damage; or
- (b) \$75,000 combined single limit.

(2) *The term of the insurance coverage under §A(1) of this regulation is 6 months or more.*

##### B. Bond in Lieu of Insurance.

(1) If the owner of a taxicab or taxicabs elects to [enter into] *use a bond as [provided in the law] authorized under Public Utilities Article, §10-207, Annotated Code of Maryland*, the amount of the bond [shall be determined by the number of taxicabs covered by and described in the bond and shall be as] *is as set out in the following table:*

Number of Taxicabs	Required Amount of Bond
For one taxicab only	[\$60,000] \$75,000
2 to 5 taxicabs, inclusive	[75,000] 90,000
6 to 15 taxicabs, inclusive	[90,000] 105,000
16 to 30 taxicabs, inclusive	[105,000] 120,000
31 to 50 taxicabs, inclusive	[120,000] 135,000
51 to 80 taxicabs, inclusive	[135,000] 150,000
81 to 120 taxicabs, inclusive	[150,000] 165,000
121 to 170 taxicabs, inclusive	[165,000] 180,000
171 to 230 taxicabs, inclusive	[180,000] 195,000
231 to 300 taxicabs, inclusive	[195,000] 210,000

(2) The bonding company shall guarantee the prompt payment by the taxicab owner of indemnities for personal injuries or for property damage resulting from any accident due to the negligence of the owner *or the driver of the covered vehicle*, to the extent of the damages sustained, but not to exceed, for any one accident [to] involving any taxicab[, \$25,000 for personal injuries to any one person, or \$50,000 for personal injuries to two or more persons, and \$10,000 for property damage.]:

- (a) \$30,000 for injury to any one person;
- (b) \$60,000 for injury to two or more persons; and
- (c) \$15,000 for property damage.

(3) *The Public Service Commission shall be shown as a certificate holder on the liability insurance policy, self-insurance certificate, security, or bond.*

[(3)] (4) The penalty of the *security or bond* may not be exhausted by successive recoveries but shall remain unimpaired until the *security or bond* shall be canceled after statutory notice to the Commission or by action of the Commission.

[(4)] (5) If the *self-insurance certificate, security, or bond* is canceled or the taxicab operation terminated or interrupted at any time, the *security or bonding company* shall proceed to make settlement of all then outstanding indemnity claims, in conformity with the limitations of §B(2), of this regulation, except that the aggregate amount of the settlements may not exceed the penal sum of the bond.

[(5)] (6) Compliance with [the law] *Public Utilities Article, §10-207, Annotated Code of Maryland*, as to insurance shall be evidenced by depositing with the Commission the insurance policy, or a certificate from the insurance company signed by an authorized agent, that the policy has been issued, specifying the terms of the policy, description of the taxicab, and name of the assured.

[(6)] Cancellation or revocation of an insurance policy, certificate or bond required by these regulations may not be effective except after 5 days from the actual receipt of notice by the revoking party.]

*C. Notice of Cancellation. Written cancellation or revocation of an insurance policy, self-insurance certificate, security, or bond shall be submitted to the Commission 45 days before an insurance policy, self-insurance certificate, security, or bond may be canceled as required under Public Utilities Article, §10-207, Annotated Code of Maryland. Cancellation or revocation of an insurance policy or bond issued by the Maryland Automobile Insurance Fund shall be submitted to the Commission 30 days before an insurance policy or bond issued by the Maryland Automobile Insurance Fund may be*

*canceled as required under Public Utilities Article, §10-207, Annotated Code of Maryland.*

TERRY J. ROMINE  
Executive Secretary  
Public Service Commission

# **Title 21**

## **STATE PROCUREMENT REGULATIONS**

### **Subtitle 11 SOCIOECONOMIC POLICIES**

#### **21.11.03 Minority Business Enterprise Policies**

Authority: State Finance and Procurement Article, §§12-101 and 14-303, Annotated Code of Maryland; *Chs. 252, 253, and 254, Acts of 2011*

##### **Notice of Proposed Action**

[11-276-P]

The Board of Public Works proposes to amend Regulations **.01, .08, .09, and .12**, adopt new Regulation **.12-1**, and repeal Regulation **.14** under **COMAR 21.11.03 Minority Business Enterprise Policies**. This action was considered by the Board of Public Works at a public meeting on July 27, 2011, notice of which was published pursuant to State Government Article, §10-506, Annotated Code of Maryland.

##### **Statement of Purpose**

The purpose of this action is to implement the following changes to the State's MBE Laws:

- Chs. 253 and 254, Acts of 2011, require the Office of Minority Affairs to establish guidelines for setting MBE subgoals, which will be set on a procurement-by-procurement basis. The Law also codifies MBE waiver reporting requirements and clarifies that MBE participation may only be counted for those MBEs who are performing a commercially useful function on a contract. The Law gives agencies, after consultation with GOMA, the authority to designate contracts that would typically have an MBE goal as excluded from MBE requirements.

- Ch. 254, Acts of 2011, authorizes bidders/offerors to notify a procuring agency within 72 hours after discovering that an MBE listed as a participant in a bid or proposal is ineligible or unavailable for the work proposed.

- The repeal of COMAR 21.11.03.14 is in response to a recent Court of Special Appeals decision, *Salisbury University v. Joseph M. Zimmer, Inc.*, which held that a procurement statute grants contractors aggrieved by agency MBE decisions the right to submit bid protests. Regulation .14 prohibits contractors from doing so.

- The amendments to COMAR 21.11.03.08 and .09 update solicitation notice requirements and delete obsolete references.

##### **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 Mary Jo Childs, Procurement Advisor, Board of Public Works, 80 Calvert Street, Room 117, Annapolis, MD 21401, or call 410-260-7335, or email to [mchilds@comp.state.md.us](mailto:mchilds@comp.state.md.us), or fax to 410-974-5240. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

##### **.01 General — Purpose.**

This chapter provides that maximum contracting opportunities be extended to certified minority business enterprises, as both prime contractors and subcontractors, and establishes that:

A. Each procurement agency shall [structure its procedures for making procurements to try to achieve]:

(1) [A minimum of 7 percent of the unit's total dollar value of all procurement contracts made directly or indirectly from certified minority business enterprises classified by the certification agency as African-American-owned businesses;

(2) A minimum of 10 percent of the unit's total dollar value of all procurement contracts made directly or indirectly from certified minority business enterprises classified by the certification agency as women-owned businesses; and

(3) An] *Structure its procedures for making procurements to try to achieve an overall minimum of 25 percent of the unit's total dollar value of all procurement contracts made directly or indirectly from all certified minority business enterprises; and*

(2) *Apply the guidelines established by the Office of Minority Affairs for determining the subgoals to be set for the groups listed in State Finance and Procurement Article, §14-301(i)(1)(i)1, 2, 3, 4, and 6, Annotated Code of Maryland.*

B. With respect to [Department of Transportation] construction contracts, §A[(1) — (3)] of this regulation apply only to those construction contracts in excess of \$50,000;

C. To the maximum extent feasible, procurement agencies shall use race-neutral measures in meeting the goals under §A[(1) — (3)] of this regulation; [or]

D. The requirements of this chapter may be applied to individual task orders competitively procured among contractors under a multiple-award procurement as provided in COMAR 21.06.03.10; *and*

E. *Each procurement agency shall work with the Office of Minority Affairs to designate certain contracts to be procured without any certified MBE participation goals.*

##### **.08 MBE Notification.**

Within 30 days following the first day of the fiscal year, each procurement agency shall forward to the Office of Minority Affairs a complete listing of all known regularly recurring procurement solicitations reasonably expected to be of \$100,000 or more. The list shall be in an electronic format and include the subject of the contract, where the work is to be performed or delivery made, the approximate solicitation date, and the [name and telephone number] *contact information* of the procurement officer. The Office of Minority Affairs shall compile a master list containing this information[, and distribute it to the Department of Business and Economic Development, Office of Small Business Assistance, appropriate minority business associations, minority business assistance agencies, and trade organizations, and to each designated department and procurement agency which shall post the list on all bid boards for the remainder of the fiscal year. The Office of Minority Affairs may, upon approval of the Joint Standing Committee on Administrative, Executive and Legislative Review (AELR), also publish the list electronically].

**.09 Procurement Solicitations.**

A. [General] *To attain the overall and specific MBE goals under Regulation .01A of this chapter, procurement agencies shall set, where appropriate, an overall certified MBE participation goal, expressed as a percentage of the dollar value of the contract, and subgoals to facilitate the participation of certain groups as prescribed under Regulation .01A(2) of this chapter, unless:*

(1) *The procurement is a construction contract having an estimated value of less than \$50,000; or*

(2) *The contract has been designated as a procurement to be made without any certified MBE participation goals pursuant to Regulation .01E of this chapter.*

B. *Goal Setting Generally.*

(1) (text unchanged)

(2) The following factors may be used to anticipate the degree of certified MBE prime contractor participation, to decide the certified MBE [subcontract] participation goal and subgoals, when used, and the MBE prime contractor and subcontractor procurement strategy to be used:

(a) — (d) (text unchanged)

(e) [Specific statutory participation goals applicable to the procurement.] *The guidelines established by the Office of Minority Affairs for determining the subgoals to be set for the groups listed in State Finance and Procurement Article, §14-301(i)(1)(i)1, 2, 3, 4, and 6, Annotated Code of Maryland.*

[B.] (proposed for repeal)

C. — D. (text unchanged)

E. *Notification — Organizations and Trade Groups.*

(1) Except for sole source, small, and emergency procurements, a copy of the solicitation notice for each procurement [shall] *may* be sent in an electronic format to the:

(a) Office of Minority Affairs for distribution to the appropriate minority business associations, minority business assistance agencies, and trade organizations identified by the Office of Minority Affairs; and

(b) Governor's Office of Business Advocacy and Small Business Assistance].

(2) If *an agency sends a [the] solicitation notice that does not indicate [availability of the] solicitation documents [by a publicly accessible internet site] are available in an electronic format*, the procurement agency shall send one *paper* copy of the solicitation documents [for those procurements] to the Office of Minority Affairs [and the Governor's Office of Business Advocacy and Small Business Assistance], which shall make them conveniently available for review by certified MBEs and small businesses.

F. — G. (text unchanged)

**.12 Amendment [for Unforeseen Circumstances] of MBE Participation Schedule.**

A. If at any time after submission of a bid or proposal and before execution of a contract, [the apparent successful] a bidder or offeror determines that a certified MBE listed on the MBE participation schedule required under Regulation [.10B(2)] .09C(3) of this chapter has become or will become unavailable *or is ineligible to perform the work required under the contract*, then the [apparent successful] bidder or offeror [immediately] shall:

(1) [notify] *Within 72 hours of making the determination, provide written notice to the procurement officer; and*

(2) [Any desired change in ] *Within 5 business days of making the determination, make a written request to the procurement officer to amend the MBE participation schedule.*

B. *For purposes of this regulation, "ineligible" means an MBE certified by the certification agency that may not be counted toward meeting the MBE subcontract participation goal established for the procurement because:*

(1) *The MBE is not certified by the certification agency to provide the services, materials, or supplies the bidder or offeror has committed the MBE to provide on the MBE participation schedule;*

(2) *The MBE has graduated from the NAICS Code associated with the services, materials, or supplies the bidder or offeror has designated the MBE to provide; or*

(3) *The MBE no longer meets the personal net worth requirements of Regulation .03 of this chapter.*

C. [shall be approved in advance by the procurement officer after consulting with the MBE liaison.] The request [for a change] to *amend the MBE participation schedule shall [indicate the contractor's] include:*

(1) *The name of each certified MBE subcontractor that will substitute for the unavailable or ineligible certified MBE subcontractor;*

(2) *A description of work to be performed by each certified MBE subcontractor;*

(3) *The percentage of the contract to be paid to the certified MBE subcontractor for the work or supply; and*

(4) *A full description of the bidder's or offeror's efforts to substitute another certified MBE subcontractor to perform the work that the unavailable or ineligible certified MBE subcontractor would have performed.*

D. *The procurement officer shall consult with the MBE liaison before deciding whether to approve a request to amend the MBE participation schedule.*

E. [Desired changes] *Amendments to the MBE participation schedule occurring after the date of contract [execution] award may occur only upon written approval by the agency head and subsequently by contract amendment.*

**.12-1 Counting Minority Business Enterprise Participation.**

A. *When a certified MBE participates in a contract, the procurement agency shall consider §§B and C of this regulation in determining whether and the extent to which the certified MBE's participation may be counted toward the MBE participation goals.*

B. *A procurement agency may count participation of a certified MBE contractor toward MBE goals only if the certified MBE is performing a commercially useful function on that contract.*

(1) *Commercially Useful Function.*

(a) *A certified MBE performs a commercially useful function when it is responsible:*

(i) *For execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved; and*

(ii) *With respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.*

(b) *To determine whether a certified MBE is performing a commercially useful function, the procurement agency shall evaluate:*

(i) *The amount of work subcontracted;*

(ii) *Industry practices;*

(iii) *Whether the amount the certified MBE is to be paid under the contract is commensurate with the work it is actually performing; and*

(iv) *Other relevant factors.*

(2) *A certified MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE participation. In deciding*

whether a certified MBE is such an extra participant, the procurement agency may examine similar transactions, particularly those in which MBEs do not participate.

(3) A certified MBE is presumed not to perform a commercially useful function if it does not perform or exercise responsibility for at least 30 percent of the total dollar value of its contract with its own work force, or the certified MBE subcontracts a greater portion of the work of a contract than would be expected on the basis of industry practice for the type of work involved. A procurement agency may, however, upon evaluation of the work involved and industry practices, decide that the certified MBE is performing a commercially useful function.

C. Joint Venture. When a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the certified MBE performs with its own forces toward fulfilling the contract goal.

SHEILA McDONALD  
Executive Secretary  
Board of Public Works

## Subtitle 11 SOCIOECONOMIC POLICIES

### 21.11.12 State Apprenticeship and Training Fund

Authority: State Finance and Procurement Article, §§17-603—17-606,  
Annotated Code of Maryland

#### Notice of Proposed Action

[11-279-P]

The Commissioner of Labor and Industry proposes to adopt new Regulations .01—.09 under a new chapter, COMAR 21.11.12 State Apprenticeship and Training Fund.

#### Statement of Purpose

The purpose of this action is to implement the State Apprenticeship and Training Fund, Ch. 687, Acts of 2009. The State Apprenticeship and Training Fund requires contractors and some subcontractors on public work contracts to make contributions to: (1) a registered apprenticeship program, (2) an organization that operates registered programs, or (3) the State Apprenticeship and Training Fund.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Debbie Stone, Regulations Coordinator, Department of Labor, Licensing, and Regulation, Division of Labor and Industry, 1100 N. Eutaw Street, Room 606, Baltimore, Maryland 21201, or call 410-767-2225, or email to dstone@dllr.state.md.us, or fax to 410-767-2986. Comments will be accepted through October 24, 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) "Approved apprenticeship program" means an apprenticeship program or an organization with an apprenticeship program which has been registered with, and approved by, the Maryland Apprenticeship and Training Council or the United States Department of Labor.

(2) "Commissioner" means the Commissioner of Labor and Industry.

(3) "Covered craft" means a classification of workers listed in the prevailing wage determination applicable to a prevailing wage project.

(4) "Fund" means the Apprenticeship Training Fund.

(5) "Monthly Apprenticeship and Training Report" means the monthly report that details contractor and subcontractor contributions for that month available on the Division of Labor and Industry's website.

#### .02 Hourly Contribution Rate.

A. If a contractor participates in an apprenticeship training program for each covered craft, the contractor satisfies their obligation under State Finance and Procurement Article, §17-603(a)(1), Annotated Code of Maryland, by making contributions of at least 25 cents per person per hour.

B. If a subcontractor participates in an apprenticeship training program for each covered craft, the subcontractor satisfies their obligation under State Finance and Procurement Article, §17-604(a)(1), Annotated Code of Maryland, by making contributions of at least 25 cents per person per hour.

C. Contractors and subcontractors that do not participate in an apprenticeship training program shall pay 25 cents per hour for each employee in each covered craft on the prevailing wage project to a registered apprenticeship program, an organization that has a registered apprenticeship program, or the Fund.

D. Contractors and subcontractors who make contributions to the Fund shall do so on a monthly basis.

E. If there is a prevailing wage determination that includes a fringe benefit contribution for apprenticeship that exceeds 25 cents per hour, a contractor or subcontractor that makes contributions to the Fund shall pay to the employee wages in the amount that the fringe benefit contribution for apprenticeship exceeds 25 cents per hour.

#### .03 Contractor and Subcontractor Registration.

A. Contractors performing work on a prevailing wage project shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage>.

B. Subcontractors who are performing work valued at \$100,000 or more on a prevailing wage project shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage>.

C. Prior to the commencement of work, a registered contractor or registered subcontractor shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> and complete the required project log information, including:

(1) The prevailing wage project number;

(2) Contract value;

(3) Designation of the program or Fund where the contractor or subcontractor will make contributions; and

(4) Any other information that the Commissioner requires.

**.04 Contractor and Subcontractor Notification to Subcontractors.**

A. Contractors and subcontractors who hire subcontractors performing work valued at \$100,000 or more on a public work contract subject to the Maryland Prevailing Wage Law shall provide the subcontractors with written notice of the following requirements:

(1) Subcontractors shall complete the registration process at the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage>.

(2) Prior to the commencement of work, a subcontractor shall log onto the Division of Labor and Industry's website at <https://www.state.md.us/prevwage> and complete the required project log information, including:

(a) The prevailing wage project number;

(b) Contract value;

(c) Designation of the program or Fund where the subcontractor will make contributions; and

(d) Any other information that the Commissioner requires.

(3) Subcontractors performing work on a prevailing wage project valued at \$100,000 or more are required to make payments to approved apprenticeship programs or to the Fund for each employee employed in classifications listed on the prevailing wage determination.

B. Contractors and subcontractors shall retain a copy of the written notice required in §A of this regulation that was provided to covered subcontractors for inspection and review by the Commissioner for 1 year after the completion of their work on a public work project.

**.05 Contractor and Subcontractor Obligations Related to Approved Apprenticeship Programs.**

A. Contractors and subcontractors are required to complete and to file on the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage> the Monthly Apprenticeship and Training Report, which shall include the following:

(1) A list of the contributions to each approved apprenticeship program during the last month; and

(2) A statement by the contractor or subcontractor that the information is correct and that the contractor or subcontractor has complied with the requirements of State Finance and Procurement Article, Title 17, Subtitle 6, Annotated Code of Maryland.

B. Contractors and subcontractors are required to submit the Monthly Apprenticeship and Training Verification Report by the 30th calendar day of each month for the previous month.

**.06 Notification to Division of Labor and Industry of Changes to Designated Approved Apprenticeship Programs or Fund.**

A. Contractors and subcontractors shall log onto the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage> and indicate each approved apprenticeship program or the Fund to which it will make contributions.

B. If a contractor or subcontractor intends to change a designation, it shall log onto the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage> to indicate the change in designation 30 days prior to that change.

**.07 Approved Apprenticeship Program Obligations.**

A. Upon notice from the Division of Labor and Industry that the approved apprenticeship program has been designated for contributions by a contractor, an approved apprenticeship program shall complete the registration process at the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage>, including:

(1) Defining their program; and

(2) Any other information that the Commissioner requires.

B. Within 30 days of notification from the Division of Labor and Industry, the approved apprenticeship program shall complete the required information, including an acknowledgement of their obligations under this subtitle.

C. After completion of the requirements of §§A and B of this regulation, an approved apprenticeship program shall:

(1) Provide on the Division of Labor and Industry's website at <https://www.dlir.state.md.us/prevwage> a monthly report of the contributions received from contractors and subcontractors for each covered craft for each prevailing wage project by the 30th calendar day of each month for the previous month; and

(2) Certify that all funds received are used solely for the purpose of improving or expanding pre-apprenticeship training in the State.

**.08 Audit of an Approved Apprenticeship Program.**

The Commissioner may require an independent audit by a certified public accountant of an approved apprenticeship program to verify that contributions received are used in a manner consistent with this subtitle.

**.09 Enforcement Procedures.**

A. The Commissioner may investigate whether State Finance and Procurement Article, Title 17, Subtitle 6, Annotated Code of Maryland, has been violated:

(1) On the Commissioner's own initiative;

(2) On receipt of a written complaint; or

(3) On referral from another State agency.

B. The Commissioner may require a contractor, a subcontractor, or an approved apprenticeship program to produce records as part of the Commissioner's investigation.

C. The Commissioner may enter a place of business to:

(1) Interview individuals; or

(2) Review and copy records.

D. If after an investigation, the Commissioner determines that there is a violation of State Finance and Procurement Article, Title 17, Subtitle 6, Annotated Code of Maryland, or a regulation adopted to carry out the title, the Commissioner shall issue an administrative charge that shall:

(1) Describe in detail the nature of the alleged violation;

(2) Cite the provision of law or regulation that is alleged to have been violated; and

(3) State the penalty, if any.

E. Within a reasonable amount of time after the issuance of the administrative charge, the Commissioner shall send a copy of the administrative charge to the alleged violator by certified mail with notice of the opportunity to request a hearing.

F. Within 15 days after the alleged violator receives the administrative charge, the employer may submit a written request for a hearing on the administrative charge and proposed penalty.

G. If a hearing is not requested within 15 days, the administrative charge, including any penalties, shall become a final order of the Commissioner.

H. If there is a request for a hearing, the Commissioner may delegate the hearing to the Office of Administrative Hearings in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

I. A proposed decision of an administrative law judge shall become a final order of the Commissioner unless, within 15 days of the issuance of the proposed decision:

(1) The Commissioner orders review of the proposed decision;

or

(2) The alleged violator submits to the Commissioner a written request for review of the proposed decision.

*J. After review of the proposed decision under §I of this regulation, with or without a hearing on the record, the Commissioner shall issue an order that affirms, modifies, or vacates the proposed decision.*

J. RONALD DEJULIIS  
Commissioner of Labor and Industry

# Title 31 MARYLAND INSURANCE ADMINISTRATION

## Subtitle 14 LONG-TERM CARE

### 31.14.03 Long-Term Care Partnership

Authority: Insurance Article, §§18-102 and 18-106—18-107; Health-General Article, §15-407; Annotated Code of Maryland

#### Notice of Proposed Action

[11-266-P]

The Insurance Commissioner and the Secretary of Health and Mental Hygiene propose to amend Regulation .10 under COMAR 31.14.03 Long-Term Care.

#### Statement of Purpose

The purpose of this action is to amend COMAR 31.14.03.10 to be consistent with the changes required by Chapter 9, Acts of 2011, which amends the reporting requirements for the long-term care partnership program to clarify that only carriers participating in the partnership program are required to file the annual report regarding the number of long-term care policies offered in Maryland.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The amendment to the regulation clarifies that insurers who sell long-term care policies, but who are not in the long-term care partnership market, do not need to file an annual report regarding the number of long-term care policies offered in Maryland. This reduces the impact of the regulations on insurers who do not offer long-term care partnership policies.

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:

Reduces the impact of regulations on some insurers

Insurers (-)

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. This reduces the impact of the regulations on insurers who do not offer long-term care partnership policies.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to klawhorn@mdinsurance.state.md.us, or fax to 410-468-2020. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

#### .10 Reporting Requirements.

A. Beginning October 1, 2009, and on or before October 1 of each year after October 1, 2009, each carrier *that is certified to issue partnership policies in Maryland* shall file a report with the Commissioner that includes the information required by §B of this regulation.

B. The report required by §A of this regulation shall include the following information:

(1)—(2) (text unchanged)

(3) A list, by form[, ] number[, ] and date of approval, of the [long-term care insurance] *partnership* policies that the carrier made available in Maryland as of the July 1 immediately preceding the date of the report; and

(4) (text unchanged)

THERESE M. GOLDSMITH  
Insurance Commissioner  
JOSHUA M. SHARFSTIEN, M.D.  
Secretary of Health and Mental Hygiene

# **Title 34 DEPARTMENT OF PLANNING**

## **Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS**

### **34.04.07 Sustainable Communities Tax Credit Certifications**

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland; Ch. 383, Acts of 2011

#### **Notice of Proposed Action**

[11-265-P]

The Maryland Department of Planning proposes to amend Regulation .04 under COMAR 34.04.07 Sustainable Communities Tax Credit Certifications.

#### **Statement of Purpose**

The purpose of this action is to change the statutorily allowable fees charged under COMAR 34.04.07.04E(5)(b) and (6) in accordance with Ch. 383, Acts of 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 Philip J. Deters, Assistant Attorney General, Maryland Department of Planning, 100 Community Place, Crownsville, MD 21032, or call 410-514-7830, or email to pdeters@mdp.state.md.us, or fax to 410-514-7099. Comments will be accepted through October 24, 2011. A public hearing has not been scheduled.

### **.04 Procedures for Certification of Certified Historic Structure Rehabilitations.**

A. — D. (text unchanged)

E. For any State fiscal year:

(1) — (4) (text unchanged)

(5) The Director may not approve an application for approval of:

(a) (text unchanged)

(b) A completed rehabilitation of a single-family, owner-occupied residence until the applicant pays an administrative fee not to exceed [1] 3 percent of the qualified rehabilitation expenditures for the rehabilitation, as described in the application or by public notice posted on the Trust's website, less the \$10 fee previously paid; and

(6) The Director may not issue an initial credit certificate until the applicant pays an administrative fee not to exceed [1] 3 percent of the initial credit certificate award, as described in the application or by public notice posted on the Trust's website. If the fee is not received by the Trust within 120 days after the Trust sends notice that the fee is due, any reservation of an award of an initial credit certificate for the rehabilitation shall expire.

F. — H. (text unchanged)

RICHARD E. HALL  
Secretary of Planning



# Errata

## COMAR 10.37.07

At 38:18 Md. R. 1077 (August 26, 2011), column 2, line 12 from the top:

For: Commission adopted new Regulations .01—.07 under a new chapter,

Read: Commission adopted new Regulations .01—.09 under a new chapter,

[11-20-37]

## COMAR 08.02.04.04

At 38:19 Md. R. 1143 (September 9, 2011), column 2, line 14 from the top:

For: *(iv) 11 3/4 inches in height;*

Read: *(iv) 11 1/4 inches in height;*

## COMAR 08.02.08.02

At 38:19 Md. R. 1145 (September 9, 2011), column 1, line 9 from the bottom:

For: *(i) Licensed and authorized to the person's own catch in*

Read: *(i) Licensed and authorized to sell the person's own catch in*

[11-20-53]

# Maryland Medical Orders for Life-Sustaining Treatment (MOLST)

Patient's Last Name, First, Middle Initial

Date of Birth

☐ Male    ☐ Female

This form includes medical orders for Emergency Medical Services (EMS) and other medical personnel regarding cardiopulmonary resuscitation and other life-sustaining treatment options for a specific patient. It is valid in all health care facilities and programs throughout Maryland. This order form shall be kept with other active medical orders in the patient's medical record. The physician or nurse practitioner must accurately and legibly complete the form and then sign and date it. Blank order forms shall not be signed. The physician or nurse practitioner shall select only 1 choice in Section 1 and only 1 choice in any of the other Sections that apply to this patient. If any of Sections 2-9 do not apply, leave them blank. A copy or the original of every completed MOLST form must be given to the patient or authorized decision maker within 48 hours of completion of the form or sooner if the patient is discharged or transferred.

**CERTIFICATION FOR THE BASIS OF THESE ORDERS:** Mark any and all that apply. Otherwise, leave this section blank.

I hereby certify that these orders are entered as a result of a discussion with and the informed consent of:

- ☐ the patient; or  
☐ the patient's health care agent as named in the patient's advance directive; or  
☐ the patient's guardian of the person; or  
☐ the patient's surrogate; or  
☐ if the patient is a minor, the patient's legal guardian or another legally authorized adult.

Or, I hereby certify that these orders are based on:

- ☐ instructions in the patient's advance directive; or  
☐ certification by two physicians that CPR and/or other specific treatments will be medically ineffective.

☐ Mark this line if the patient or authorized decision maker declines to discuss or is unable to make a decision about these treatments. The patient's or authorized decision maker's participation in the preparation of the MOLST form is always voluntary. If the patient or authorized decision maker has not limited care, except as otherwise provided by law, CPR will be attempted and other treatments will be given.

**CPR (RESUSCITATION) STATUS:** EMS providers must follow the *Maryland Medical Protocols for EMS Providers*.

☐ **Attempt CPR:** If cardiac and/or pulmonary arrest occurs, attempt cardiopulmonary resuscitation (CPR). This will include any and all medical efforts that are indicated during arrest, including artificial ventilation and efforts to restore and/or stabilize cardiopulmonary function.

[If the patient or authorized decision maker does not or cannot make any selection regarding CPR status, mark this option. Exceptions: If a valid advance directive declines CPR, CPR is medically ineffective, or there is some other legal basis for not attempting CPR, mark one of the "No CPR" options below.]

**1 No CPR, Option A, Comprehensive Efforts to Prevent Arrest:** Prior to arrest, administer all medications needed to stabilize the patient. If cardiac and/or pulmonary arrest occurs, do not attempt resuscitation (No CPR). Allow death to occur naturally.

☐ **Option A-1, Intubate:** Comprehensive efforts may include intubation and artificial ventilation.

☐ **Option A-2, Do Not Intubate (DNI):** Comprehensive efforts may include limited ventilatory support by CPAP or BiPAP, but do not intubate.

☐ **No CPR, Option B, Palliative and Supportive Care:** Prior to arrest, provide passive oxygen for comfort and control any external bleeding. Prior to arrest, provide medications for pain relief as needed, but no other medications. Do not intubate or use CPAP or BiPAP. If cardiac and/or pulmonary arrest occurs, do not attempt resuscitation (No CPR). Allow death to occur naturally.

**PHYSICIAN'S OR NURSE PRACTITIONER'S SIGNATURE (Signature and date are required to validate order)**

Practitioner's Signature

Print Practitioner's Name

Maryland License #

Phone Number

Date

Patient's Last Name, First, Middle Initial		Date of Birth		Page 2 of 2	
				<input type="checkbox"/> Male <input type="checkbox"/> Female	
Orders in Sections 2-9 below do not apply to EMS providers and are for situations other than cardiopulmonary arrest. Only complete applicable items in Sections 2 through 8, and only select one choice per applicable Section.					
2	<b>ARTIFICIAL VENTILATION</b>				
	2a. _____ May use intubation and artificial ventilation indefinitely, if medically indicated.				
	2b. _____ May use intubation and artificial ventilation as a limited therapeutic trial. Time limit _____				
	2c. _____ May use only CPAP or BiPAP for artificial ventilation, as medically indicated. Time limit _____				
	2d. _____ Do not use any artificial ventilation (no intubation, CPAP or BiPAP).				
3	<b>BLOOD TRANSFUSION</b>				
	3a. _____ May give any blood product (whole blood, packed red blood cells, plasma or platelets) that is medically indicated.		3b. _____ Do not give any blood products.		
4	<b>HOSPITAL TRANSFER</b>		4b. _____ Transfer to hospital for severe pain or severe symptoms that cannot be controlled otherwise.		
	4a. _____ Transfer to hospital for any situation requiring hospital-level care.		4c. _____ Do not transfer to hospital, but treat with options available outside the hospital.		
			5b. _____ Only perform limited medical tests necessary for symptomatic treatment or comfort.		
5	<b>MEDICAL WORKUP</b>		5c. _____ Do not perform any medical tests for diagnosis or treatment.		
	5a. _____ May perform any medical tests indicated to diagnose and/or treat a medical condition.				
6	<b>ANTIBIOTICS</b>				
	6a. _____ May use antibiotics (oral, intravenous or intramuscular) as medically indicated.		6c. _____ May use oral antibiotics only when indicated for symptom relief or comfort.		
	6b. _____ May use oral antibiotics when medically indicated, but do not give intravenous or intramuscular antibiotics.		6d. _____ Do not treat with antibiotics.		
7	<b>ARTIFICIALLY ADMINISTERED FLUIDS AND NUTRITION</b>				
	7a. _____ May give artificially administered fluids and nutrition, even indefinitely, if medically indicated.		7c. _____ May give fluids for artificial hydration as a therapeutic trial, but do not give artificially administered nutrition.		
	7b. _____ May give artificially administered fluids and nutrition, if medically indicated, as a trial. Time limit _____		7d. _____ Do not provide artificially administered fluids or nutrition.		
8	<b>DIALYSIS</b>		8b. _____ May give dialysis for a limited period. Time limit _____		
	8a. _____ May give chronic dialysis for end-stage kidney disease if medically indicated.		8c. _____ Do not provide acute or chronic dialysis.		
9	<b>OTHER ORDERS</b> _____				
	_____				
	_____				
	_____				
	_____				
<b>PHYSICIAN'S OR NURSE PRACTITIONER'S SIGNATURE (Signature and date are required to validate order)</b>					
Practitioner's Signature			Print Practitioner's Name		
Maryland License #			Phone Number		Date

## INSTRUCTIONS

**Completing the Form:** The physician or nurse practitioner shall select only 1 choice in Section 1 and only 1 choice in any of the other Sections that apply to this patient. If any of Sections 2-9 do not apply, leave them blank. Use Section 9 to document any other orders related to life-sustaining treatments. The order form is not valid until a physician or nurse practitioner signs and dates it. Each page that contains orders must be signed and dated. A copy or the original of every completed MOLST form must be given to the patient or authorized decision maker within 48 hours of completion of the form or sooner if the patient is discharged or transferred.

**Selecting CPR (Resuscitation) Status:** EMS Option A-1 – Intubate, Option A-2 – Do Not Intubate, and Option B include a set of medical interventions. You cannot alter the set of interventions associated with any of these options and cannot override or alter the interventions with orders in Section 9.

**No-CPR Option A: Comprehensive Efforts to Prevent Cardiac and/or Respiratory Arrest / DNR if Arrest – No CPR.** This choice may be made either with or without intubation as a treatment option. Prior to arrest, all interventions allowed under *The Maryland Medical Protocols for EMS Providers*. Depending on the choice, intubation may or may not be utilized to try to prevent arrest. Otherwise, CPAP or BiPAP will be the only devices used for ventilatory assistance. In all cases, comfort measures will also be provided. No CPR if arrest occurs.

**No-CPR Option B: Supportive Care Prior to Cardiac and/or Respiratory Arrest. DNR if Arrest Occurs – No CPR.** Prior to arrest, interventions may include opening the airway by non-invasive means, providing passive oxygen, controlling external bleeding, positioning and other comfort measures, splinting, pain medications by orders obtained from a physician (e.g., by phone or electronically), and transport as appropriate. No CPR if arrest occurs.

The DNR A-1, DNR A-2 (DNI) and DNR B options will be authorized by this original order form, a copy or a fax of this form, or a bracelet or necklace with the DNR emblem. EMS providers or medical personnel who see these orders are to provide care in accordance with these orders and the applicable *Maryland Medical Protocols for EMS Providers*. Unless a subsequent order relating to resuscitation has been issued or unless the health care provider reasonably believes a DNR order has been revoked, every health care provider, facility, and program shall provide, withhold, or withdraw treatment according to these orders in case of a patient's impending cardiac or respiratory arrest.

**Location of Form:** The original or a copy of this form shall accompany patients when transferred or discharged from a facility or program. Health care facilities and programs shall maintain this order form (or a copy of it) with other active medical orders in the patient's medical record. At the patient's home, this form should be kept in a safe and readily available place and retrieved for responding EMS and health care providers before their arrival. The original, a copy, and a faxed MOLST form are all valid orders. There is no expiration date for the MOLST or EMS DNR orders in Maryland.

**Reviewing the Form:** These medical orders are based on this individual's current medical condition and wishes. Patients, their authorized decision makers and attending physicians or nurse practitioners shall review and update if appropriate the MOLST orders annually and whenever the patient is transferred between health care facilities or programs, is discharged, has a substantial change in health status, loses capacity to make health care decisions, or changes his or her wishes.

**Updating the Form:** The MOLST form shall be voided and a new MOLST form prepared when there is a change to any of the orders. If modified, the physician or nurse practitioner shall void the old form and complete, sign, and date a new MOLST form.

**Voiding the Form:** To void this medical order form, a physician or nurse practitioner shall draw a diagonal line through the sheet, write "VOID" in large letters across the page, and sign and date below the line. A nurse may take a verbal order from a physician or nurse practitioner to void the MOLST order form. Keep the voided order form in the patient's active or archived medical record.

**Revoking the Form's DNR Order:** In an emergency situation involving EMS providers, the DNR order in Section 1 may be revoked at any time by a competent patient's request for resuscitation made directly to responding EMS providers.

**Bracelets and Necklaces:** If desired, complete the paper form at the bottom of this page, cut out the bracelet portion below, and place it in a protective cover to wear around the wrist or neck or pinned to clothing. If a metal bracelet or necklace is desired, contact Medic Alert at 1-800-432-5378. Medic Alert requires a copy of this order along with an application to process the request.

**How to Obtain This Form:** Call 410-706-4367 or go to [dhmh.maryland.gov/marylandmolst](http://dhmh.maryland.gov/marylandmolst)



Use of an EMS DNR bracelet is OPTIONAL and at the discretion of the patient or authorized decision maker. Print legibly, have physician or NP sign, cut off strip, fold, and insert in bracelet or necklace.

☐ DNR A-1 Intubate    ☐ DNR A-2 Do Not Intubate    ☐ DNR B

Pt. Name \_\_\_\_\_ DOB \_\_\_\_\_

Phys./NP Name \_\_\_\_\_ Date \_\_\_\_\_

Phys./NP Signature \_\_\_\_\_ Phone \_\_\_\_\_

# 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.

### ADVISORY COUNCIL ON CEMETERY OPERATIONS

**Subject:** Public Meeting  
**Date and Time:** October 27, 2011, 10 a.m. — 1 p.m.  
**Place:** Dept. of Labor, Licensing and Regulation, 500 N. Calvert St., 3rd Fl., Baltimore, MD  
**Contact:** Benjamin Foster (410) 230-6229  
 [11-20-20]

### BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

**Subject:** Public Meeting  
**Date and Time:** October 14, 2011, 9 a.m.  
**Place:** 4201 Patterson Ave., Rms. 100/107, Baltimore, MD  
**Contact:** Carol Johnson (410) 764-5996  
 [11-20-14]

### BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

**Subject:** Public Meeting  
**Date and Time:** October 13, 2011, 10 a.m. — 1 p.m.  
**Place:** Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rms. 108/109, Baltimore, MD  
**Contact:** Maria Ware (410) 764-5902  
 [11-20-25]

### CONSUMER COUNCIL OF MARYLAND

**Subject:** Public Meeting  
**Date and Time:** October 7, 2011, 9:15 — 11 a.m.  
**Place:** 200 St. Paul Place, 16th Fl., Baltimore, MD  
**Contact:** Stephanie A. Hodge (410) 576-6557  
 [11-20-48]

### CORRECTIONAL TRAINING COMMISSION

**Subject:** Public Meeting  
**Date and Time:** October 18, 2011, 10 a.m. — 12 p.m.  
**Place:** Public Safety Education and Training Center, 6852 4th St., Sykesville, MD  
**Contact:** Thomas C. Smith (410) 875-3605  
 [11-20-26]

### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** November 14, 2011, 3 — 5 p.m.  
**Place:** Loch Raven Library, Baltimore, MD  
**Contact:** Jessica Winpiger (410) 821-2829  
 [11-20-13]

### PROFESSIONAL STANDARDS AND TEACHER EDUCATION BOARD

**Subject:** Public Meeting  
**Date and Time:** October 6, 2011, 9 a.m. — 12 p.m.  
**Place:** 200 W. Baltimore St., Baltimore, MD  
**Contact:** Madeline Koum (410) 767-0385  
 [11-20-08]

### 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  
 [11-20-01]

### EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL

**Subject:** Public Meeting  
**Date and Time:** October 6, 2011, 1 — 3 p.m.  
**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD  
**Add'l. Info:** The State Emergency Medical Services Advisory Council (SEMSAC) meets regularly on the 1st Thursday of each month.  
**Contact:** Leandrea Gilliam (410) 706-4449  
 [11-20-19]

### EMERGENCY MEDICAL SERVICES BOARD

**Subject:** Public Meeting  
**Date and Time:** October 11, 2011, 9 — 11 a.m.; part of the meeting may include a closed session  
**Place:** 653 W. Pratt Street, Ste 212, Baltimore, MD

**Add'l. Info:** The State Emergency Medical Services Board (EMS Board) meets regularly on the 2nd Tuesday of each month.  
**Contact:** Leandrea Gilliam (410) 706-4449  
 [11-20-18]

### BOARD FOR PROFESSIONAL ENGINEERS

**Subject:** Public Meeting  
**Date and Time:** October 13, 2011, 9 a.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6262  
 [11-20-44]

### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting  
**Date and Time:** November 2, 2011, 10 a.m. — 4:30 p.m.  
**Place:** Howard County Bureau of Utilities, Columbia, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Pat Kratochvil (410) 537-3597  
 [11-20-12]

### FIRE PREVENTION COMMISSION

**Subject:** Public Meeting  
**Date and Time:** October 13, 2011, 9:30 a.m.  
**Place:** Laurel Municipal Bldg., Council Chambers, 8103 Sandy Spring Rd., Laurel, MD  
**Add'l. Info:** If public schools in Prince George's County are closed due to inclement weather, the meeting and any appeals will be rescheduled.  
**Contact:** Heidi Ritchie (877) 890-0199  
 [11-20-29]

### FIRE PREVENTION COMMISSION

**Subject:** Public Hearing on Regulations  
**Date and Time:** October 13, 2011, 12 p.m.  
**Place:** Laurel Municipal Bldg., Council Chambers, 8103 Sandy Spring Rd., Laurel, MD  
**Add'l. Info:** The Commission will hold a public hearing on proposed amendments to COMAR 29.06.04 Fees for Fire Prevention Services. If public schools in Prince George's County are closed due to

inclement weather, the hearing will be rescheduled.

**Contact:** Heidi Ritchie (877) 890-0199  
[11-20-32]

**DEPARTMENT OF GENERAL  
SERVICES/ARCHITECTURAL/ENGINEERING/PROCUREMENT/GPSSB**

**Subject:** Public Meeting

**Date and Time:** October 4, 2011, 9 a.m.

**Place:** 201 W. Preston St., Rm. L-2, Baltimore, MD

**Add'l. Info:** The agenda for the meeting is as follows:

A. Acknowledge receipt of the Department of General Services' Letter of Certification, receive and act upon the Qualification Committee's and/or Second Phase Review Panel's recommendation that the ranking of the firms be approved and that authorization be granted to initiate negotiations in accordance with the A/E Procurement regulations for the following project:

Project No. MDE-11-6.0-AMA

Professional Services Agreement to Provide Air Quality and Radiation Management Services for Multiple Projects with Fees \$200,000 or Less

Using Agency: Maryland Department of the Environment

B. The Board, in making its selection recommendation for presentation to the Board of Public Works, shall determine that the negotiations have been conducted in accordance with Regulations and that the Price Proposal is fair, competitive, and reasonable for the following project:

Project No. DGS-11-009-IQC

Professional Services Agreement to Provide Civil Investigative, Design and Engineering Services and Land Surveying Services for Multiple Construction Projects with Fees Greater than \$25,000 and Less than \$200,000

Using Agency: Department of General Services

C. The Selection Board will also review other matters which may be presented for its consideration

Please call William A. Davis at 410-767-4296 (voice) or, for persons with hearing or speech disabilities, call via the Maryland Relay Service at 1-800-735-2258 to request any reasonable accommodations you may require.

**Contact:** William A. Davis (410) 767-4296  
[11-20-49]

**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  
[11-20-27]

**HOME IMPROVEMENT  
COMMISSION**

**Subject:** Public Meeting

**Date and Time:** October 6, 2011, 10 a.m. — 12:30 p.m.

**Place:** 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD

**Contact:** Steven Smitson (410) 230-6169  
[11-20-07]

**DIVISION OF LABOR AND  
INDUSTRY/BOARD OF BOILER  
RULES**

**Subject:** Public Meeting

**Date and Time:** October 11, 2011, 9 a.m.

**Place:** 10946 Golden West Dr., Ste. 160, Hunt Valley, MD

**Contact:** Debbie Stone (410) 767-2225  
[11-20-46]

**DIVISION OF LABOR AND  
INDUSTRY/MARYLAND  
OCCUPATIONAL SAFETY AND  
HEALTH (MOSH) ADVISORY  
BOARD**

**Subject:** Public Meeting

**Date and Time:** October 5, 2011, 10 a.m.

**Place:** 10946 Golden West Dr., Ste. 160, Hunt Valley, MD

**Add'l. Info:** This will be a general meeting. The MOSH Advisory Board may consider regulations on tree care.

**Contact:** Debbie Stone (410) 767-2225  
[11-20-50]

**BOARD FOR PROFESSIONAL LAND  
SURVEYORS**

**Subject:** Public Meeting

**Date and Time:** October 5, 2011, 10 a.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Pamela J. Edwards (410) 230-6262  
[11-20-43]

**MARYLAND HEALTH CARE  
COMMISSION**

**Subject:** Public Meeting

**Date and Time:** October 20, 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  
[11-20-02]

**MARYLAND HEALTH CARE  
COMMISSION**

**Subject:** Notice of Receipt of Application

**Add'l. Info:** On September 6, 2011 the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by Genesis Bayview SNF — Matter No. 11-24-2323 — Construction of a new skilled nursing facility on the same campus of Johns Hopkins Bayview Medical Center where the existing Johns Hopkins Bayview Care center is located. The new facility will include 132 CCF beds purchased from the Care Center. Cost: \$26,150,769. The MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter No. listed above in any correspondence on the application. A copy of the application is available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Acting Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215

**Contact:** Ruby Potter (410) 764-3276  
[11-20-45]

## GENERAL NOTICES

1256

### MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

**Subject:** Public Meeting

**Date and Time:** October 12, 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  
[11-20-24]

### BOARD OF MORTICIANS AND FUNERAL DIRECTORS

**Subject:** Public Meeting

**Date and Time:** October 12, 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  
[11-20-23]

### DEPARTMENT OF NATURAL RESOURCES/POWER PLANT ASSESSMENT DIVISION

**Subject:** Issuance of Draft Final Long-term Electricity Report for Public Review

**Date and Time:** September 12, 2011

**Add'l. Info:** Pursuant to Executive Order 01.01.2010.16, the Maryland Department of Natural Resources' Power Plant Assessment Division is issuing the draft final Long-Term Electricity Report for public review and comment. The draft final report is available by going to <http://esm.versar.com/pprp/pprphome.htm>. Comments may be provided in writing by email to [dwtaylor@dnr.state.md.us](mailto:dwtaylor@dnr.state.md.us). The deadline for comments is October 24, 2011.

**Contact:** Susan Gray (410) 260-8661  
[11-20-51]

### BOARD OF OCCUPATIONAL THERAPY PRACTICE

**Subject:** Public Meeting

**Date and Time:** October 21, 2011, 8:30 a.m. — 2 p.m.

**Place:** Spring Grove Hospital Center, 55 Wade Ave., Catonsville, MD

**Add'l. Info:** Health Occupations Article, Title 10, Annotated Code of Maryland, and COMAR 10.46 amendments, additions, and revisions, including fee changes, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session. Sign language interpreters and/or appropriate

accommodations for qualified individuals with disabilities will be provided upon request. Please call 1-800-735-2255.

**Contact:** Marilyn Pinkney (410) 402-8556  
[11-20-30]

### 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  
[11-20-04]

### 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  
[11-20-05]

### 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  
[11-20-06]

### POLICE TRAINING COMMISSION

**Subject:** Public Meeting

**Date and Time:** October 4, 2011, 10 a.m. — 12 p.m.

**Place:** Public Safety Education and Training Center, 6852 4th St., Sykesville, MD

**Contact:** Thomas C. Smith (410) 875-3605  
[11-20-38]

### BOARD OF EXAMINERS OF PSYCHOLOGISTS

**Subject:** Public Meeting

**Date and Time:** October 14, 2011, 9 a.m. — 1 p.m.

**Place:** 4201 Patterson Ave., Conf. Rm. 110, Baltimore, MD

**Add'l. Info:** Sign language interpreters/other appropriate accommodations for qualified individuals with disabilities will be provided upon request.

**Contact:** Dorothy Kutcherman (410) 764-4703  
[11-20-28]

### COMMISSION OF REAL ESTATE APPRAISERS AND HOME INSPECTORS

**Subject:** Public Meeting

**Date and Time:** October 11, 2011, 10:30 a.m. — 12 p.m.

**Place:** 500 N. Calvert St., Baltimore, MD

**Contact:** Patti Schott (410) 230-6165  
[11-20-03]

### REAL ESTATE COMMISSION

**Subject:** Public Meeting

**Date and Time:** October 19, 2011, 10:30 a.m.

**Place:** Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Patricia Hannon (410) 230-6199  
[11-20-09]

### REAL ESTATE COMMISSION

**Subject:** Public Hearing

**Date and Time:** October 19, 2011, 12:30 p.m.

**Place:** Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Patricia Hannon (410) 230-6199  
[11-20-10]

### STATE BOARD OF INDIVIDUAL TAX PREPARERS

**Subject:** Public Meeting

**Date and Time:** October 17, 2011, 1:30 — 3:30 p.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Douglas Blackstone (410) 230-6244  
[11-20-31]

### BOARD OF WELL DRILLERS

**Subject:** Public Meeting

**Date and Time:** October 26, 2011, 9 a.m. — 4 p.m.

**Place:** MDE, 1800 Washington Blvd., Terra Conf. Rm., Baltimore, MD

**Add'l. Info:** A portion of this meeting may be held in closed session.

**Contact:** Willie Everett (410) 537-3644  
[11-20-11]

### WORKERS' COMPENSATION COMMISSION

**Subject:** Public Meeting

**Date and Time:** October 13, 2011, 9 — 11 a.m.

**Place:** 10 E. Baltimore St., Baltimore, MD

**Add'l. Info:** Portions of this meeting may be held in closed session.

**Contact:** Amy Lackington (410) 864-5300  
[11-20-15]

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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	_____	_____
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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	_____	_____
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Title 26	Part 2 **		\$109	\$72	_____	_____
Title 26	Part 3 **		\$76	\$50	_____	_____
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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	_____	_____
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#### 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
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- 33 Board of Examiners of Nursing Home Administrators
- 34 Board of Pharmacy
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- 36 Board of Examiners of Psychologists

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- 37 Health Services Cost Review Commission
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- 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

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- 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
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