



Maryland Register

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Volume 38 • Issue 23 • Pages 1391—1482

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before October 17, 2011, 5 p.m.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 October 17, 2011.

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



Information About the Maryland Register and COMAR

MARYLAND REGISTER

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

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

The following information is also published regularly in the Register:

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

CITATION TO THE MARYLAND REGISTER

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

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

CODE OF MARYLAND REGULATIONS (COMAR)

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

CITATION TO COMAR REGULATIONS

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

DOCUMENTS INCORPORATED BY REFERENCE

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

HOW TO RESEARCH REGULATIONS

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

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

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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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April 6	March 19	March 28	March 26
April 20	April 2	April 11	April 9
May 4	April 16	April 25	April 23
May 18	April 30	May 9	May 7
June 1**	May 14	May 21	May 18
June 15**	May 24	June 6	June 4
June 29	June 11	June 20	June 18
July 13**	June 25	July 3	July 2
July 27	July 9	July 18	July 16

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

Due date for documents exceeding 18 pages — 1 week before date shown

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

** Note closing date changes

The regular closing date for Proposals and Emergencies is Monday.

09.12.01.01D(2)(c)(iii)

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33.07.09.01—,06 • 38:23 Md. R. 1468 (11-4-11)
33.11.03.08 • 38:23 Md. R. 1470 (11-4-11)
33.11.04.03 • 38:23 Md. R. 1470 (11-4-11)
33.13.02.02 • 38:21 Md. R. 1313 (10-7-11)
33.13.03.02 • 38:21 Md. R. 1313 (10-7-11)
33.13.05.01,02 • 38:21 Md. R. 1313 (10-7-11)
33.13.06.03—,05 • 38:21 Md. R. 1313 (10-7-11)
33.13.06.03,05 • 38:23 Md. R. 1471 (11-4-11)
33.13.08.01—,05 • 38:21 Md. R. 1313 (10-7-11)
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33.13.10.01,02 • 38:23 Md. R. 1471 (11-4-11)
33.17.06.08—,11 • 38:23 Md. R. 1468 (11-4-11)

34 DEPARTMENT OF PLANNING

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

The Governor

EXECUTIVE ORDER 01.01.2011.19

Proclamation Convening the General Assembly of Maryland in Extraordinary Session at Annapolis, Maryland on October 17, 2011

WHEREAS, Every decade, Maryland and other States must create electoral districts from which representatives to the United States House of Representatives are to be elected based on data from the United States Census Bureau;

WHEREAS, Maryland's Presidential Primary will be held on April 3, 2012, with early voting centers opening on March 24, 2012;

WHEREAS, The passage of the 2009 Military and Overseas Voter Empowerment (MOVE) Act by Congress establishes certain deadlines for States to transmit absentee ballots for federal elections to service members covered by the Uniformed and Overseas Citizens Voting Absentee Act (UOCAVA); and

WHEREAS, Maryland must pass a Congressional redistricting plan prior to the beginning of the 2012 Session of the Maryland General Assembly in order to conduct the Presidential Primary on April 3, 2012.

NOW THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY ARTICLE II, SECTION 16 OF THE MARYLAND CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM AND CONVENE A SPECIAL AND EXTRAORDINARY SESSION OF THE GENERAL ASSEMBLY OF MARYLAND TO COMMENCE ON MONDAY, OCTOBER 17, 2011, IN THE STATE CAPITAL IN THE CITY OF ANNAPOLIS FOR THE PURPOSE OF PASSING LEGISLATION TO ESTABLISH THE STATE OF MARYLAND'S CONGRESSIONAL DISTRICTS.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 12th Day of October, 2011.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[11-23-53]

EXECUTIVE ORDER 01.01.2011.20

Governor's Job Creation Through Regulatory Reform Initiative

WHEREAS, The State of Maryland and Maryland families are not immune from the continuing effects of the global recession, and our unemployment rate, though one of the lowest in the United States, shows that we still have far too many Marylanders out of work;

WHEREAS, The State of Maryland has promoted economic development and job creation by making record investments in public school construction, creating a large-scale public venture capital initiative, investing millions in loans to small businesses, providing

numerous tax incentives to Maryland businesses, and working to streamline business and economic development projects;

WHEREAS, The private sector plays an essential role in economic development and job creation; and businesses thrive in an economic environment that encourages innovation and investment and provides a predictable and balanced regulatory future;

WHEREAS, State agencies must balance their core institutional missions, including the protection of public health, welfare, safety, and our environment, with the need to promote economic growth, innovation, competitiveness, and job creation;

WHEREAS, Many businesses are required to comply with regulations issued by numerous agencies, and many of these regulations impose burdens that are not justified by present facts and circumstances and do not further the institutional missions of State agencies;

WHEREAS, Unnecessary and onerous regulations waste private and public sector resources and jeopardize investment in the State's economy; and

WHEREAS, All State agencies must take additional steps to reduce regulatory burdens in order to enable regulated businesses to focus on expansion and job creation and to foster the growth of small businesses and new industries.

NOW THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Each agency shall conduct a comprehensive review of its regulations in order to determine whether any such regulations should be modified, streamlined, or repealed in order to reduce unnecessary regulatory burdens and promote economic growth and job creation.

B. Each agency shall identify circumstances in which businesses are co-regulated by other agencies and identify ways in which rules and regulations can be harmonized to eliminate unnecessary burdens on the private sector.

C. Each agency shall provide a report with the results of its review and a set of recommendations to the Governor's Chief of Staff no later than December 17, 2011.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 17th Day of October, 2011.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[11-23-54]

The Attorney General

OPINIONS

August 22, 2011

The Honorable Robert E. Bruchey, II
Mayor, City of Hagerstown

On behalf of the City of Hagerstown ("City") you have requested our opinion regarding the "system of charges" that a local government may adopt to fund stormwater management programs under Annotated Code of Maryland, Environment Article ("EN"), §4-204(d). Specifically, you have asked:

(1) Whether the City may use the proceeds of a tax or fee under EN §4-204(d) to finance curb construction and maintenance.

(2) Whether such a charge may be assessed against a tax-exempt property owner.¹

For the reasons explained below, our opinion is as follows:

(1) Curbs, if functioning as an integral part of a stormwater management system, may be constructed and maintained with funds obtained through a system of charges imposed by a local governing body pursuant to EN §4-204(d).

(2) Whether such a charge may be assessed against a tax-exempt property owner depends on the nature of the particular charge assessed under EN §4-204(d). If a property tax is imposed, then tax-exempt entities would be exempt from the assessment. However, a valid utility user fee, regulatory program fee, or excise tax could be assessed against many tax-exempt entities.

I

Background

A. Evolution of Stormwater Management

Stormwater management initially focused on urban flood prevention, later evolved into resource management, and, more recently, has become an environmental and regulatory function. Maryland Department of the Environment, *Report on Stormwater Management Act of 2007* (2008) (the "2008 MDE Report") at 1. Current stormwater management still addresses flood prevention (*i.e.*, quantity control), but pollution control (*i.e.*, quality control) is also of concern, because stormwater collects pollutants as it runs off developed properties. 2008 MDE Report at 5. What was once unregulated flood prevention is now a carefully regulated activity, requiring the planning, design, construction, and maintenance of a system that will ensure compliance with various laws, such as the Maryland Stormwater Management Act, EN §4-201 *et seq.*², and the

¹ Consistent with our policy concerning local government opinion requests, you included with your request a legal opinion from the City Attorney. The City Attorney determined that curb construction and maintenance could be appropriately funded by a system of charges established by the City under EN §4-204(d). The City Attorney also opined that charges for curb construction and maintenance would likely be considered a tax, which could not be levied upon a tax-exempt entity.

² The General Assembly first enacted the Stormwater Management Act in 1982, Chapter 682, Laws of Maryland 1982, and has amended it several times in the intervening years. A review of the history of that statute through 2006 may be found in 91 *Opinions of the Attorney General* 152 (2006). The 2008 MDE Report was produced in response to a provision of the Stormwater Management Act of 2007 directing MDE to evaluate options for a stormwater management fee system and an appropriate schedule of fees for enforcement of the stormwater management laws. Chapters 121, §2, 122, §2, Laws of Maryland 2007.

federal Clean Water Act, 33 U.S.C. §1251 *et seq.*³. See 2008 MDE Report at 4-5.

B. Stormwater Management Act

1. Local Stormwater Management Programs

In the Stormwater Management Act ("the Act"), the Legislature found that "the management of stormwater runoff is necessary to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding" in order to protect the State's water and land resources. EN §4-201. The Act is intended "to reduce as nearly as possible the adverse effects of stormwater runoff" *Id.* To achieve this goal, the Act requires, among other things, that each county and municipality have an ordinance implementing a stormwater management program that is consistent with flood management plans and that meets certain minimum requirements. EN §§4-202, 4-203.

2. Local System of Charges

A key provision of the Act authorizes each county and municipality to adopt a "system of charges" to fund the implementation of stormwater management programs. EN §4-204(d). The revenues generated by the system of charges may be used for:

- (i) Reviewing stormwater management plans;
- (ii) Inspection and enforcement activities;
- (iii) Watershed planning;
- (iv) Planning, design, land acquisition, and construction of stormwater management systems and structures;
- (v) Retrofitting developed areas for pollution control;
- (vi) Water quality monitoring and water quality programs;
- (vii) Operation and maintenance of facilities; and
- (viii) Program development of these activities.

EN §4-204(d)(1). The charges take effect upon enactment by the local governing body and may be collected in the same manner as county and municipal property taxes. EN §4-204(d)(2), (3).⁴

Although the Act requires local governments to adopt an ordinance implementing a stormwater management program, the grant of authority to establish a system of charges is permissive. Accordingly, a local governing body can choose to pay the costs of the program with general revenue funds or with the proceeds of a "system of charges."

3. State Guidance and Assistance

The General Assembly has charged the Maryland Department

³ Under the federal Clean Water Act (the "CWA"), State and local governments must meet certain water quality standards. For example, under the CWA's National Pollutant Discharge Elimination System ("NPDES") regulations, administered by the State pursuant to 33 U.S.C. §1342(b), certain counties and municipalities must comply with strict standards for stormwater runoff and ensure that certain minimum control measures are implemented. 40 CFR 122.26; *see also* NPDES General Permit for Discharges from Small Municipal Separate Storm Sewers (April 14, 2003), *available at* <http://www.mde.state.md.us/assets/document/NPDES%20Phase%20II%20General%20Permit.pdf#page_28> (last visited August 9, 2011).

⁴ The statute does not apply to the construction activities of State or federal agencies. EN §4-205(a). Stormwater management plans for such activities are administered through the Maryland Department of the Environment. EN §4-205(b)-(c).

of the Environment (“MDE”) with various duties related to the administration and enforcement of the Act. Among other things, MDE is to adopt regulations that establish criteria and procedures for stormwater management. EN §4-203(b). MDE has suggested that, although regulatory fees or taxes could be charged to fund stormwater management programs, local governments may also impose stormwater utility user fees based on the runoff contribution of a property. 2008 MDE Report at 13 (stormwater utility fee could generate “funding that is adequate, stable, equitable, and dedicated solely to the stormwater function”); *see also* Maryland Department of the Environment, *Financing Stormwater Management: the Utility Approach* (1988) (“*Financing Stormwater Management*”) at 7⁵.

II Analysis

A. *Whether Curb Construction and Maintenance May be Funded*

You first ask whether the City may finance curb construction and maintenance through a system of charges authorized under EN §4-204(d). The statute does not explicitly mention curb construction and maintenance. But it states that the revenues resulting from a system of charges may be used for the planning, design, and construction of “stormwater management systems and structures” and the operation and maintenance of “facilities.” EN §4-204(d)(1)(iv), (vii). Thus, curb construction and maintenance may be funded under EN §4-204(d) if curbs are an integral part of a stormwater management system.

In its regulations, MDE has defined “stormwater management” to include, *inter alia*, quantitative control through “a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land.” COMAR 26.17.02.02(B)(36)(a). A “stormwater management system” is comprised of “natural areas, [environmental site design] practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates, or discharges from a site.” COMAR 26.17.02.02(B)(38).

Curbing is a structure through which stormwater flows and is discharged from a site. *See* 2000 Maryland Stormwater Design Manual (rev. 2009) at p. 1.4 (recognizing use of curbs and other structures to control stormwater flow). It thus can play a critical role in stormwater management systems:

Traditionally, the major objective of installing separate storm sewers has been to remove as much stormwater runoff from developed lands as soon as possible. To achieve this goal, local governments have constructed thousands of miles of curb, gutter, road side ditches, and other storm sewers to convey stormwaters as quickly and as efficiently as possible to the nearest stream.

Weiss, *Stormwater and the Clean Water Act: Municipal Separate Storm Sewers in the Moratorium*, in U.S. Env'tl. Prot. Agency, *National Conference on Urban Runoff Management: Enhancing Urban Watershed Management at the Local, County, and State Levels* (EPA-625-R-95-003) 47, 57 (1995).

There appears little doubt that curb construction and maintenance can be an integral part of a stormwater management program. Thus, in our view, revenues generated from a system of charges adopted pursuant to EN §4-204(d) may be used for that

purpose.⁶

B. *Whether a Charge for Curb Construction and Maintenance May be Assessed Against Tax-Exempt Entities*

You also ask whether a charge for curb construction and maintenance established under the authority of EN §4-204(d) may be assessed against a tax-exempt property owner. EN §4-204(d) itself does not specify any exemptions. Thus, any exemption from such an assessment derives from other authority that may vary according to the type of charge assessed and the type of tax-exempt entity.

1. Potential Types of Charges

In EN §4-204(d), the General Assembly authorized local governments to establish a “system of charges” to fund their stormwater management programs⁷. In a prior opinion, this Office conducted a comprehensive review of the statute’s legislative history and purpose and concluded that the broadly-worded phrase “system of charges” includes both taxes and fees. *See* 91 *Opinions of the Attorney General* 152, 157–60 (2006) (“2006 Opinion”)⁸.

In categorizing the types of charges assessed by local governments, Maryland courts have distinguished taxes from regulatory fees and user fees depending on the function of the particular charge. Generally, a tax is designed primarily to raise revenue, a regulatory fee funds a regulatory measure, and a user fee pays for a commodity consumed or a service rendered. *See Eastern Diversified v. Montgomery County*, 319 Md. 45, 52-53, 570 A.2d 850 (1990) (regulatory fee v. tax); *Mass Transit Administration v. Baltimore County Revenue Auth.*, 267 Md. 687, 694-95, 298 A.2d 413 (1973) (tax v. toll or user fee); *Maryland Theatrical Corp. v. Brennan*, 180 Md. 377, 380–81, 24 A.2d 911 (1942) (regulatory fee v. tax); *Home Owners’ Loan Corp. of Washington, D.C. v. Mayor of Baltimore*, 175 Md. 676, 681, 3 A.2d 747 (1939) (difference between tax and charge based on use of water). Within the category of taxes related to property, a distinction is made between a tax based on the value of the property – often called a “property tax” – and a tax based on the use of the property – often referred to as an “excise tax.” *See Waters Landing Limited Partnership v. Montgomery County*, 337 Md. 15, 26, 650 A.2d 712 (1994); *Weaver v. Prince George’s County*, 281 Md. 349, 358-59, 379 A.2d 399 (1977). We next elaborate on each of these types of charges in the context of stormwater management.

⁶ We thus agree with the City Attorney, who concluded that, “based upon purpose and function, curbing quite appropriately qualifies as an integral part of a stormwater management system.” City Attorney’s opinion at 2. The City Attorney appropriately relied on the analysis of an Assistant City Engineer, who indicated that curbing functions as an integral part of a stormwater drainage network.

⁷ Under the State Constitution, a local government may assess a tax, fee, or other charge only with the assent of the General Assembly. Maryland Declaration of Rights, Article 14; Maryland Constitution, Article XI-E, §5 (municipality may not levy new fee without express authorization of General Assembly); *see also River Walk Apts, LLC v. Twigg*, 396 Md. 527, 544, 914 A.2d 770 (2007).

⁸ The specific question addressed by the 2006 Opinion was “whether the authorized charges are in the nature of a *regulatory* fee or a *tax*.” 2006 Opinion at 152 (emphasis added). Although the requester did not inquire about user or service fees, the opinion briefly noted that stormwater management charges might be based on use. *Id.* at 155 n.2. The opinion also suggested that it might be difficult to develop a formula for computing a fee based on use. *Id.* citing, *inter alia*, 91 *Opinions of the Attorney General* 14 (proposed “street utility fee” based on average trip generation data not a user fee). However, MDE’s guidance offers a method for calculating usage of stormwater management measures that may allow for the assessment of a reasonable user charge. If such a method is used, there would be no legal barrier to the assessment of a user fee as part of the system of charges under EN §4-204(d).

⁵ MDE has published a model ordinance for local governments that adopts that approach – *i.e.*, creating a utility within a local government. Maryland Department of the Environment, *Maryland Sample Stormwater Utility Ordinance* (1988 rev. 2003).

a. *User Fee*

A user fee for curb construction and maintenance might be charged by a stormwater utility. A stormwater utility provides the service of stormwater management, much as public water and waste water utilities provide those services⁹. See Maryland Department of the Environment, *Potential Revenues from Stormwater Utilities in Maryland* (July 1991) (“1991 MDE Report”) at 2-1 to 2-3. A user fee would be based on the contribution of a given parcel of property to the total volume of stormwater that must be managed. 1991 MDE Report at 2-1; see also 2008 MDE Report at 10–11. A parcel developed with impervious structures, driveways, and patios does not retain stormwater as well as undeveloped land and thus contributes more runoff. 1991 MDE Report at 2-1. The rationale for the stormwater utility user fee approach, therefore, is that the generator is charged for the service provided to control the runoff from the generator’s parcel. 1991 MDE Report at 2-1 to 2-2; *Financing Stormwater Management* at 6. The Court of Appeals has relied on a similar rationale to uphold a special assessment in a similar context. *Leonardo v. Board of County Commissioners*, 214 Md. 287, 306-9, 134 A.2d 284 (1957) (upholding erosion control charge based on waterfront footage); see also *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So.2d 180, 185 (Fla. 1995) (upholding special assessment for stormwater facilities against developed properties that generate polluted runoff and therefore benefit from such facilities).

MDE has developed a model ordinance that includes a stormwater utility user fee. Maryland Department of the Environment, *Maryland Sample Stormwater Utility Ordinance* (1988 rev. 2003). Under MDE’s model ordinance a local government would create a stormwater utility and impose user fees to finance stormwater management programs. Sample Ordinance §§1.3, 5.0. The user fee provision in the model ordinance reads in part:

Such charges shall be paid by each user of the stormwater system and will reflect the extent to which each user contributes runoff to the system. The charges will bear a substantial relationship to the cost of service provided to the property. The rate structure shall be fair and equitable, simple and easy to administer, and generate sufficient revenue to fund all necessary utility activities.

Sample Ordinance §5.1. MDE’s model standard for assessment of a stormwater utility user fee is similar to that required for water and sewer utility user fees. See *West Capital Associates Limited Partnership v. City of Annapolis*, 110 Md. App. 443, 452-53, 677 A.2d 655 (1995) (describing standards for assessment of water and sewer fees).¹⁰

b. *Regulatory Fee*

The 2006 Opinion concluded that a local government may impose a regulatory fee as part of a system of charges under EN §4-204(d). As explained in that opinion, a regulatory measure generally imposes requirements on the regulated person beyond the mere payment of a fee. 2006 Opinion at 156. The fee must be reasonable and the amount of revenue generated must bear some relation to the purpose of the regulation. *Id.* While a regulatory fee may raise

revenue, its predominant purpose should be regulatory, such as defraying the expense of regulation. *Eastern Diversified*, 319 Md. at 53–55; *Maryland Theatrical Corp.*, 180 Md. at 380–81.

We are not aware of any Maryland cases concerning the use of regulatory fees to finance stormwater management, but courts in other states have upheld such regulatory fees. See *Twietmeyer v. City of Hampton*, 497 S.E.2d 858, 859, 861 (Va. 1998) (charge to recover stormwater control program costs, including construction, operation, and maintenance activities, was regulatory fee, not tax); *Teter v. Clark County*, 704 P.2d 1171, 1180 (Wash. S. Ct. 1985) (charge imposed on homeowners to finance water management department was regulatory fee and not a tax); *Smith v. Spokane County*, 948 P.2d 1301, 1306–7 (Wash. App. 1997) (charge designated to fund, among other things, storm or surface water drainage collection, disposal and treatment was valid regulatory fee and not a property tax).

c. *Taxes*

The 2006 Opinion also concluded that a local government could impose a property tax or excise tax as part of a system of charges under EN §4-204(d). 2006 Opinion at 161. A tax, generally, is an enforced contribution “in return for the general benefits of the government, and it promises nothing to the persons taxed, beyond what may be anticipated from an administration of the laws for individual protection, and the general public good.” *Brooks v. Baltimore*, 48 Md. 265, 268–69 (1878) (citation and quotation marks omitted); see also *Allied Am. Mut. Fire Ins. Co. v. Comm’r of Motor Vehicles*, 219 Md. 607, 616, 150 A.2d 421 (1959); 2006 Opinion at 155. In other words, the primary purpose of a tax is to raise revenue for general public purposes. Although a revenue raising measure might include some regulatory elements, generally, an act is a revenue raising measure when it appears from the act itself that revenue is its main objective. *Eastern Diversified*, 319 Md. at 53; *Maryland Theatrical Corp.*, 180 Md. at 381-82.

As noted in the 2006 Opinion, if a charge is assessed as a tax, there may be different consequences if the tax is an excise tax rather than an *ad valorem* property tax. 2006 Opinion at 161. A property tax would need to be implemented in accordance with the uniformity requirement of Article 15 of the Maryland Declaration of Rights. In addition, as explained in greater detail below, certain exemptions from a property tax do not extend to an excise tax.

2. **Charges Assessable As to Particular Types of Tax-Exempt Entities**

a. *State and Local Government Entities*

In general, property owned by the State, a county, or a municipal corporation and used for governmental purposes is not subject to a property tax. Annotated Code of Maryland, Tax-Property Article (“TP”), §7-210(a). Property owned by an instrumentality of the State or local government may be exempt, to the extent that a law exempts the property from property tax. See TP §7-210(b). Therefore, if a municipality establishes a property tax as part of the system of charges under EN §4-204(d), then property owned by State and local governments would not be subject to the charge, but property owned by their instrumentalities would be, unless specifically exempt by law.

The assessment of other types of charges against State and local entities is less straightforward. The authorization to create a system of charges in EN §4-204(d) does not apply to construction activities of the State. EN §4-205(a). Therefore, charges could not be assessed against State entities in relation to construction activities. In addition, as a general principle, the State is not subject to regulation under an enactment of the General Assembly unless there is “a clear and indisputable intention” that the State be subject to that regulation. See *Mayor and City Council of Baltimore v. State*, 281 Md. 217, 223, 378 A.2d 1326 (1977). Similarly, a county would ordinarily not be subject to regulation by a municipality. See 73 *Opinions of the Attorney General* 238 (1988). Consistent with these principles, the

⁹ In this regard, it is notable that the General Assembly has referred to “drainage,” as well as water and sewerage, as a service that a local government may provide. See EN §9-705(8) (“A municipal authority may ... withhold water, sewerage, or drainage service from any property that abuts on any street for which a person establishes lines and grades without the approval of the municipal authority”).

¹⁰ The court noted that a utility user fee is not considered a tax or even in the nature of a tax because such a fee is based on either consumption of a commodity or provision of a service and does not represent a general exaction applicable to persons who do not use the service or commodity. 110 Md. App. at 451.

term “person” in a statute is ordinarily construed not to apply to the State or political subdivisions. See 85 *Opinions of the Attorney General* 3 (2000).

In the Stormwater Management Act, the General Assembly has indicated an intention to cover State and local entities. For example, the definition of “person” applicable to the Act explicitly includes governmental entities. EN §4-101.1 (“‘Person’ includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units”). Moreover, there would have been no need to exclude “construction activities” of State entities from the reach of EN §4-204 if the Act was not intended to regulate State entities. Finally, even when a State entity is exempt from taxes or other local government charges, it may be subject to a fee for services provided by a local government. See, e.g., *Mass Transit Administration*, 267 Md. at 697 (State agency required to pay bridge tolls that did not fall within the categories of taxes and other charges from which agency was exempt). Thus, in our view, the State, a county, or a municipal corporation, or their instrumentalities could be assessed a utility user fee, and may be subject to a regulatory fee or an excise tax that is part of a system of charges under EN §4-204(d).¹¹

b. Federal Government Entities

As a general rule, federal agencies are exempt from State and local taxes unless Congress expressly consents. *United States v. City of Huntington, West Virginia*, 999 F.2d 71, 73 (4th Cir. 1993), cert. denied, 410 U.S. 1109 (1994). On the other hand, federal agencies are generally liable to pay reasonable user fees assessed by State or local agencies – for example, charges for services provided by municipal utilities. *Id.*; see also *United States v. Harford County*, 572 F.Supp. 239, 241 (D.Md. 1983). The same principle would apply to a regulatory fee based on the provision of a specific service.

With particular application to stormwater programs, in Section 313 of the federal Clean Water Act, Congress has waived sovereign immunity and accepted liability as to all reasonable stormwater program service charges assessed against federal property regardless of whether such a charge is denominated a fee or a tax. 33 U.S.C. §1323(a). Specifically, each department, agency, or instrumentality of the federal government having jurisdiction over any property or engaged in any activity resulting in the discharge or runoff of pollutants:

shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of *reasonable service charges*.

33 U.S.C. §1323(a) (emphasis added). The statute defines “reasonable service charge” to include “any reasonable nondiscriminatory charge ... that is [both] based on some fair approximation of the proportionate contribution of the property” to stormwater pollution in terms of stormwater runoff rate, quantity, or quality, and “used to pay or reimburse the costs associated with any stormwater management program ... including [all] programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge....” 33 U.S.C. §1323(c)¹². Thus, whether a regulatory fee could be assessed against a federal governmental entity

would likely depend on whether it related to a service provided to the federal entity and met the standard in §1323(c) for a reasonable service charge.¹³

As noted above, MDE’s model ordinance includes a stormwater utility user fee that is calculated according to a reasonable and non-discriminatory method. If implemented in that fashion, it could be assessed against federal government entities. The model ordinance recognizes that such a user fee could be assessed against various governmental entities that are otherwise exempt from taxation. MDE Model Ordinance, §5.5.

c. Non-Governmental Entities

The tax-exempt status of a non-governmental property owner is irrelevant with regards to regulatory fee or user charge as such fees are neither taxes nor charges in the nature of taxes. See *Mass Transit Authority*, 267 Md. at 696; *West Capital Assocs.*, 110 Md. App. at 450. Thus, a regulatory or user fee could be assessed against an otherwise tax-exempt non-governmental entity.

Even if a non-governmental entity is exempt from federal income taxation, it is not automatically exempt from State taxation in Maryland. Excise taxes are not a general tax category subject to exemption under State law. Certain charitable, fraternal, educational, religious, or other similar organizations may be eligible for an exemption from State property tax, State income tax, or sales and use tax. Such an entity must satisfy specific requirements to qualify for each type of State tax exemption. See information posted by the Maryland Secretary of State at <www.sos.state.md.us/charity/non-profit.aspx> (summarizing tax exemptions for which non-profit organizations may qualify); and by the State Department of Assessments and Taxation at <www.dat.state.md.us/sdatweb/exempt.html>.

Thus, whether a charge established pursuant to EN §4-204(d) is assessable against a non-governmental tax-exempt property owner will likely depend on whether the charge would be considered a property tax. An entity exempt from property taxes in Maryland would not be required to pay a property tax imposed to fund stormwater management under EN §4-204(d). TP §§7-201 to 7-243 (exempting certain entities from property taxes). The same entity, however, would be required to pay a valid excise tax, utility user fee, or regulatory fee.

III Conclusion

Our opinion is as follows:

(1) Curbs, if functioning as an integral part of a stormwater management system, may be constructed and maintained with funds obtained through a system of charges imposed by a local governing body pursuant to EN §4-204(d).

(2) Whether such a charge may be assessed against a tax-exempt property owner depends on the nature of the particular charge assessed under EN §4-204(d). If a property tax is imposed, then tax-exempt entities would be exempt from the assessment. However, a valid utility user fee, regulatory program fee, or excise tax could be assessed against many tax-exempt entities.

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice *

*Former Associate Sherryl Zounes contributed significantly to the preparation of this opinion.

[11-23-39]

¹¹ MDE’s model stormwater utility ordinance contemplates that public properties would be charged “as if they were private properties.” Sample Ordinance, §5.5.

¹² This definition was recently added to clarify the limits of federal agency responsibility. Pub.L. 111-378, §1, 124 Stat. 4128 (Jan. 4, 2011).

¹³ Also, as noted above, State law exempts “construction activities” of federal agencies from the system of charges under EN §4-204(d). EN §4-205(a).

OPINIONS

October 5, 2011

Steven I. Kroll, Esquire
State's Attorneys' Coordinator

On behalf of the State's Attorneys' Coordination Council ("Coordination Council"), you have asked for our opinion whether the State's Attorney's Coordinator ("Coordinator") has various immunities from liability if the Coordinator is appointed a Special Assistant State's Attorney to handle a particular criminal prosecution when the State's Attorney for the jurisdiction has a conflict of interest.

In our opinion, if the Coordinator accepts appointment as a Special Assistant State's Attorney for a particular case in accordance with a direction of the Coordination Council, the Coordinator will have the same prosecutorial immunity and protection under the Maryland Tort Claims Act as other Assistant State's Attorneys.

I

Background

A. State's Attorneys' Coordinator

In 1977, the General Assembly created the Coordination Council and the position of Coordinator. Chapter 710, Laws of Maryland 1977, now codified at Annotated Code of Maryland, Criminal Procedure Article ("CP"), §15-201 *et seq.* The Coordination Council consists of the Attorney General and ten State's Attorneys selected in accordance with the statute. CP §15-202. The Coordinator serves as Secretary to the Coordination Council and assists it in carrying out its functions. CP §15-204.

The Coordinator is appointed by the Coordination Council and serves at its pleasure. CP §15-301(a). The Coordinator is to establish and implement training programs for State's Attorneys and their staffs, devise uniform reporting procedures for gathering statistical information related to the prosecutorial function, and administer the Victim and Witness Protection and Relocation Program. CP §15-302(1)-(3), (7)-(8). The statute confers some general powers and duties on the Coordinator – obtaining grants, expending funds, entering into agreements and contracts, and conferring with the Attorney General, individual State's Attorneys, and the Coordination Council. CP §15-302(4)-(5), (9). In addition, the Coordinator is to "provide services and functions as the Council directs to carry out the duties of the office of Coordinator." CP §15-302(6). The Coordinator is to devote full time to these duties and may not engage in the private practice of law. CP §15-301(d).

Approximately fifteen years ago, a question arose as to whether the position of Coordinator enjoyed any common law or statutory immunity under Maryland law. This Office opined that the Coordinator has no statutory immunity from tort liability by virtue of the office. 81 *Opinions of the Attorney General* 232 (1996).¹⁴ That opinion also concluded that the Coordinator is not entitled to assert public official immunity as Coordinator. *Id.* There have been no substantive changes in the relevant statutes since that time.

¹⁴ The opinion reasoned that the Coordinator does not fall within any of the categories of "State personnel," as defined in the Maryland Tort Claims Act; nor is the Coordinator an "employee" of a "local government" under the Local Government Tort Claims Act. 81 *Opinions of the Attorney General* at 234-35. In addition, because the Coordinator does not ordinarily exercise the sovereignty of the State, the Coordinator is not entitled to assert public official immunity. *Id.* at 235-36. However, the opinion noted that the Attorney General's Office would represent the Coordinator, if sued, and that the Board of Public Works might well pay a judgment rendered against the Coordinator. *Id.* at 236-37.

Accordingly, the Coordinator does not ordinarily enjoy common law or statutory immunity.

B. Special Assistant State's Attorney

In each county, the State's Attorney is an elected constitutional officer on whom the General Assembly has conferred the responsibility to prosecute criminal cases. Maryland Constitution, Article V, §9; CP §15-102. State's Attorneys are authorized to employ deputies and assistants to help carry out their duties. *See, e.g.*, CP §15-403(c) (authorizing State's Attorney for Anne Arundel County to hire two deputies and the number of assistants provided for in the budget).

From time to time, a State's Attorney may encounter a conflict of interest in prosecuting a particular case. For example, a State's Attorney may have the responsibility of prosecuting an individual whom the State's Attorney represented while in private practice. In some circumstances, the State's Attorney may be prohibited under the ethical rules governing lawyers from handling such a prosecution. *See* Maryland Lawyers' Rules of Professional Conduct, Rules 1.9, 1.11(d)(1); *Gatewood v. State*, 388 Md. 526, 541-51, 880 A.2d 322 (2005); *Lykins v. State*, 288 Md. 71, 85, 415 A.2d 1113 (1980) (State's Attorney's former representation of defendant merited replacement of prosecutor, not dismissal of indictment). Or, even when there is no absolute prohibition under the ethical rules, a State's Attorney may wish to avoid even the appearance of a conflict of interest.

In such circumstances, the State's Attorney may wish to assign the case to a Special Assistant State's Attorney who will function independently of the State's Attorney. *See* 59 *Opinions of the Attorney General* 121 (1974) (discussing a proposed appointment of a special prosecutor for cases in which a State's Attorney had a conflict). Such a prosecutor may be appointed by the State's Attorney. *See* *Goldberg v. State*, 69 Md. App. 702, 710-18, 519 A.2d 779 (1987), *aff'd on other grounds*, 315 Md. 653, 556 A.2d 267 (1989); *State v. Aquilla*, 18 Md. App. 487, 495, 309 A.2d 44 (1973). Alternatively, if charges have already been filed, the trial court may appoint a special prosecutor, at the suggestion of the State's Attorney, under Annotated Code of Maryland, Courts & Judicial Proceedings ("CJ"), §2-102.¹⁵

II

Analysis

Your inquiry concerns situations in which the Coordinator is asked to serve as a Special Assistant State's Attorney when it is deemed advisable to appoint someone other than the State's Attorney or the State's Attorney's staff to prosecute a particular case. You have asked whether the Coordinator has the immunity of a prosecutor, including coverage under the Maryland Tort Claims Act, when the Coordinator serves as a Special Assistant State's Attorney.

¹⁵ CJ §2-102(a) provides:

If advisable in a specific proceeding, a court may appoint an ... assistant counsel for the State ... and may require his presence in court.

This section has been recognized as a source of authority for appointment of a Special Assistant State's Attorney in conflict situations. *See Lykins, supra*, 288 Md. at 86; 59 *Opinions of the Attorney General* at 122 (discussing such an appointment under the predecessor of CJ §2-102). However, counsel appointed under CJ §2-102 would ordinarily be assigned to prosecute a case that had already been commenced. *See Babbitt v. State*, 294 Md. 134, 448 A.2d 930 (1982) (counsel appointed under CJ §2-102 may not initiate a criminal prosecution by filing a criminal information). The Court of Appeals in *Lykins* recognized that the Attorney General's Office could also provide an alternate prosecutor in such situations.

An initial question is whether the Coordinator may accept such an assignment.

A. Whether the Coordinator May Serve as a Special Assistant State's Attorney

The statute that creates the position of Coordinator does not explicitly authorize the Coordinator to serve as a Special Assistant State's Attorney. However, the statute states that the Coordinator is to "provide services and functions as the [Coordination] Council directs" in carrying out the duties of Coordinator. CP §15-302(6). While this open-ended provision grants the Coordination Council considerable discretion in directing the activities of the Coordinator, it is evident that any services or functions undertaken by the Coordinator should relate ultimately to the training, reporting, and administrative duties of the position. In our view, the Council might reasonably direct the Coordinator to serve as a Special Assistant State's Attorney from time to time. While such service may benefit the individual State's Attorney's office that requires such services, it also has the benefit of exposing the Coordinator to prosecutorial practices in a variety of jurisdictions.¹⁶ The Coordination Council could reasonably conclude that such service enhances the Coordinator's ability to organize meaningful training programs for State's Attorneys and their staffs.

B. Whether the Coordinator Has Immunity as a Special Assistant State's Attorney

As noted above, the position of Coordinator itself does not have the benefit of statutory or common law immunities. Nevertheless, the particular services performed by the Coordinator may confer obligations, as well as protections, not ordinarily associated with the position. For example, in entering into a contract – as authorized by the statute – the Coordinator may undertake contractual obligations and rights that are not conferred on the position by the statute. Similarly, in acting as a Special Assistant State's Attorney pursuant to the Coordination Council's direction, the Coordinator may have the benefit of an immunity that the position of Coordinator by itself does not enjoy.

As a prosecutor, a State's Attorney, as well as the deputy and assistant State's attorneys appointed by the State's Attorney, enjoy various immunities from liability. *See, e.g., Gill v. Ripley*, 352 Md. 754, 759-74, 724 A.2d 88 (1999) (tracing history of doctrine of prosecutorial immunity and its various applications); *Imbler v. Pachtman*, 424 U.S. 409 (1976) (prosecutors absolutely immune from liability in §1983 actions for conduct in the judicial phase of the criminal process). In addition, under the Maryland Tort Claims Act, they have immunity from liability for tortious acts committed without malice or gross negligence. *See* Annotated Code of Maryland, Courts & Judicial Proceedings Article, §5-522(b) (immunity of "State personnel" under Maryland Tort Claims Act); State Government Article, §12-101(a)(8) (including "State's Attorney ... or an employee of an office of a State's Attorney" within the definition of "State personnel"); *see also Newell v. Runnels*, 407 Md. 578, 635-37, 967 A.2d 729 (2009).

An individual appointed as a Special Assistant State's Attorney would typically come from outside the prosecutor's office and thus would likely not have prosecutorial immunity in the individual's

usual employment.¹⁷ In our view, such an individual would have that immunity while serving as a special prosecutor for the State's Attorney's Office. As the Supreme Court has indicated, the application of prosecutorial immunity turns on "the nature of the function performed, not the identity of the actor who performed it." *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993).¹⁸

With respect to coverage under the Maryland Tort Claims Act, it is our view that an individual appointed as a Special Assistant State's Attorney will qualify for coverage under the Act. Such an appointee would be covered either as an "employee" of the State's Attorney's Office in his or her capacity as Special Assistant State's Attorney or as an unpaid "volunteer" who provides services to the State.¹⁹

Thus, in our view, if appointed a Special Assistant State's Attorney for a particular case, the Coordinator would enjoy the same immunity from suit and liability as any other individual appointed to that position. The fact that the Coordinator does not ordinarily enjoy public official immunities or immunity under the Maryland Tort Claims Act does not disqualify the Coordinator from having the immunities that otherwise attach to the position of Special Assistant State's Attorney.

III Conclusion

For the reasons set forth above, it is our opinion that, if the Coordinator accepts appointment as a Special Assistant State's Attorney in a particular jurisdiction in accordance with a direction of the Coordination Council, the Coordinator will have the same

¹⁷ There may be some instances in which an attorney who is appointed as a Special Assistant State's Attorney normally works in another position that has various immunities associated with it – *e.g.*, an Assistant Attorney General or an Assistant State's Attorney from another jurisdiction – but those immunities are presumably related to the individual's normal duties and not the special appointment.

¹⁸ The Supreme Court has held that, in some circumstances, private individuals performing what might otherwise might be a government function may not have official immunity. *Richardson v. Walker*, 521 U.S. 399 (1997) (prison guards at privatized prison did not have official immunity). However, the Court has been careful to distinguish those circumstances from instances in which a private individual is briefly associated with a government body, serves as an adjunct to government in an essential governmental activity, or acts under close official supervision – all of which may characterize a private individual serving as a Special Assistant State's Attorney. *See* 521 U.S. at 413. The Court recently granted a writ of certiorari to assess the application of official immunities to a private attorney under contract with a municipality. *See Filarsky v. Delia*, 2011 U.S. LEXIS 5204 (September 27, 2011).

¹⁹ The State Treasurer defines "volunteer" for purposes of the Maryland Tort Claims Act as follows:

(8) "Volunteer" means a person who:

(a) Is performing services to or for a unit of State government, the employees of which are considered State personnel under [the Tort Claims Act and regulations];

(b) Is engaged in the actual performance of services in §B(8)(a) at the time of the incident giving rise to a claim; and

(c) In the performance of services in §B(8)(a):

(i) Is participating in a formal volunteer program, or

(ii) Before the beginning of those services, is formally recognized by the unit as a volunteer.

COMAR 25.02.01.02B(8). The employees of a State's Attorney's Office are considered "State personnel" for purposes of the Tort Claims Act; an appointment as an unpaid Special Assistant State's Attorney to perform the prosecutorial function of an Assistant State's Attorney should suffice as formal recognition of the individual as a volunteer.

¹⁶ In that regard, it is notable that the bill file for the legislation that created the position of Coordinator contains a study of prosecuting attorney coordinators in other states and discusses the advantages and disadvantages of the various forms that such positions had taken as of that time. It noted that a primary argument in favor of creating an independent position, as the Maryland statute ultimately did, was to ensure that the Coordinator was responsive to local application of the criminal law throughout a state. *See* "Organization and Operation of Office (Appendix A)" in Legislative File for Senate Bill 465 (1977).

prosecutorial immunity and protection under the Maryland Tort Claims Act as other Assistant State's Attorneys.

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice

[11-23-40]

OPINIONS

October 11, 2011

Victoria K. Fretwell, Chair
Anne Arundel Community College Board of Trustees

On behalf of the Board of Trustees of Anne Arundel Community College, you asked whether Annotated Code of Maryland, Education Article ("ED"), §16-315(i) empowers the Anne Arundel County Council to compel the Anne Arundel Community College ("the College") to undergo an audit by the County Auditor of its administrative and management practices. The College asserts that such an audit would be a "performance audit" and that the County Auditor "does not have authority under State law to conduct a performance audit of the manner in which the college is managed."

For the reasons discussed below, it is our opinion that ED §16-315(i) does not authorize the County Auditor to audit the administrative and management practices of the College. The statute permits the County Auditor to conduct an audit of the financial accounts of the College.

I Background

A. Audit Requirements for Community Colleges

Under Maryland law, each community college is to "have an annual audit of its books of accounts, accounting procedures and principles, and other fiscal and operational methods and procedures." ED §16-315(b). The audit is to be conducted in accordance with guidelines established by the Maryland Higher Education Commission ("MHEC"). ED §16-315(a); COMAR 13B.07.03. The audit report and related management letter²⁰ must be submitted to MHEC for review and assessment and to the Legislative Auditor. ED §16-315(b); COMAR 13B.07.03.02A²¹. MHEC is to evaluate each audit report it receives and may take various actions depending on a college's response to recommendations in an audit report. ED §16-315(c).

The statute does not ordinarily require use of a particular auditor. The Legislative Auditor may conduct the annual audit for a community college, on giving the college notice of its intent to do so. ED §16-315(d). "[A]n official auditor of any county or Baltimore City" also may conduct the annual audit of a community college, if MHEC approves the use of that auditor and the Legislative Auditor concurs. ED §16-315(f). The cost of the annual audit is the responsibility of the college. ED §16-315(g).

At the direction of the Legislature's Joint Audit Committee,

²⁰ In a management letter, sometimes referred to as an internal controls report, an auditor evaluates the entity's internal financial controls. Gauthier, *Governmental Accounting, Auditing and Financial Reporting (Using the GASB 34 Model)* (2005) at p. 698; American Institute of Certified Public Accountants, *Statements on Auditing Standards*, SAS 115 (AU 325) – Communicating Internal Control Related Matters Identified in an Audit.

²¹ The guidelines also require that the community college submit to an "enrollment audit," which relates to a calculation of "full-time equivalent students." COMAR 13B.07.03.02. The full-time equivalent student calculation is used in the formula for distributing State aid to community colleges. See ED §16-305.

the Legislative Auditor may undertake special audits of any community college at State expense. ED §16-315(e). Each year, the Legislative Auditor is required to submit a report "on the results of the annual and special community college audits." ED §16-315(h).

Finally, the statute states:

Nothing contained in this section may be construed to prohibit a periodic or special audit by an official auditor of any county providing funds for a community college.

ED §16-315(i). The statute does not define "periodic or special audit."

B. County Council Audit Resolution

On July 18, 2011, the Anne Arundel County Council adopted Resolution No. 39-11 ("Resolution"). Citing ED §16-315(i) concerning "periodic or special" audits, the Resolution requests the County Auditor to undertake an audit of the College to review numerous areas of College administration and management. In particular, the Resolution asks the County Auditor to analyze the "effectiveness" of the College's utilization of its facilities, to compare its administrative costs with those of other colleges, to make various other comparisons with other colleges (*e.g.*, sabbatical policies, sabbatical pay, pay and benefits of the College president), and to obtain various items of information and documentation from the College.

You ask whether the County Auditor has authority to conduct such an audit under the statutory provision that allows a county auditor to conduct a "periodic or special" audit of a community college.

II Analysis

A. Types of Audits

An audit of a government entity is generally characterized as either a "financial audit" or a "performance audit." See 75 *Opinions of the Attorney General* 172 (1990) ("1990 Opinion"); see also 92 *Opinions of the Attorney General* 137, 141-42 (2007); United States Government Accountability Office, *Government Auditing Standards – 2011 Internet Version* (August 2011) ("GAO Standards"), Chapter 2. A "financial audit" is a review of an entity's financial statements, or segments of them, for two purposes: to determine whether the statements fairly present the audited entity's financial position in accordance with generally accepted accounting principles; and to determine whether the entity has complied with legal requirements governing those transactions and events that may have a material effect on the financial statements. 1990 Opinion at 174; GAO Standards at §§2.07, 2.08. By contrast, a "performance audit" is an assessment of an entity's or program's practices to determine whether the entity or program is operating economically and efficiently, whether it is achieving its objectives, and whether corrective actions for improving its performance are appropriate²². 1990 Opinion at 174; GAO Standards at §§2.10, 2.11.

Although the Resolution itself does not characterize the assignment that it gives the County Auditor, you believe it calls for a performance audit and that the cited statute does not authorize a performance audit by a county auditor.

B. Audits by County Auditor under ED §16-315

To answer your question, we must assess the role of the County Auditor under ED §16-315 – a question of statutory

²² This definition was articulated in the 1990 Opinion and was later adopted by the General Assembly in a statute governing performance audits of local boards of education. Chapter 88, *Laws of Maryland 1996, now codified at ED §5-110(a)*.

construction in which we attempt to discern the intent of the Legislature. As the Court of Appeals has frequently stated, that process looks first to the language of the statute, considers it within the overall statutory scheme, and may also examine the statute's history to resolve ambiguities. *See Breslin v. Powell*, 2011 Md. LEXIS 518 at 34-35 (August 16, 2011).

1. Statutory Language

There are two references in ED §16-315 to “an official auditor” of a county that provides funds to a community college – a term that encompasses the County Auditor. The first states that such an auditor may conduct the required annual audit of the college – an audit that clearly is a financial audit. ED §16-315(f). The second reference in the statute states that “[n]othing in this section may be construed to prohibit a periodic or special audit by an official auditor of any county providing funds for a community college.” ED §16-315(i). This provision appears simply to make clear that the authority to do the *annual* audit does not preclude a county auditor from conducting audits on other occasions or in other cycles. Thus, on its face, the reference to a “periodic or special” audit by a county auditor in ED §16-315(i) is addressed to the timing or scope of an audit, not its nature.²³

The Annotated Code of Maryland contains only two other references to a “periodic” or “special” audit of a government entity that does not involve the Legislative Auditor. In both instances, the statute authorizes, or preserves a right to conduct, a financial audit. *See* Annotated Code of Maryland, Correctional Services Article, §11-903(a)(4) (providing that statute requiring accounting of local inmate welfare funds does not preclude a “periodic or special audit” of such a fund); Criminal Procedure Article, §15-414(e)(3) (authorizing County Executive or County Council of Howard County to order a “special audit” of the Howard County State’s Attorney in accordance with a provision of the County charter providing for financial audits); *see also Andresen v. Bar Assn. of Montgomery County*, 269 Md. 313, 316, 305 A.2d 845 (1973) (referring to a court-ordered audit of an attorney’s accounts related to the closing of real estate transactions as a “special audit”).

2. Absence of Language concerning Performance Audits

Nothing in ED §16-315 specifically authorizes a county auditor to conduct a performance audit of a community college. When the General Assembly authorizes an auditor to conduct a performance audit, it makes that intention quite clear. For example, it has charged the Legislative Auditor generally with performing “performance audits” of State entities, when directed by the Joint Audit Committee, by the Executive Director of the Department of Legislative Services, or otherwise by law. Annotated Code of Maryland, State Government Article (“SG”), §§2-1207(5) and 2-1220(a)(3)²⁴. The scope of such an audit includes evaluating the efficiency, effectiveness, and economy with which resources are used, determining whether desired program results are achieved, and determining the reliability of identified performance measures. SG §2-1221(b).

In other statutes, the General Assembly has authorized performance audits in particular contexts or for particular purposes. For example, in ED §5-110(f), the General Assembly recognized that

a local school board and a county governing body might agree to a performance audit of a local school system. In the absence of such an agreement, the Legislature authorized the State Department of Education, at the request of a county government, to contract for a performance audit of the county school system. ED §5-110(b). However, the county governing body cannot require the local board to submit to a performance audit by the county auditor without the local board’s assent. 91 *Opinions of the Attorney General* 145 (2006).

Other provisions of law provide for performance audits in specific contexts. *See* CS §8-114 (authorizing Commission on Correctional Standards to conduct performance audits of correctional facilities); Annotated Code of Maryland, Insurance Article, §29-101 (adopting an interstate compact that includes provision for a “performance audit” of a commission established by the compact).

These statutes demonstrate that, when the General Assembly intends that a government unit or an official have authority to conduct a performance audit, that authority is made express. It has not been made express in ED §16-315(i), and, in our view, the right to perform a “periodic or special audit” preserved in that statute should not be construed to mean a performance audit.

C. History of Audit Provisions Relating to Community Colleges

The legislative history of ED §16-315 confirms our construction of the statutory language. From the inception of the statute, the Legislature apparently intended the references to audits of a community college by a county auditor to denote financial audits. In 1961, the local boards of education were given authority to establish and maintain community colleges. Chapter 134, Laws of Maryland 1961. The board of trustees, the superintendent, and the president of a community college were “charged with the preparation of the annual budget, ...and the receipt and expenditure of budgeted funds under an adequate accounting system, subject to review by the auditor of the county or of Baltimore City” Annotated Code of Maryland, Article 77, §302(a) (1961 Supp.).

In 1968, the Legislature established the State Board for Community Colleges (“State Board”) and gave it authority to “exercise full State-wide responsibility for the several community colleges.” Chapter 454, Laws of Maryland, 1968, *codified at* Annotated Code of Maryland, Article 77, §§304A (1965 Repl. Vol. & 1968 Supp.). County auditors retained their authority to review the accounting system of a community college. Article 77, §302(a).

When the Education Article was enacted in 1978, the provision concerning audits of community colleges was recodified as ED §16-409(a). Chapter 22, Laws of Maryland 1978. The revisors added language to make explicit that an audit was required annually, as the State Board had required by rule. *Id.*, Revisor’s Note²⁵. That same year, the audit statute was amended substantively to add many of the provisions that still appear in it today, including a direction to the State Board to create guidelines for audits and the authorization for the Legislative Auditor to perform the annual audit. Chapter 642, Laws of Maryland 1978. While that bill was before the Legislature, it was amended to include the savings clause allowing for “periodic or special” audits by county auditors that now appears in ED §16-315(i). Given that the 1978 recodification of the provision was the first time that the provision referred to an “annual” audit, it appears likely that this provision was added simply to clarify that the “annual” audit did not preclude the conduct of audits at other times or on other cycles.

It is notable that, in connection with the 1978 legislation, the State Board submitted to the Legislature a description of the audit process for community colleges. Letter and Report of Brent M. Johnson, Executive Director, State Board for Community Colleges,

²³ This reading is consistent with the use of those terms by accountants. According to a dictionary of accounting terms, a “periodic audit” is an audit “covering an intermediate accounting period such as a month” or an audit “conducted at state intervals of time.” W.W. Cooper & Y. Ijiri, *Kohler’s Dictionary for Accountants* (6th ed. 1983) at 378. The term “special audit” is used to refer to an audit “having a limited, specific scope.” *Id.*

²⁴ In the 2011 Session, the General Assembly added SG §2-1220(f), authorizing Legislative Auditor to conduct “performance audits” of the Board of Liquor License Commissioners for Baltimore City. Chapter 263, Laws of Maryland 2011.

²⁵ Prior to creation of Education Article, Article 77, §302(a) had been renumbered as Article 77A, §5 by Chapter 405, §4, Laws of Maryland 1969.

to Delegate Benjamin L. Cardin (February 27, 1978). That submission provides elaborate detail as to the conduct of financial audits and enrollment audits in the context of a community college. There is no mention of performance audits in the legislative file.

Subsequently, the Legislature has modified the statute in only minor respects. In 1985, ED §16-409(b) and (c) were amended to require the State Board to review and assess the annual audit report and management letter. A process was established for the State Board and the community colleges to deal with material weaknesses and related recommendations. Chapter 123, Laws of Maryland 1985. In 1991, the State Board was discontinued and its powers and duties were vested in MHEC. Chapter 464, Laws of Maryland 1991. In 1996, the Legislature authorized a renumbering of the provision, resulting in its current codification as ED §16-315. Chapter 10, §16, Laws of Maryland 1996.

Since 1978, no substantive changes related to audits by a county auditor have been made in the statute. Thus, there appears no basis for reading an authorization for a county auditor to conduct a performance audit into the statute that was not present when the subsection was originally enacted in 1978.²⁶

D. Summary

The statutory provision cited in the Resolution – ED §16-315(i) – preserves a right for a county auditor to undertake a financial audit of a community college. However, the Resolution itself requests the County Auditor to review the “effectiveness” of various practices of the College and to make various comparisons with other colleges. This assignment largely falls within the scope of a performance audit of the College rather than a financial audit that the savings clause of the statute allows²⁷. Thus, the County Auditor lacks authority to compel the College to undergo such an audit.

III Conclusion

In our opinion, ED §16-315(i) does not authorize the County Auditor to undertake a performance audit of Anne Arundel Community College. The County Auditor may conduct a financial audit of the College.

Douglas F. Gansler, Attorney General
Patricia A. Logan, Assistant Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice

[11-23-41]

²⁶ The 1990 Opinion reached a similar conclusion regarding a statute that allowed for a county auditor to audit a local board of education. Attorney General Curran reviewed the legislative history of the relevant statute and ascertained that the references to an “audit” in that subsection were linked to provisions concerning audits of the local board’s “financial transactions and accounts.” 1990 Opinion at 174-78. Accordingly, the county governing body lacked authority under the statute, as it then existed, to conduct a performance audit. *Id.* 1990 Opinion at 172. While ED §16-315(i) traces its origin to a separate statute, it is not surprising that the Legislature adopted a similar policy concerning county audits as to these two State educational entities that are partially funded by counties.

²⁷ Portions of the Resolution ask the County Auditor to obtain public records or information from the College. Like any other person, the County Auditor may make a request to the College for access to records under the Public Information Act (“PIA”). SG §10-611 *et seq.* The PIA contemplates that one government entity may ask another government entity for access to records. SG §10-611(b) (“‘Applicant’ means a person or governmental unit that asks to inspect a public record”). The PIA provides a broad right of access to public records, but also incorporates various exceptions that may apply to some of the records or information sought. *See 92 Opinions of the Attorney General* 137, 145-47 (2007).

The Judiciary

ADMINISTRATIVE OFFICE OF THE COURTS

NOTICE

As part of the Maryland Judiciary's efforts to find more effective and meaningful ways for all families to resolve their disputes, the Department of Family Administration (DFA) at the Maryland Judiciary has become a nationwide leader in promoting Collaborative Law. Collaborative Law is an alternative resolution mechanism that encourages open, transparent, mature, and cooperative behavior between parties with the goal of resolving their dispute without litigation.

The DFA is requesting applications for Pilot Project Grants. Subject to the availability of funds for Fiscal Year 2012, grants will be awarded to one program to administer a collaborative law pro bono or reduced fee legal services program. Applications are due November 9, 2011.

For more detailed information, please review the Notice of Funding Announcement and Grant Guidelines found on the Department of Family Administration's website: www.courts.state.md.us/family/grantadmin.html or call 410-260-1739.

[11-23-44]

COURT OF APPEALS OF MARYLAND

DISCIPLINARY PROCEEDINGS

This is to certify that by an Per Curiam Order of this Court dated October 7, 2011, **AARON GREGORY SELTZER**, 644 Shrewsbury Commons Avenue, Shrewsbury, Pennsylvania 17361, 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 October 18, 2011, **BARRY MAURICE JOHNSON**, 3540 Crain Highway, Suite 175, Bowie, Maryland 20716, 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 October 12, 2011, **WILLIAM REX LENDERMAN**, 606 Baltimore Avenue, Suite 107, Towson, Maryland 21204, has been reprimanded by consent.

[11-23-50]

SCHEDULE

Thursday, December 1, 2011

Bar Admissions

- No. 60 People's Insurance Counsel Division v. Allstate Insurance Company, et al.
- No. 42 University of Maryland Medical System Corporation v. Giuseppina Muti, Personal Representative of the Estate of Elliott Muti, et al.
- No. 117 Anthony Grandison v. State of Maryland (2010 T.)
- No. 43 Amy Mulligan v. William Corbett

Friday, December 2, 2011

- No. 48 Tonto Corbin v. State of Maryland
- No. 50 Markino Little v. State of Maryland
- No. 44 Motor Vehicle Administration v. Dana Eric Carpenter
- No. 45 Ricky Shamar Washington v. State of Maryland

Monday, December 5, 2011

- No. 52 State of Maryland v. Nicolas S. Serrano
- No. 47 Shailendra Kumar, P.A. v. Anand M. Dhanda
- No. 54 Leon Dulyx a/k/a Leon Dulyx v. State of Maryland
- No. 55 Bonnie L. Maddox v. Edward C. Cohn, et al.

Tuesday, December 6, 2011

- No. 59 Tyrone Davis v. State of Maryland
- No. 56 Potomac Abatement, Inc., et al. v. Edy Sanchez
- No. 62 State of Maryland v. Reginald Stringfellow
- No. 61 Frances V. Hamilton v. Baltimore Police Department

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

After December 6, 2011, the Court will recess until January 5, 2012.

BESSIE M. DECKER
Clerk

[11-24-24]

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 Friday, November 18, 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.

[11-23-45]

RULES ORDER

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Seventy-Second Report to the Court recommending adoption on an emergency basis of proposed amendments to Rules 14-207, 14-209, 14-209.1, and 14-211; and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed amendments and finding that an emergency does in fact exist with reference to the proposed rules changes, it is this 11th day of October, 2011,

ORDERED, by the Court of Appeals of Maryland, that the amendments to Rules 14-207, 14-209, 14-209.1, and 14-211 be, and they are hereby, adopted in the form attached to this Order; 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 November 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.
Sally D. Adkins
Mary Ellen Barbera

Filed: October 11, 2011

BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207 to add a cross reference following subsection (b)(1) regarding a lost note affidavit in an action to foreclose a lien on residential property; to amend subsection (b)(5) to conform to the amendment to Code, Real Property Article, §7-105.1 (d)(2)(v); and to add a cross reference following subsection (b)(8) regarding the form and sequence of documents accompanying an order to docket or complaint to foreclose; as follows:

Rule 14-207. PLEADINGS; SERVICE OF CERTAIN AFFIDAVITS, PLEADINGS, AND PAPERS

(a) Pleadings Allowed

(1) Power of Sale

An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. No process shall issue.

(2) Assent to a Decree or Lien Instrument With No Power of Sale or Assent to a Decree

An action to foreclose a lien pursuant to an assent to a decree or pursuant to a lien instrument that contains neither a power of sale nor an assent to a decree shall be commenced by filing a complaint to foreclose. If the lien instrument contains an assent to a decree, no process shall issue.

(3) Lien Instrument with Both a Power of Sale and Assent to a Decree

If a lien instrument contains both a power of sale and an assent to a decree, the lien may be foreclosed pursuant to either.

(b) Exhibits

A complaint or order to docket shall include or be accompanied by:

(1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of the lien supported by an affidavit that it is a true and accurate copy;

Cross reference: See Code, Real Property Article, §7-105.1 (d-1) concerning the contents of a lost note affidavit in an action to foreclose a lien on residential property.

(2) an affidavit by the secured party, the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable;

(3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument;

(4) a copy of any assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is a true and accurate copy of the assignment or deed of appointment;

(5) [an affidavit] with respect to any defendant who is an individual, [that] *an affidavit in compliance with §521 of the* [the individual is not in the military service of the United States as defined in the] Servicemembers Civil Relief Act, 50 U.S.C. app. §501 et seq.; [or that the action is authorized by the Act;]

(6) a statement as to whether the property is residential property and, if so, statements in boldface type as to whether (A) the property is owner-occupied residential property, if known, and (B) a final loss mitigation affidavit is attached;

(7) if the property is residential property that is not owner-occupied residential property, a final loss mitigation affidavit to that effect;

(8) in an action to foreclose a lien instrument on residential property, to the extent not produced in response to subsections (b)(1) through (b)(7) of this Rule, the information and items required by Code, Real Property Article, §7-105.1 (d), except that (A) if the name and license number of the mortgage originator and mortgage lender is not required in the notice of intent to foreclose, the information is not required in the order to docket or complaint to foreclose; and (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program; and

Committee note: Subsection (b)(8) of this Rule does not require the filing of any information or items that are substantially similar to information or items provided in accordance with subsections (b)(1) through (b)(7). For example, if a copy of a deed of appointment of substitute trustee, supported by an affidavit that it is a true and accurate copy, is filed, it is not necessary to file the original or a clerk-certified copy of the deed of appointment.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 (f)(1) and COMAR 09.03.12.01 et seq.

(9) in an action to foreclose a land installment contract on property other than residential property, an affidavit that the notice required by Rule 14-205 (c) has been given.

Cross reference: For statutory "notices" relating to liens, see, e.g., Code, Real Property Article, §14-203 (b).

Committee note: Pursuant to subsections (b)(7) and (8) of this Rule, a preliminary or final loss mitigation affidavit must be filed in all actions to foreclose a lien on residential property, even if a loss mitigation analysis is not required.

(c) Service of Certain Affidavits, Pleadings, and Papers

Any affidavit, pleading, or other paper that amends, supplements, or confirms a previously filed affidavit, pleading, or other paper shall be served on each party, attorney of record, borrower, and record

owner in accordance with the methods provided by Rule 1-321, regardless of whether service of the original affidavit, pleading, or paper was required.

Committee note: This Rule prevails over the provision in Rule 1-321 (a) or any other Rule that purports, where a party is represented by an attorney, to permit service on only the attorney. This Rule requires service on both.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (a) and (c) and is in part new.

**MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS**

AMEND Rule 14-209 to conform to the amendment to Code, Real Property, §7-105.1 (f) by adding to sections (a) and (b) the requirement that certain additional papers be served on the borrower and record owner and by adding cross references following sections (a) and (b), as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

(a) Service on Borrower and Record Owner by Personal Delivery

When an action to foreclose a lien on residential property is filed, the plaintiff shall serve on the borrower and the record owner a copy of all papers filed to commence the action, *accompanied by the documents required by Code, Real Property Article, §7-105.1 (f)*. Service shall be accomplished by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the borrower's or record owner's dwelling house or usual place of abode.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 (f)(1) and COMAR 09.03.12.01 et seq.

(b) Service on Borrower and Record Owner by Mailing and Posting

If on at least two different days a good faith effort was made to serve a borrower or record owner under section (a) of this Rule and service was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, *accompanied by the documents required by Code, Real Property Article, §7-105.1 (f)*, to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 (f)(1) and COMAR 09.03.12.01 et seq.

(c) Notice to All Occupants by First-Class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to "All Occupants" at the address of the property the notice required by Code, Real Property Article, §7-105.9 (b).

(d) If Notice Required by Local Law

When an action to foreclose on residential property is filed with respect to a property located within a county or a municipal corporation that, under the authority of Code, Real Property Article, §14-126 (c), has enacted a local law requiring notice of the commencement of a foreclosure action, the plaintiff shall give the notice in the form and manner required by the local law. If the local law does not provide for the manner of giving notice, the notice shall be sent by first-class mail.

(e) Affidavit of Service, Mailing, and Notice

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule, mailing under section (c) of this Rule, and notice under section (d) of this Rule shall be filed promptly and in any event before the date of the sale.

(2) Service by an Individual Other than a Sheriff

In addition to other requirements contained in this section, if service is made by an individual other than a sheriff, the affidavit shall include the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(3) Contents of Affidavit of Service by Personal Delivery

An affidavit of service by personal delivery shall set forth the name of the person served and the date and particular place of service. If service was effected on a person other than the borrower or record owner, the affidavit also shall include a description of the individual served (including the individual's name and address, if known) and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(4) Contents of Affidavit of Service by Mailing and Posting

An affidavit of service by mailing and posting shall (A) describe with particularity the good faith efforts to serve the borrower or record owner by personal delivery; (B) state the date on which the required papers were mailed by certified and first-class mail and the name and address of the addressee; and (C) include the date of the posting and a description of the location of the posting on the property.

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, 50 U.S.C. app. § 501 et seq.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

**MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS**

AMEND Rule 14-209.1 to change the earliest time for advertising a sale from 20 to 30 days after a final loss mitigation affidavit is filed; to add the word "and" to subsection (c)(2); to amend subsection (d)(1) to require the Office of Administrative Hearings, if it has granted an extension, to notify the court of the new date by which foreclosure mediation shall be completed; to extend the number of days that the Office of Administrative Hearings is given to notify the court of such extension; and to require that the court be notified regarding any subsequent extension; as follows:

Rule 14-209.1. OWNER-OCCUPIED RESIDENTIAL PROPERTY

(a) Applicability

This rule applies to an action to foreclose a lien on residential property that is owner-occupied residential property, or where it is unknown whether the property is owner-occupied residential property at the time the action is filed.

(b) Advertising of Sale

A sale may not be advertised until [the 20] 30 days after a final loss mitigation affidavit is filed, but if a request for foreclosure mediation is filed within that time and not stricken, a sale may not be

advertised until the report from the Office of Administrative Hearings is filed with the court.

(c) Foreclosure Mediation

(1) Request; Transmittal

(A) Filing of Request

The borrower may file a request for foreclosure mediation within the time allowed by Code, Real Property Article, §7-105.1 (h)(1). The request shall contain the caption of the case and the names and addresses of the parties and be accompanied by the foreclosure mediation filing fee required by Code, Real Property Article, §7-105.1 (h)(1)(ii) or a written request in accordance with Rule 1-325 for an order waiving or reducing the fee. The borrower shall serve a copy of the request on the other parties. The clerk shall not accept for filing a request for foreclosure mediation that does not contain a certificate of service or is not accompanied by the required fee or request for an order waiving or reducing the fee.

Cross reference: See Rules 1-321 and 1-323. For the Request for Foreclosure Mediation form prescribed by regulation adopted by the Commissioner of Financial Regulation, see COMAR 09.03.12.05.

(B) Transmittal of Request

Subject to section (e) of this Rule, the clerk shall transmit notice of the request to the Office of Administrative Hearings no later than five days after the request is filed.

Committee note: The transmittal to the Office of Administrative Hearings shall be made within the time required by subsection (c)(1)(B) of this Rule, regardless of the status of a request for waiver or reduction of the foreclosure mediation filing fee.

(C) Ruling on Request for Fee Waiver or Reduction

The court promptly shall rule upon a request for an order waiving or reducing the foreclosure mediation filing fee. The court may make its ruling ex parte and without a hearing. If the court does not waive the fee in its entirety, the court shall specify in its order the dollar amount to be paid and the amount of time, not to exceed ten days, within which the sum shall be paid. The order shall direct the clerk to strike the request for foreclosure mediation if the sum is not paid within the time allowed and, if the request is stricken, to promptly notify the Office of Administrative Hearings that the request for foreclosure mediation has been stricken.

(2) Motion to Strike Request for Foreclosure Mediation

No later than 15 days after service of a request for foreclosure mediation, the secured party may file a motion to strike the request. The motion shall be accompanied by an affidavit that sets forth with particularity reasons sufficient to overcome the presumption that the borrower is entitled to foreclosure mediation and why foreclosure mediation is not appropriate.

(3) Response to Motion to Strike

No later than 15 days after service of the motion to strike, the borrower may file a response to the motion.

(4) Ruling on Motion

After expiration of the time for filing a response, the court shall rule on the motion, with or without a hearing. If the court grants the motion, the clerk shall notify the Office of Administrative Hearings that the motion has been granted.

(d) Notification from Office of Administrative Hearings

(1) If Extension Granted

If the Office of Administrative Hearings extends the time for completing foreclosure mediation pursuant to Code, Real Property Article, §7-105.1 (i)(2)(ii), it shall notify the court no later than [65] 67 days after the court transmitted the request for foreclosure mediation and specify the date by which mediation shall be completed. *If the Office of Administrative Hearings extends the time for completing foreclosure mediation more than once, it shall notify the court of each extension and specify the new date by which mediation shall be completed.*

(2) Outcome of Foreclosure Mediation

Within the time allowed by Code, Real Property Article, §7-105.1 (j)(3), the Office of Administrative Hearings shall file with the court a report that states (A) whether the foreclosure mediation was held and, if not, the reasons why it was not held, or (B) the outcome of the foreclosure mediation. The Office of Administrative Hearings promptly shall provide a copy of the report to each party to the foreclosure mediation.

(e) Electronic Transmittals

By agreement between the Administrative Office of the Courts and the Office of Administrative Hearings, notifications required by this Rule may be transmitted by electronic means rather than by mail and by a department of the Administrative Office of the Courts rather than by the clerk, provided that an appropriate docket entry is made of the transmittal or the receipt of the notification.

(f) Procedure Following Foreclosure Mediation

(1) If Agreement Results from Foreclosure Mediation

If the foreclosure mediation results in an agreement, the court shall take any reasonable action reasonably necessary to implement the agreement.

(2) If No Agreement

If the foreclosure mediation does not result in an agreement, the secured party may advertise the sale, subject to the right of the borrower to file a motion pursuant to Rule 14- 211 to stay the sale and dismiss the action.

(3) If Foreclosure Mediation Fails Due to the Fault of a Party

(A) If the foreclosure mediation is not held or is terminated because the secured party failed to attend or failed to provide the documents required by regulation of the Commissioner of Financial Regulation, the court, after an opportunity for a hearing, may dismiss the action.

(B) If the foreclosure mediation is not held or is terminated because the borrower failed to attend or failed to provide the documents required by regulation of the Commissioner of Financial Regulation, the secured party may advertise the sale.

Source: This Rule is new.

**MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS**

AMEND Rule 14-211 to add to subsection (a)(2)(A)(iii)(c) language which is consistent with the amendment to Code, Real Property Article, §7-105.1 (i), and to delete language which is inconsistent with the amendment to Code, Real Property Article, §7-105.1 (i), as follows:

Rule 14-211. STAY OF THE SALE; DISMISSAL OF ACTION

(a) Motion to Stay and Dismiss

(1) Who May File

The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

Cross reference: See Code, Real Property Article, §§7-101 (a) and 7-301 (f)(1).

(2) Time for Filing

(A) Owner-occupied Residential Property

In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

- (i) the date the final loss mitigation affidavit is filed;
- (ii) the date a motion to strike foreclosure mediation is granted; or
- (iii) if foreclosure mediation was requested and the request was not stricken, the first to occur of:

- (a) the date the foreclosure mediation was held;
- (b) the date the Office of Administrative Hearings files with the court a report stating that no foreclosure mediation was held; or
- (c) the expiration of 60 days after transmittal of the borrower's request for foreclosure mediation or, if the Office of Administrative Hearings extended the time to complete the foreclosure mediation, [90 days after the date of the transmittal], *the expiration of the period of the extension.*

(B) Other Property

In an action to foreclose a lien on property, other than owner-occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14-209 shall be filed within 15 days after the moving party first became aware of the action.

(C) Non-compliance; Extension of Time

For good cause, the court may extend the time for filing the motion or excuse non-compliance.

Cross reference: See Rules 2-311 (b), 1-203, and 1-204, concerning the time allowed for filing a response to the motion.

(3) Contents

A motion to stay and dismiss shall:

- (A) be under oath or supported by affidavit;

(B) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action;

Committee note: The failure to grant loss mitigation that should have been granted in an action to foreclose a lien on owner-occupied residential property may be a defense to the right of the plaintiff to foreclose in the pending action. If that defense is raised, the motion must state specific reasons why loss mitigation pursuant to a loss mitigation program should have been granted.

(C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;

(D) state whether there are any collateral actions involving the property and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;

(E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and

(F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.

To the extent permitted in Rule 14-212, the motion may include a request for referral to alternative dispute resolution pursuant to Rule 14-212.

(b) Initial Determination by Court

(1) Denial of Motion

The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

- (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;

- (B) does not substantially comply with the requirements of this Rule; or

- (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

Committee note: A motion based on the failure to grant loss mitigation in an action to foreclose a lien on owner-occupied residential property must be denied unless the motion sets forth good cause why loss mitigation pursuant to a loss mitigation program should have been granted is stated in the motion.

(2) Hearing on the Merits

If the court concludes from the record before it that the motion:

- (A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,

- (B) substantially complies with the requirements of this Rule, and

- (C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.

(c) Temporary Stay

(1) Entry of Stay; Conditions

If the hearing on the merits cannot be held prior to the date of sale, the court shall enter an order that temporarily stays the sale on terms and conditions that the court finds reasonable and necessary to protect the property and the interest of the plaintiff. Conditions may include assurance that (1) the property will remain covered by adequate insurance, (2) the property will be adequately maintained, (3) property taxes, ground rent, and other charges relating to the property that become due prior to the hearing will be paid, and (4) periodic payments of principal and interest that the parties agree or that the court preliminarily finds will become due prior to the hearing are timely paid in a manner prescribed by the court. The court may require the moving party to provide reasonable security for compliance with the conditions it sets and may revoke the stay upon a finding of non-compliance.

(2) Hearing on Conditions

The court may, on its own initiative, and shall, on request of a party, hold a hearing with respect to the setting of appropriate conditions. The hearing may be conducted by telephonic or electronic means.

(d) Scheduling Order

In order to facilitate an expeditious hearing on the merits, the court may enter a scheduling order with respect to any of the matters specified in Rule 2-504 that are relevant to the action.

(e) Final Determination

After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

Committee note: If the court finds that the plaintiff has no right to foreclose in the pending action because loss mitigation should have been granted, the court may stay entry of its order of dismissal, pending further order of court, so that loss mitigation may be implemented.

Source: This Rule is new.

[11-23-36]

Regulatory Review and Evaluation

Regulations promulgated under the Administrative Procedure Act will undergo a review by the promulgating agency in accordance with the Regulatory Review and Evaluation Act (State Government Article, §§10-130 — 10-139; **COMAR 01.01.2003.20**). This review will be documented in an evaluation report which will be submitted to the General Assembly's Joint Committee on Administrative, Executive, and Legislative Review. The evaluation reports have been spread over an 8-year period (see **COMAR 01.01.2003.20** for the schedule). Notice that an evaluation report is available for public inspection and comment will be published in this section of the Maryland Register.

Title 11 DEPARTMENT OF TRANSPORTATION

Notice of Availability of Evaluation Report

Pursuant to Executive Order 01.01.2003.20, Implementation of the Regulatory Review and Evaluation Act, notice is hereby given that the Evaluation Report concerning COMAR 11.20—11.23 is available for public inspection and comment for a period of 60 days following the date of this notice.

This report may be reviewed at the Office of the Administrator, Motor Vehicle Administration, 6601 Ritchie Highway, N.E., Room 200, Glen Burnie, Maryland 21062, Monday through Friday, 8:30 a.m. to 4:30 p.m., except holidays.

Information may be obtained by contacting Tracey C. Sheffield, Regulations Coordinator, at 410-424-3105.

[11-23-42]

Emergency Action on Regulations

Symbol Key

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

Emergency Regulations

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

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

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

Notice of Emergency Action

[11-290-E-I]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amend Regulation .17 under **COMAR 08.02.04 Oysters**.

Emergency status began: October 10, 2011.

Emergency status expires: April 6, 2012.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:22 Md. R. 1349—1350 (October 21, 2011), referenced as [11-290-P-I].

JOHN R. GRIFFIN

Secretary of Natural Resources

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.12 Foreclosure Procedures for Residential Property

Authority: Real Property Article, §7-105.1, Annotated Code of Maryland

Notice of Emergency Action

[11-264-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of

existing Regulations .01 — .03 and new Regulations .01 — .12 under **COMAR 09.03.12 Foreclosure Procedures for Residential Property**.

Emergency status began: October 25, 2011.

Emergency status expires: February 1, 2012.

MARK A. KAUFMAN

Commissioner of Financial Regulation

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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

10.54.03 Retail Food and Pharmacy Vendors

Authority: Health-General Article, §§2-104(b), 18-107(a), and 18-108, Annotated Code of Maryland

Notice of Emergency Action

[11-283-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .03, .09-1, .10, and .13—.16 under **COMAR 10.54.03 Retail Food and Pharmacy Vendors**.

Emergency status began: October 5, 2011.

Emergency status expires: March 29, 2012.

JOSHUA M. SHARFSTEIN, M.D.

Secretary of Health and Mental Hygiene

Title 11

DEPARTMENT OF TRANSPORTATION

Subtitle 18 MOTOR VEHICLE ADMINISTRATION — FINANCIAL RESPONSIBILITY REQUIREMENTS

11.18.02 Self-Insurers

Authority: Transportation Article, §§12-104(b) [and], 17-103, and 20-105.1[; Article 48A, §§539, 540, and 542]; Annotated Code of Maryland

Notice of Emergency Action [11-299-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .01 and new Regulation .08 under **COMAR 11.18.02 Self-Insurers**.

Emergency status began: October 5, 2011.

Emergency status expires: March 30, 2012.

JOHN T. KUO
Administrator
Motor Vehicle Administration

Title 14

INDEPENDENT AGENCIES

Subtitle 09 WORKERS' COMPENSATION COMMISSION

14.09.01 Procedural Regulations

Authority: Health-General Article, §4-303; Labor and Employment Article, §§9-307, 9-309, 9-310.2, 9-314, 9-404, 9-405, 9-410, 9-603, 9-625, 9-635, 9-689, 9-701, 9-709, 9-710, 9-711, 9-721, 9-731, 9-739, and 9-6A-07; Insurance Article, §§19-405 and 19-406; State Government Article, §10-1103; Annotated Code of Maryland

Notice of Emergency Action [11-323-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .06 and new Regulation .06-1 under **COMAR 14.09.01 Procedural Regulations**.

Emergency status began: October 5, 2011.

Emergency status expires: March 30, 2012.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Economic Impact on Small Businesses

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

.06 Requirements for Filing and Amending Claims.

A. — B. (text unchanged)

[C.]—[D.] (proposed for repeal)

.06-1 Death and Funeral Benefits.

A. Election for Counties and Municipal Corporations.

(1) A county or municipal corporation may elect for the death benefits provisions of Labor and Employment Article, §§9-683.1 — 9-683.5, Annotated Code of Maryland, to apply to its public safety employees subject to the statutory presumption set forth in Labor and Employment Article, §9-503, Annotated Code of Maryland.

(2) A county or municipal corporation may make this election by:

(a) Completing an online form, available at the Commission's website; and

(b) Attaching a copy of the county or municipal corporation's ordinance or resolution making the election.

(3) The Commission shall issue a date-stamped notice advising the county or municipal government of its receipt of the election.

(4) The date stamp of the Commission's notice will be used as the effective date of the election.

(5) All death benefit claims arising out of a death that occurred after the date of election are subject to the death benefits provisions set forth in Labor and Employment Article, §§9-683.1 — 9-683.5, Annotated Code of Maryland.

B. Dependent Claim for Death Benefits.

(1) To initiate a claim for death benefits, a dependent of the deceased employee or an individual authorized to act on behalf of the dependent claimant shall file a dependent death benefits claim form with the Commission.

(2) The Commission may reject and return to the dependent claimant or authorized individual a claim form that does not contain sufficient information to process the claim including:

(a) The dependent claimant's name and, if applicable, the authorized individual's name;

(b) The dependent claimant's address and, if applicable, the authorized individual's address;

(c) The deceased employee's name;

(d) The deceased employee's address;

(e) The deceased employee's date of birth;

(f) The date of the accident or occupational disease;

(g) The member of the deceased employee's body that was injured;

(h) A description of how the accidental injury or occupational disease occurred;

(i) The deceased employee's date of death; and

(j) The deceased employee's employer's name and address.

(3) If the information set forth in §B(2) of this regulation is unavailable or does not exist the claimant shall:

(a) Enter all zeros (0) in the spaces provided for the information; and

(b) Attach a signed statement certifying that the information is unavailable or does not exist.

(4) Signature.

(a) The dependent claimant or authorized individual shall sign the dependent death benefit claim form.

(b) An authorized individual shall submit documentation establishing his or her authority to act on behalf of the dependent claimant with the claim form.

(5) Submission of Supporting Documentation.

(a) When completing the dependent death benefits claim form, the dependent claimant or authorized individual shall submit:

(i) An authorization for disclosure of health information signed by the dependent claimant or authorized individual, directing the deceased employee's health care providers to disclose to the dependent claimant's attorney, the deceased employee's attorney, the deceased employee's employer, the employer's insurer, or any agent thereof, the deceased employee's medical records that are relevant to:

1. The member of the body that was injured by an accident or occupational disease, as indicated on the claim form; and

2. The description of how the accidental injury or occupational disease occurred, as indicated on the claim form;

(ii) A certification of funeral expenses, if the dependent claimant is making a claim for funeral benefits, which shall:

1. Include the name of the deceased employee;

2. Include an attached itemized statement of the services performed and corresponding costs;

3. Be signed by the provider of the funeral services or undertaker;

4. Be signed by the person authorizing the burial or other services; and

5. Be notarized;

(iii) A certified copy of the certificate of death for the deceased employee;

(iv) A certified copy of the certificate of marriage for the dependent claimant and deceased employee, if the dependent claimant is the surviving spouse of the employee; and

(v) A certified copy of the certificate of birth for the dependent claimant, if the dependent claimant is the surviving child of the deceased employee.

(b) Prior to the scheduled hearing on the death claim, the dependent claimant or authorized individual who filed the claim shall submit:

(i) Proof of family income at the date of the accidental personal injury or disablement;

(ii) An affidavit attesting to the authenticity of the documents submitted as proof of family income; and

(iii) If applicable, copies of any legal documents or orders directing the deceased employee to pay child support or alimony.

(c) Proof of family income may include:

(i) Payroll stubs or wage records covering the 14-week period prior to the accidental injury or date of disablement;

(ii) W-2s;

(iii) 1099 forms or other evidence of earnings from self-employment; and

(iv) Tax returns.

(d) If the dependent claimant or authorized individual does not have access to proof of income records for some alleged dependent claimants, the dependent claimant or authorized individual shall submit evidence demonstrating the efforts made to obtain these records, including any Commission subpoenas.

(6) Revocation of Authorization.

(a) A dependent claimant or authorized individual may revoke an authorization for disclosure of health information in writing.

(b) The dependent claimant or authorized individual shall serve a copy of the written revocation on all the parties in the case.

(7) The Commission shall reject and return to the dependent claimant or authorized individual a dependent death benefits claim form that does not contain a signed authorization for disclosure of health information.

(8) Date of Filing.

(a) A claim is considered filed on the date that a completed and signed claim form, including the signed authorization for disclosure of health information, is received by the Commission.

(b) The Commission's date of receipt is determined by the date stamp affixed on the claim form.

(9) Electronic Submission.

(a) A dependent death benefits claim that is submitted electronically is not considered filed until the signed claim form, including the signed authorization for disclosure of health information, is received by the Commission.

(b) The Commission's date of receipt is determined by the date stamp affixed on the claim form.

C. Claim for Funeral Benefits Only.

(1) If the deceased employee has no dependents, any person or entity responsible for paying, or who has paid, the deceased employee's funeral expenses may initiate a claim for funeral benefits by filing with the Commission a signed funeral benefits only claim form certifying that the information submitted on the form is accurate.

(2) The Commission may reject and return to the filing party a funeral benefits only claim form that does not contain sufficient information to process the claim including:

(a) The filing party's name and address;

(b) The deceased employee's name and address;

(c) The deceased employee's employer's name and address;

(d) The date of accident or occupational disease; and

(e) The deceased employee's date of death.

(3) When the information set forth in §D(2) of this regulation is unavailable or does not exist, the claimant shall:

(a) Enter all zeros (0) in the spaces provided for the information; and

(b) Attach a signed statement certifying that the information is unavailable or does not exist.

(4) When completing the funeral benefits only claim form the filing party shall attach a certification of funeral expenses, which shall:

(a) Include the name of the deceased employee;

(b) Include an attached itemized statement of the services performed and corresponding costs;

(c) Be signed by the provider of the funeral services or undertaker;

(d) Be signed by the person authorizing the burial or other services; and

(e) Be notarized.

R. KARL AUMANN

Chairman

Workers' Compensation Commission

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 Emergency Action

[11-265-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .04 under **COMAR 34.04.07 Sustainable Communities Tax Credit Certifications** so that the Sustainable Communities Tax Credit Program may charge statutorily allowable fees for FY 2012 applications to the program.

Emergency status began: October 5, 2011.

Emergency status expires: January 29, 2012.

RICHARD E. HALL

Secretary of Planning

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 07 CHILD SUPPORT ENFORCEMENT ADMINISTRATION

07.07.02 General Information

Authority: Family Law Article, §§10-106—10-116, 10-118, 10-119, 10-119.3—10-144, and 10-303—10-359, Annotated Code of Maryland; Agency Note: Federal Regulatory Reference—45 CFR §§302, 303.2—303.15, 303.30, 303.31, and 303.71—303.106; 42 U.S.C. §654(6)(B)

Notice of Final Action

[11-221-F]

On October 12, 2011, the Secretary of Human Resources adopted amendments to Regulations .04 and .05 under **COMAR 07.07.02 General Information**. This action, which was proposed for adoption in 38:17 Md. R. 1018 (August 12, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

THEODORE DALLAS
Secretary of Human Resources

This action, which was proposed for adoption in 38:19 Md. R. 1150—1151 (September 9, 2011), has been adopted with the nonsubstantive changes shown below.

Effective Date: November 14, 2011.

Attorney General's Certification

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

Regulation .01: A reference was changed so that the definitions now apply to the subtitle, and minor recommended wording changes were incorporated.

.01 Definitions.

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

B. Terms Defined.

(1)—(22) (proposed text unchanged)

(23) “Sale” is defined pursuant to [[UCC]] §2-106(1) and 2-401(20) of the Uniform Commercial Code as amended.

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

(25)—(31) (proposed text unchanged)

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 04 BOATING

08.04.01 Definitions

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

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

Notice of Final Action

[11-250-F]

On October 25, 2011, the Secretary of Natural Resources adopted amendments to Regulation .01 under **COMAR 08.04.01 Definitions**.

Subtitle 04 BOATING

08.04.12 Security Interest Recordation

Authority: Natural Resources Article, [[§§8-704(b) and 8-712]] §§8-704(c) and 8-733, Annotated Code of Maryland

Notice of Final Action

[11-254-F]

On October 25, 2011, the Secretary of Natural Resources adopted amendments to Regulation .01 under **COMAR 08.04.12 Security Interest Recordation**. This action, which was proposed for adoption in 38:19 Md. R. 1156 (September 9, 2011), has been adopted with the nonsubstantive changes shown below.

Effective Date: November 14, 2011.

Attorney General's Certification

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

Regulation .01: The authority line for the chapter was corrected, and minor recommended changes to wording were incorporated.

.01 Security Interest Recordation.

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

(1) — (2) (proposed text unchanged)

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

B. (proposed text unchanged)

C. To record a subsequent security interest in a vessel:

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

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

(3) Department shall deliver ~~[[corrected title]]~~ the new Security Interest Filing Statement to the first secured party.

(4) (proposed text unchanged)

D. When a second or subsequent secured party interest is *discharged*~~[[~~:

(1) *That*~~]]~~, that party shall forward the original Discharge of Security Interest to the Department and a *copy* to the first secured party and to the vessel owner.

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

E. (proposed text unchanged)

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 07 FORESTS AND PARKS

08.07.08 Licensed Forest Products Operator

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

Notice of Final Action

[11-243-F]

On October 25, 2011, the Department of Natural Resources adopted Regulations **.01—.07** under **COMAR 08.07.08 Licensed Forest Products Operator** to reflect changes to the Forest Products Operators statute during the 2010 legislative session. This action, which was proposed for adoption in 38:19 Md. R. 1157—1158 (September 9, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 09

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

Subtitle 10 RACING COMMISSION

09.10.01 Thoroughbred Rules

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

Notice of Final Action

[11-216-F]

On October 18, 2011, the Maryland Racing Commission adopted amendments to Regulation **.49** under **COMAR 09.10.01 Thoroughbred Rules**. This action, which was proposed for adoption in 38:17 Md. R. 1027 (August 12, 2011), has been adopted as proposed.

Effective Date: January 10, 2012.

J. MICHAEL HOPKINS
Executive Director

Subtitle 21 BOARD OF ARCHITECTS

09.21.04 Fees

Authority: Business Occupations and Professions Article, §§3-208, 3-309, 3-309.1, and 3-309.2, Annotated Code of Maryland

Notice of Final Action

[11-227-F]

On October 26, 2011, the Board of Architects adopted amendments to Regulation **.03** under **COMAR 09.21.04 Fees**. This action, which was proposed for adoption in 38:18 Md. R. 1082 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

DIANE CHO
Chair
Maryland Board of Architects

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 04 FISCAL

10.04.01 Local Health Services *Funding*

Authority: Health-General Article, §§2-301—2-305, Annotated Code of Maryland

Notice of Final Action

[11-239-F]

On October 17, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.01**, **.02**, **.05**, and **.06**, the repeal of existing Regulations **.03** and **.04**, and new Regulations **.03** and **.04** under **COMAR 10.04.01 Local Health Services Funding**. This action, which was proposed for adoption in 38:18 Md. R. 1082—1084 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

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

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Final Action

[11-234-F-I]

On October 17, 2011, the Secretary of Health and Mental Hygiene adopted amendments to:

- (1) Regulation **.07** under **COMAR 10.09.02 Physicians' Services**;
- (2) Regulation **.06** under **COMAR 10.09.17 Physical Therapy Services**; and
- (3) Regulation **.07** under **COMAR 10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services**.

This action, which was proposed for adoption in 38:18 Md. R. 1084—1085 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.20 Personal Care Services

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

Notice of Final Action

[11-191-F]

On October 24, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.01** and **.04—.06** under **COMAR 10.09.20 Personal Care Services**. This action, which was proposed for adoption in 38:16 Md. R. 961—962 (July 29, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

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

Subtitle 15 FOOD

10.15.07 Shellfish Sanitation

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

Notice of Final Action

[11-235-F-I]

On October 17, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulation **.01** under **COMAR 10.15.07 Shellfish Sanitation**. This action, which was proposed for adoption in 38:18 Md. R. 1086 (August 26, 2011), has been adopted as proposed.

Effective Date: November 24, 2011.

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

Subtitle 34 BOARD OF PHARMACY

10.34.35 Infusion Pharmacy Services in an Alternate Site Care Environment

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

Notice of Final Action

[11-213-F]

On October 17, 2011, the Secretary of Health and Mental Hygiene adopted new Regulations **.01—.10** under a new chapter, **COMAR 10.34.35 Infusion Pharmacy Services in an Alternate Site Care Environment**. This action, which was proposed for adoption in 38:17 Md. R. 1034—1038 (August 12, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

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

Title 11 DEPARTMENT OF TRANSPORTATION

Notice of Final Action

[11-233-F]

On October 11, 2011, the Administrator of the Motor Vehicle Administration adopted:

(1) Amendments to Regulation .02 under **COMAR 11.11.05 Motor Vehicle Fees**;

(2) New Regulations .01 — .06 under a new chapter, **COMAR 11.11.15 Refusal to Renew or Transfer a Vehicle Registration and Refusal to Renew a Driver's License for Failure to Pay Undisputed Taxes and Unemployment Insurance Contributions**; and

(3) Amendments to Regulation .06 under **COMAR 11.15.33 Vehicle Trade-In Allowance**.

This action, which was proposed for adoption in 38:18 Md. R. 1087—1089 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

JOHN T. KUO
Administrator
Motor Vehicle Administration

Title 14 INDEPENDENT AGENCIES

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.01 Designation of Service Regions

Authority: Natural Resources Article, §§3-106(b) and 3-129, Annotated Code of Maryland

Notice of Final Action

[11-259-F]

On October 24, 2011, the Maryland Environmental Service adopted the repeal of Regulation .01 under **COMAR 14.27.01 Designation of Service Regions**. This action, which was proposed for adoption in 38:19 Md. R. 1168 (September 9, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

JAMES M. HARKINS
Director
Maryland Environmental Service

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.02 Human Resources System

Authority: Natural Resources Article, §§3-103.1 and 3-127, Annotated Code of Maryland

Notice of Final Action

[11-260-F]

On October 24, 2011, the Maryland Environmental Service adopted amendments to Regulation .12 under **COMAR 14.27.02 Human Resources System**. This action, which was proposed for adoption in 38:19 Md. R. 1168—1169 (September 9, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

JAMES M. HARKINS
Director
Maryland Environmental Service

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.02 Human Resources System

Authority: Natural Resources Article, §§3-103.1 and 3-127, Annotated Code of Maryland

Notice of Final Action

[11-244-F]

On October 24, 2011, the Maryland Environmental Service adopted amendments to Regulation .16 under **COMAR 14.27.02 Human Resources System**. This action, which was proposed for adoption in 38:19 Md. R. 1169—1170 (September 9, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

JAMES M. HARKINS
Director
Maryland Environmental Service

Subtitle 27 MARYLAND ENVIRONMENTAL SERVICE

14.27.03 Procurement

Authority: Natural Resources Article, §§3-103 and 3-127, Annotated Code of Maryland

Notice of Final Action

[11-261-F]

On October 24, 2011, the Maryland Environmental Service adopted amendments to Regulation .11 under **COMAR 14.27.03 Procurement**. This action, which was proposed for adoption in 38:19 Md. R. 1170 (September 9, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

JAMES M. HARKINS
Director
Maryland Environmental Service

Title 23
BOARD OF PUBLIC WORKS
Subtitle 03 PUBLIC SCHOOL
CONSTRUCTION

Notice of Final Action
[11-228-F]

On October 19, 2011, the Board of Public Works adopted amendments to:

(1) Regulations **.03**, **.05**, and **.13** and new regulations **.28** and **.29** under **COMAR 23.03.02 Administration of the Public School Construction Program**; and

(2) Regulation **.04** under **COMAR 23.03.03 Construction Procurement Methods**.

This action, which was proposed for adoption in 38:18 Md. R. 1096—1099 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

SHEILA McDONALD
Executive Secretary
Board of Public Works

Title 29
DEPARTMENT OF STATE
POLICE

Subtitle 05 CRIME LABORATORY

29.05.01 Statewide DNA Data Base System and Repository

Authority: Public Safety Article, §2-503, Annotated Code of Maryland

Notice of Final Action
[11-241-F]

On October 13, 2011, the Secretary of State Police adopted amendments to Regulations **.01** and **.16** under **COMAR 29.05.01 Statewide DNA Data Base System and Repository**. This action, which was proposed for adoption in 38:18 Md. R. 1105 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

TERRENCE B. SHERIDAN
Secretary of State Police

Title 31
MARYLAND INSURANCE
ADMINISTRATION
Subtitle 09 LIFE INSURANCE AND
ANNUITIES

31.09.14 Retained Asset Accounts

Authority: Insurance Article, §§2-109(a), 12-208, and 16-108, Annotated Code of Maryland

Notice of Final Action
[11-231-F]

On October 11, 2011, the Insurance Commissioner adopted the repeal of existing Regulations **.01 — .05** under **COMAR 31.09.14 Retained Asset Accounts**. This action, which was proposed for adoption in 38:18 Md. R. 1106—1107 (August 26, 2011), has been adopted as proposed.

Effective Date: November 14, 2011.

THERESE M. GOLDSMITH
Insurance Commissioner

Withdrawal of Regulations

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 02 DIVISION OF CORRECTION

12.02.28 Death Penalty Procedures

*Authority: Correctional Services Article, §§2-109, 3-205, and 3-901 — 3-909,
Annotated Code of Maryland*

Notice of Withdrawal

[10-326-W]

The Secretary of Public Safety and Correctional Services withdraws Regulations .01 — .23 under a new chapter, **COMAR 12.02.28 Death Penalty Procedures**, as published in 37:24 Md. R. 1674 — 1687 (November 19, 2010).

The Department will conduct additional research concerning death penalty protocols.

GARY D. MAYNARD

Secretary of Public Safety and Correctional Services

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

26.11.19 Volatile Organic Compounds from Specific Processes

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

Notice of Withdrawal

[11-240-W]

The Secretary of the Environment withdraws new Regulation .27-1 under COMAR **26.11.19 Volatile Organic Compounds from Specific Processes**, as published in 38:18 Md. R. 1099—1101 (August 26, 2011).

ROBERT M. SUMMERS, Ph.D.

Secretary of the Environment

Proposed Action on Regulations

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

Symbol Key

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

Promulgation of Regulations

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

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

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

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 06 SALES AND USE TAX

03.06.01 Sales and Use Tax

Authority: Tax-General Article, §§11-102 and 11-230, Annotated Code of Maryland

Notice of Proposed Action

[11-312-P]

The Comptroller of the Treasury proposes to adopt new Regulation .43 under **COMAR 03.06.01 Sales and Use Tax**.

Statement of Purpose

The purpose of this action is to define geothermal and residential wind energy and solar equipment under Tax-General Article, §10-230, Annotated Code of Maryland. The regulation clarifies equipment that is exempt from sales and use tax for purposes of the statute.

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 Sharonne Bonardi, Director of Compliance, Comptroller of the Treasury, 301 W. Preston Street, Room 203, or call 410-767-1556, or email to sbonardi@comp.state.md.us, or fax to 410-

767-1310. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

.43 *Geothermal and Residential Wind Energy and Solar Equipment.*

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

(1) "Equipment" means an implement, such as a tool, apparatus, appliance, utensil, or instrument, used to perform a mechanical or manual operation.

(2) "Geothermal equipment" means equipment that uses ground loop technology to heat and cool a structure.

(3) "Residential wind energy equipment" means equipment installed on residential property that uses wind energy to generate electricity to be used in a residential structure on the property.

(4) "Solar energy equipment" means:

(a) Equipment that uses solar energy to heat or cool a structure, generate electricity to be used in a structure or supplied to the electric grid, or provide hot water for use in a structure.

(b) "Solar energy equipment" does not include equipment that is part of a nonsolar energy system, such as a window, floor, or other passive solar material that does not involve the use of a mechanical or electronic device but is designed to enhance or improve the functionality of a traditional heating or cooling system, or that uses any type of recreational facility or equipment as a storage medium, such as a pool or hot tub.

B. Exempt Sales.

(1) The sales and use tax does not apply to a sale of geothermal equipment, residential wind energy equipment, or solar energy equipment.

(a) The exemption includes the sale of equipment and other material that is attached, applied, fabricated, or assembled in such a manner that it comprises a complete geothermal, residential wind energy, or solar energy system.

(b) Material such as sand, gravel, or grout, although necessary for the system to be built or to function properly, is not equipment or a component of equipment and, therefore, is not exempt from the tax.

(2) *If sales and use tax is paid on the sale of an item that qualifies for exemption, the person paying the tax may apply to the Comptroller for a refund pursuant to COMAR 03.06.03.05.*

PETER FRANCHOT
Comptroller of the Treasury

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

Notice of Proposed Action

[11-321-P]

The Secretary of Natural Resources proposes to amend:

(1) Regulations .03, .04, .06, and .16 under **COMAR 08.02.04 Oysters**; and

(2) Regulation .02 under **COMAR 08.02.08 Shellfish — General**.

Statement of Purpose

The purpose of this action is to bring Maryland into compliance with federal sanitation requirements for shellfish sold for human consumption, improve resource tracking, and improve the accountability and enforcement of Maryland's oyster harvest. The National Shellfish Sanitation Program (NSSP) is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption. Through membership with the NSSP and the ISSC, Maryland has agreed to enforce the Model Ordinance for the sanitary control of molluscan shellfish (National Shellfish Sanitation Program Model Ordinance is incorporated by reference in COMAR 10.15.07.01A). The Model Ordinance includes the minimum requirements necessary to ensure that the shellfish produced in states are sanitary and safe for human consumption.

The ISSC and the FDA are concerned with the ability to accurately trace shellfish to the harvest area and harvest date in the event of an illness or some unforeseen contamination event. The NSSP Model Ordinance requires that harvesters identify the shellstock before it is transported to a dealer. A harvester tag is required on each individual container. The requirements are listed in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish in Chapter VIII of the Model Ordinance.

The proposed action includes provisions for compliance with the NSSP Model Ordinance. Specifically, the proposal addresses containers, tagging, and selling oysters. Requirements for containers include: containers with dimensions that result in the volume equaling one bushel of oysters; that the harvester must put the oysters in a container prior to leaving the location where they were harvested; and exceptions for harvesting from a lease or skipjack. Requirements for tagging containers of oysters include: tagging the container prior to leaving the harvest location; special requirements for tagging oysters harvested with a skipjack; a person must use the tags issued to them; tags may not be reused; tags may only be transferred during a license transfer; and only one type of tag, wild or aquaculture, may be in possession while harvesting oysters. Buying station has been redefined to meet NSSP requirements for selling oysters. A person must sell oysters at a buying station or be properly

licensed to sell in other locations. Other portions of the proposal address record-keeping requirements and taxes on oysters. Failure to comply with the NSSP requirements would be irresponsible and potentially unsafe. It would drop Maryland from the federal program, resulting in a closure of interstate transport and sales and would also damage our credibility and affect the industry in State as well.

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 impact on regulated industry and the Department.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
Tags	(E+)	\$10,500 per year
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
Containers	(-)	Indeterminable
E. On other industries or trade groups:		
Tags and containers	(+)	Indeterminable
F. Direct and indirect effects on public:	NONE	

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

A. The Department is providing waterproof tags to harvesters and will have to purchase approximately 200,000 per year. The initial estimate for the tags was \$10,500, but that may vary based on the number of tags needed each year and the manufacturer. The Department will use industry special funds to cover the tag cost.

D. Individuals harvesting oysters may have to purchase new containers to comply with the regulation. The magnitude is not able to be determined because the number of containers that need to be purchased is unknown. Many harvesters already have these types of containers.

E. Tag and container manufacturers may benefit from the regulation, but the magnitude is indeterminable.

Economic Impact on Small Businesses

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

See assumptions in previous section.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Oyster Containers and Tagging, Regulatory Staff, Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to

fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

08.02.04 Oysters

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

.03 Catching Oysters for Commercial Purposes.

A. — D. (text unchanged)

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

.04 Oyster [Containers] Container and Tagging Requirements.

A. Containers.

[A.] (1) [Oysters in the shell sold in the State] *Notwithstanding Natural Resources Article, §4-1018(a), Annotated Code of Maryland, oysters harvested from waters of the state shall be [measured at the point of initial sale] stored prior to leaving the bar from which they were harvested in [either] a:*

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

- (i) *18 inches top diameter;*
- (ii) *16-1/2 inches bottom diameter; and*
- (iii) *12 inches height;*

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

- (i) *12-5/8 inches width across the top;*
- (ii) *12 inches width across the bottom;*
- (iii) *20 inches in length; and*
- (iv) *11-1/4 inches height;*

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

- (i) *16-1/2 inches top diameter;*
- (ii) *13-1/2 inches bottom diameter; and*
- (iii) *14-1/4 inches height; or*

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

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

- (a) *Made of a rigid, open mesh;*
- (b) *Made of smooth, impervious, corrosion-resistant, and non-toxic materials which will not readily disintegrate or crack;*
- (c) *Constructed so that it may be easily cleaned and kept in good repair; and*
- (d) *Constructed to allow either one side or one end to be opened to unload or inspect the oysters.*

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

[B.] — [C.] (proposed for repeal)

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

(4) *Oysters stored in accordance with §A of this regulation shall remain in the original container until a tag is no longer required on the container in accordance with §B(3)(b) of this regulation.*

(5) *Exceptions.*

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

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

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

(b) *Oysters on board a skipjack harvested in accordance with Natural Resources Article, §4-1013, Annotated Code of Maryland, from:*

(i) *Only one bar are exempt from §A(1) — (3) of this regulation; or*

(ii) *More than one bar may have oysters from one bar not in containers and all other oysters from different bars shall follow the container requirements of §A(1) — (4) of this regulation.*

(c) *Oysters harvested for recreational purposes and not for sale are exempt from this regulation.*

B. Tagging.

(1) *An individual storing oysters in accordance with §A(1) — (3) and (5)(a) of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the bar from which the oysters were harvested.*

(2) *An individual storing oysters in accordance with §A(5)(b) of this regulation shall complete one Department-issued tag for the group of oysters not in containers and affix a Department-issued tag to each container of oysters prior to leaving the bar from which the oysters were harvested.*

(3) *Tags:*

(a) *Shall be completed legibly in indelible ink;*

(b) *Shall stay affixed to the container until the container is in the possession of a person who is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07;*

(c) *May not be reused; and*

(d) *May only be transferred to another individual during a license transfer in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland.*

(4) *In addition to the tagging requirements of this regulation, a person who is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.07 shall follow the tagging requirements of the National Shellfish Sanitation Program Model Ordinance, incorporated by reference by the Department of Health and Mental Hygiene in COMAR 10.15.07.01.*

(5) *An individual shall only possess one type of Department-issued tag, wild shellfish or farm raised shellfish, while harvesting oysters.*

(6) *Except as provided in §B(3)(d) of this regulation, tags shall only be used by the individual to whom the tags were originally issued.*

(7) *Exception. Tags are not required for oysters harvested for recreational purposes.*

.06 Daily Catch Limit.

A. Definition.

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

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

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

[A.] (1) — [C.] (3) (text unchanged)

.16 Recording the Catching and Disposal of Oysters.

A. Shellfish Buy Ticket.

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

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

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

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

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

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

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

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

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

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

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

[B.] (proposed for repeal)

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

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

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

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

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

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

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

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

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

C. *Oyster Export Certificate.*

(1) *When oysters are shipped out of State, the seller shall complete an Oyster Export Certificate for each shipment.*

(2) *A person who ships oysters in the shell out of State shall receive an Oyster Export Certificate for each shipment. The original certificate shall accompany the shipment of oysters out of State and shall be available for inspection by officials of the State.*

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

[D.] (proposed for repeal)

[E.] D. Oyster Harvester Reporting.

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

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

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

08.02.08 Shellfish — General

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

.02 Buying Station.

[A.] — [B.] (proposed for repeal)

A. *Definitions.*

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

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

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

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

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

(1) *Buying station; or*

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

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

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

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

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

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §§4-215, 4-11A-12 and 4-11A-19, Annotated Code of Maryland

Notice of Proposed Action

[11-322-P]

The Secretary of Natural Resources proposes to amend Regulations .02 — .04 and .07 under COMAR 08.02.23 Shellfish Aquaculture and Leasing.

Statement of Purpose

The purpose of this action is to add water column leases to regulation in accordance with H.B. 1053 and S.B. 847, which passed in the 2011 Maryland General Assembly Session. These crossfiled bills allow the Department to issue water column leases. Formerly the process included the Maryland Department of Environment issuing the tidal wetlands license and the lease was issued by the Board of Public Works. The proposed action corrects existing leasing text to include water column leasing by the Department.

The proposed action also requires shellfish harvesters to follow the vibrio parahaemolyticus (vibrio) control measures required in the Maryland Vibrio parahaemolyticus Control Plan which are set forth in COMAR 10.15.07.06 by the Department of Health and Mental Hygiene. Vibrio is a naturally occurring bacterium commonly found in waters where oysters are cultivated. When the appropriate conditions occur with regard to salt content and temperature, V. parahaemolyticus thrives. It lives in brackish saltwater and causes gastrointestinal illness in humans. Most infections caused by V. parahaemolyticus in the United States can be prevented by following the vibrio control plan while harvesting oysters.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. This action has an economic impact on the Department.

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

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

A(1). Each water column lease application is required to be advertised in a local newspaper for 4 weeks. The advertisements cost between \$300 and \$1,000 depending on the newspaper. The number of applications is variable; therefore, the actual amount is indeterminable.

A(2). Additional funds are not necessary to implement or enforce these regulation changes.

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 Water Column Leasing, Regulatory Staff, Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (10) (text unchanged)

[(11) “Tidal wetlands license” means written authorization by the Board of Public Works under Environment Article, §16-202, Annotated Code of Maryland, to dredge, fill, construct structures, or conduct certain other activities involving State tidal wetlands for shellfish aquaculture.]

[(12)] (11) (text unchanged)

(12) “Yates Bar” means any submerged oyster bar, reef, rock, or area represented as an oyster bar on the charts of the oyster survey of 1906 to 1912, not including any amendments.

.03 Lease Procedures.

A. (text unchanged)

B. Aquaculture Activities in the Water Column. Prior to engaging in aquaculture activities in the water column of:

(1) (text unchanged)

(2) Waters of the State not listed in Regulation .05 of this chapter, a person shall apply for a:

(a) (text unchanged)

(b) [Tidal wetlands license as described in Environment Article, Title 16, Subtitle 2, Annotated Code of Maryland] *Water column lease by submitting an application on a form provided by the Department.*

C. — E. (text unchanged)

F. Locations. In addition to restrictions provided in Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland, a lease may not be located [in]:

(1) [Waters] *In waters* classified as restricted by the Maryland Department of the Environment unless the person:

(a) — (b) (text unchanged)

(2) *In the* Assateague Island National Seashore as described in 16 U.S.C. §459f; or

(3) [A sanctuary as established in COMAR 08.02.04.15A] *Within 150 feet of a Yates Bar located in an oyster sanctuary as established in COMAR 08.02.04.15A.*

G. — K. (text unchanged)

.04 Shellfish Aquaculture Harvester Permit.

A. A lease [applicant,] *holder or* a lease transfer applicant[, a tidal wetlands license applicant, or an individual as described in Natural Resources Article, §4-11A-16, Annotated Code of Maryland,] shall submit an application for a shellfish aquaculture harvester permit prior to engaging in aquaculture activities.

B. (text unchanged)

C. Application. An application shall:

(1) (text unchanged)

(2) Include a list of all individuals who may be engaging in aquaculture activities within the area described in the applicant's lease application [or tidal wetlands license application].

D. (text unchanged)

E. Permit Registrants.

(1) An individual engaged in aquaculture activities [on] *within* the area described in the permit applicant's lease [or tidal wetlands license application] shall be:

(a) Named as a *permittee or* permit registrant under the shellfish aquaculture harvester permit; and

(b) (text unchanged)

(2) (text unchanged)

(3) A shellfish aquaculture harvester registration card shall be issued to each shellfish aquaculture harvester permittee *and permit registrant*.

F. A shellfish aquaculture harvester permittee or permit registrant:

(1) — (3) (text unchanged)

(4) Shall have written permission from the Department if in possession of undersized shellfish outside of the leased [or licensed] area; [and]

(5) May only sell oysters [to an oyster buying station, designated under COMAR 08.02.08.02B unless that person has written permission from the Department] *in accordance with COMAR 08.02.08.02; and*

(6) *Shall implement vibrio parahaemolyticus control measures in accordance with COMAR 10.15.07.06.*

.07 General.

A. Penalties. A shellfish aquaculture harvester permit or a shellfish aquaculture harvester registration card may be revoked or suspended by the Department if the individual:

(1) Receives a violation under:

(a) This chapter; *or*

(b) Natural Resources Article, Title 4, Subtitle 11A, Annotated Code of Maryland; *or*

[(c) Environment Article, Title 16, Subtitle 2, Annotated Code of Maryland; *or*]

(2) (text unchanged)

B. Fishing in a Leased Area. Fishing is permitted in a leased area if the fishing activity does not destroy or damage shellfish or gear which may be planted *or secured* there.

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 10 LABORATORIES**10.10.11 Biological Agents Registry Program**

Authority: Health-General Article, §§17-601—17-605, Annotated Code of Maryland

Notice of Proposed Action

[11-308-P-I]

The Secretary of Health and Mental Hygiene proposes to amend Regulations **.02—.05, .07—.16, .19, and .23** under **COMAR 10.10.11 Biological Agents Registry Program**.

Statement of Purpose

The purpose of this action is to clarify and update the Department's procedure to match current practice for how and when the BAR Program releases BAR information to its trusted partners including local jurisdictions, MDE, MEMA, and MIEMSS; define the acronym for the Biological Agents Registry, i.e., BAR, and use it consistently throughout the chapter; clarify when BAR information may be communicated electronically, e.g., via facsimile, e-mail, etc.; update the BMBL incorporated by reference to the most recent edition, i.e., 5th Edition, December 2009; and explicitly allow a designee of a health officer or an emergency management director to be a BAR information custodian.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The standards and requirements in the proposed regulations will have minimal or no economic impact on the regulated industry or issuing agency.

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

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

D. For the persons affected by these regulations, the costs/expenses required by this action are minimal and unquantifiable.

F. The public will be protected from the threat of biological terrorism, and individuals required to respond to emergencies where biological agents are held or maintained are benefited because they will have knowledge the biological agents present prior to responding to the emergency. These benefits are significant and unquantifiable.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston St., Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

.02 Scope.

A. (text unchanged)

B. This chapter does not apply to a biological agent or a certified laboratory or facility that is exempt from the requirements for the interstate shipment of etiologic agents under 42 CFR §§73.5 and 73.6, [9 CFR §§121.3—121.6] 9 CFR §§121.5 and 121.6, and [7 CFR §§331.3 and 331.5] 7 CFR §331.5.

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(3) (text unchanged)

(4) “BAR” means the Department’s Biological Agents Registry.

[(4)] (5) BAR Information.

(a) “BAR information” means information submitted to the [Biological Agents Registry] BAR Program by a person required to report a biological agent under this chapter.

(b) (text unchanged)

(c) “BAR information” includes:

(i) Information contained in any of the documents and records that the [Biological Agents Registry] BAR Program collects, requests, maintains, processes, or stores;

(ii) Information released by the [Biological Agents Registry] BAR Program, a trusted partner, or a BAR information custodian; and

(iii) (text unchanged)

[(5)] (6) (text unchanged)

(7) “BAR Program” means the Department’s BAR Program within the Laboratories Administration’s Office of Laboratory Emergency Preparedness and Response.

[(6)] (8)—[(7)] (9) (text unchanged)

[8] “Biological Agents Registry Program” means the Department’s Biological Agents Registry Program.]

[(9)] (10)—[(12)] (13) (text unchanged)

[(13)] (14) “BMBL” means the “Biosafety in Microbiological and Biomedical Laboratories”, [4th Edition, May 1999,] which is incorporated by reference in [COMAR 10.10.11.04] Regulation .04 of this chapter.

[(14)] (15)—[(17)] (18) (text unchanged)

[(18)] (19) “Deficiency” means a documented lack of compliance with a standard or requirement of the [Registry] BAR Program set forth in this chapter.

[(19)] (20)—[(37)] (38) (text unchanged)

[(38)] (39) Security Self-Assessment.

(a) (text unchanged)

(b) “Security self-assessment” includes the:

(i) (text unchanged)

(ii) Documentation certifying to the [Biological Agents Registry] BAR Program that a person meets the BAR information security standards;

(iii) (text unchanged)

(iv) Security standards self-assessment check list provided by the [Biological Agents Registry] BAR Program.

[(39)] (40)—[(45)] (46) (text unchanged)

.04 Incorporation by Reference.

A. (text unchanged)

B. Documents Incorporated.

(1)—(4) (text unchanged)

(5) CDC/NIH publication, “Biosafety in Microbiological and Biomedical Laboratories”, [4th Edition, May 1999] 5th Edition, December 2009.

.05 Registering Under the Biological Agents Registry Program.

A person in the State shall participate in and comply with the State’s [Biological Agents Registry] BAR Program by registering with and reporting to the Department, in the manner set forth in this chapter, the information required by the Department.

.07 Responsibilities of the Department.

The Department shall:

A. (text unchanged)

B. Conduct facility surveys by mail, by on-site visit, or both, initially and periodically after that, to:

(1) Ensure compliance with the standards and requirements of the [Biological Agents Registry] BAR Program; and

(2) (text unchanged)

C. Provide or approve the forms that a person shall complete and submit to the Department under the [Biological Agents Registry] BAR Program;

D. Issue notice when a survey of a facility yields findings of deficiencies related to the standards or requirements of the [Biological Agents Registry] BAR Program;

E. Investigate a complaint that a facility or an employee is not complying with the standards or requirements of the [Biological Agents Registry] BAR Program; and

F. (text unchanged)

.08 Responsible Official; Alternate Responsible Official.

A. A person required to report to the [Biological Agents Registry] BAR Program under this chapter shall designate an individual to be the responsible official who:

(1)—(3) (text unchanged)

B. (text unchanged)

C. A person required to report to the [Biological Agents Registry] BAR Program under this chapter shall:

(1)—(2) (text unchanged)

.09 Reporting Requirements.

A. What to Report. Using reporting forms provided or approved by the Department, a person shall:

(1) Identify all non-exempt biological agents that the person possesses, maintains, transfers, or receives listed under:

(a) Select agents and toxins in:

(i) (text unchanged)

- (ii) [9 CFR §121.5] 9 CFR §121.3; and
- (iii) (text unchanged)
- (b) Overlap select agents *and toxins* in [42 CFR §73.4]:
 - (i) 42 CFR §73.4; and
 - (ii) 9 CFR §121.4;

(2)—(5) (text unchanged)

B.—C. (text unchanged)

D. Where to Report. A person shall return all completed reports and other correspondence to *the* [Registry] BAR Program, c/o Laboratories Administration, Department of Health and Mental Hygiene[, 201 West Preston Street, Baltimore, Maryland 21201].

.10 Additional Requirements Covering Possession, Maintenance, Transfer, or Receipt of a Biological Agent.

A person possessing, maintaining, transferring, or receiving a biological agent at a facility located in the State shall:

A.—C. (text unchanged)

D. Submit a copy of each completed [Centers for Disease Control and Prevention] CDC form documenting transfer or receipt of a biological agent, within 24 hours of completing a transfer or receipt, to the [Registry] BAR Program [at the address specified in Regulation .09D of this chapter]; and

E. (text unchanged)

.11 Reporting of Unauthorized Activities.

On learning that there is an unauthorized activity involving a biological agent, including the unauthorized possession, unauthorized attempted possession, unauthorized maintenance, unauthorized transfer, or unauthorized receipt of a biological agent, a person shall immediately alert the Department by:

A. (text unchanged)

B. Asking the individual taking the call to direct the information being reported to the [Director of the Biological Agents Registry] BAR Program or the Director of the Laboratories Administration; and

C. (text unchanged)

.12 Biological Agent Incident Response Plan.

A. Requirement. A person required to report under this chapter shall:

(1)—(2) (text unchanged)

(3) Submit a copy of the plan and any amendments to the plan to the:

(a) (text unchanged)

(b) [Biological Agents Registry] BAR Program.

B. A person required to submit a biological agent incident response plan shall:

(1)—(6) (text unchanged)

(7) Ensure that the plan contains the following information:

(a)—(d) (text unchanged)

(e) A list of the PPE *available* and where the PPE is located in the facility;

(8) (text unchanged)

(9) Notify the emergency management director in the local jurisdiction where the biological agent is located and the [Biological Agents Registry] BAR Program:

(a)—(b) (text unchanged)

(10)—(11) (text unchanged)

(12) Within 10 days after a drill, exercise, or biological agent incident, submit a copy of the report to the:

(a) (text unchanged)

(b) [Biological Agents Registry] BAR Program.

C. Monitoring Compliance. When a person submits a biological agent incident response plan to the [Biological Agents Registry] BAR Program, the [Biological Agents Registry] BAR Program shall:

(1)—(2) (text unchanged)

.13 BAR Information Confidentiality and Release of BAR Information.

A.—C. (text unchanged)

D. Except as provided in §§G—I of this regulation, a person to whom BAR information has been released may not release the information to another person unless the release is approved by the [Biological Agents Registry] BAR Program.

E. The [Biological Agents Registry] BAR Program may release BAR information only to:

(1)—(3) (text unchanged)

F. Before the [Biological Agents Registry] BAR Program releases BAR information to a person, except State and federal law enforcement agencies and the CDC, the person shall:

(1)—(2) (text unchanged)

(3) Submit the results of a BAR information security self-assessment to the [Biological Agents Registry] BAR Program for approval.

G. (text unchanged)

H. Emergency Release Activation Process.

(1) A trusted partner may release on an emergency basis BAR information about the nature and location of a biological agent to another trusted partner or emergency public safety personnel when:

(a)—(b) (text unchanged)

(c) There is a reported breach of containment or imminent threat of a breach of containment of a biological agent that poses an immediate threat to the health and safety of the public or emergency public safety [first-responders] *first responders*.

(2) (text unchanged)

I. 24/7 Access to BAR Information.

(1) MDE, MEMA, and MIEMSS may act as a back-up to the [Biological Agents Registry] BAR Program by maintaining:

(a)—(b) (text unchanged)

(2) (text unchanged)

J.—K. (text unchanged)

L. Notification Protocol.

(1) When there is a breach or imminent threat of a breach in containment of a biological agent as described in §J of this regulation, the:

(a) (text unchanged)

(b) 9-1-1 center personnel shall notify [the] MIEMSS and each of the following individuals in the jurisdiction where the breach occurred:

(i) [Emergency] *The emergency* management director;

and

(ii) [Health] *The health* officer[; and

(iii) MIEMSS].

(2) When MIEMSS receives notice of a breach or an imminent threat of a breach of containment of a biological agent, MIEMSS shall notify:

(a) The Department's:

(i) (text unchanged)

(ii) *BAR Program within the* Office of Laboratory Emergency Preparedness and Response;

(b)—(c) (text unchanged)

(3) (text unchanged)

M. Using a form provided by the [Biological Agents Registry] BAR Program, a trusted partner shall notify the [Biological Agents Registry] BAR Program within 72 hours after the:

(1)—(2) (text unchanged)

.14 Method of Non-Emergency Release of BAR Information.

A. (text unchanged)

B. [Except] *Unless authorized or required by federal regulation as set forth in Regulation .04B(2)–(4) of this chapter and except as provided in Regulation .13G, H, J, and K of this chapter,* a person

other than the BAR Program may not release, transfer, or share BAR information using:

- (1)—(2) (text unchanged)
- [(3) Email (electronic mail);
- (4) A facsimile machine;]
- [(5)] (3) An electronic or mechanical recording device; or
- [(6) A wireless communication system;]
- [(7)] (4) An internet communication system, such as voice-over-internet-protocol (VoIP)[; or]
- [(8) A networked server or a networked personal computer].

C. Release of BAR Information to a Local Jurisdiction, *MDE*, *MEMA*, and *MIEMSS*.

(1) The [Biological Agents Registry] BAR Program shall release BAR information to a BAR information custodian of a local jurisdiction, *MDE*, *MEMA*, and *MIEMSS*:

- (a) When notified by the [Biological Agents Registry] BAR Program that the BAR information is available for release;
 - (b) (text unchanged)
 - (c) At the [Biological Agents Registry] BAR Program office;
- and
- (d) (text unchanged)

(2) A designated representative of the [Biological Agents Registry] BAR Program shall provide a CD-R containing BAR information to a BAR information custodian of a local jurisdiction, *MDE*, *MEMA*, and *MIEMSS* after the BAR information custodian [of the local jurisdiction] presents:

- [(a) A copy of the signed trusted partner agreement;]
- [(b)] (a) (text unchanged)
- [(c)] (b) A prior CD-R containing BAR information, if the [Biological Agents Registry] BAR Program's BAR information release log indicates a CD-R was provided at an earlier time.

[D.] (proposed for repeal)

[E.] D. [Biological Agents Registry] BAR Program staff shall document the release of all BAR information to trusted partners in a permanent record that contains the:

- (1)—(4) (text unchanged)

.15 Release of BAR Information to Law Enforcement Agencies and CDC.

The [Biological Agents Registry] BAR Program may release BAR information to State and federal law enforcement agencies and the CDC without a trusted partner agreement if the release of BAR information is pursuant to:

A.—B. (text unchanged)

.16 Release of BAR Information to Local Jurisdictions.

A. The Department shall release to a local jurisdiction the BAR information listed in §C of this regulation for each biological agent located within the local jurisdiction, if the local jurisdiction:

- (1) (text unchanged)
- (2) Limits the number of BAR information custodians in the local jurisdiction to the:
 - (a) Health officer or the health officer's designee; and
 - (b) Emergency management director or the emergency management director's designee; and
 - (c) An alternate emergency management director].

B. (text unchanged)

C. Information Released. The [Biological Agents Registry] BAR Program shall inform the BAR information custodian in the local jurisdiction of the:

- (1)—(3) (text unchanged)

.19 BAR Information Security Standards — General.

A. (text unchanged)

B. Before the Department shares BAR information with a trusted partner, the trusted partner shall:

- (1) (text unchanged)
- (2) Assess potential risks and vulnerabilities to the BAR information in its possession using a BAR information security self-assessment checklist provided by the [Biological Agents Registry] BAR Program; and
- (3) (text unchanged)

C. If a BAR information custodian believes that the security of BAR information has been or is suspected to have been misused, mishandled, lost, stolen, or otherwise compromised, the BAR information custodian shall immediately notify the:

- (1) [Biological Agents Registry] BAR Program; and
- (2) (text unchanged)

.23 Trusted Partner Agreement.

A. (text unchanged)

B. The Department shall develop and use a trusted partner form that contains, as applicable, separate clauses that:

- (1)—(6) (text unchanged)
- (7) Address corrective action by stating:
 - (a)—(b) (text unchanged)
 - (c) That the trusted partner shall send a copy of incident log entries to the [Biological Agents Registry] BAR Program;
- (8)—(17) (text unchanged)

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

Subtitle 15 FOOD

10.15.03 Food Service Facilities

Authority: Health-General Article, §§21-304, 21-309.1, and 21-309.2,
Annotated Code of Maryland

Notice of Proposed Action

[11-310-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations **.02**, **.14**, **.23**, **.27**, **.28**, and **.33** under **COMAR 10.15.03 Food Service Facilities**.

Statement of Purpose

The purpose of this action is to broaden the definition of “public event”, add the term “public event” to the definition of “seasonal farmer’s market producer sampling food service facility”, allow for a patron’s dog in the outdoor dining area of a food service facility under certain conditions, correct codification, and otherwise provide clarification and correct errors in the current regulations.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. There may be an economic impact on the Department and local health departments because of the broadening of definition for “public event.” There may be a positive impact on restaurants that allow patrons to bring their dogs to outdoor dining areas because of increased business.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	Indeterminable
	NONE	

B. On other State agencies:

C. On local governments: (E+) Indeterminable

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. and C. There may be an economic impact on the Department and local health departments because of the broadening of definition for “public event”. This may result in greater demand for licensure and inspections by the Department and local health departments. However, this impact cannot be quantified because it is unknown how many farmers will opt to sell their farm products at these public events and festivals.

D. There may be a positive impact on restaurants that allow patrons to bring their dogs to outdoor dining areas because of increased business. But again, this positive impact cannot be quantified because it is unknown how many restaurants will opt to allow dogs in outdoor seating areas.

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 December 5, 2011. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(15) (text unchanged)

(16) Continental Breakfast.

(a) “Continental breakfast” means a meal that does not require major food preparation as specified in Regulation [.28E(1)] .28G(1) of this chapter.

(b)—(c) (text unchanged)

(17)—(33) (text unchanged)

(34) Food Service Facility.

(a)—(b) (text unchanged)

(c) “Food service facility” does not include a:

(i)—(iv) (text unchanged)

(v) Farmer’s market or a public event where food products as specified in §B(30)(a) of this regulation are sold; or

(vi) (text unchanged)

(35)—(59) (text unchanged)

(60) Public Event.

(a) “Public event” means an event or festival that is a planned gathering that is:

(i) Open to the public; and

(ii) Regulated by the State or local jurisdiction in which the planned gathering takes place.

(b) “Public event” includes an event or festival:

(i)—(ii) (text unchanged)

[(b)] (c) “Public event” does not include a:

(i)—(iii) (text unchanged)

(61)—(69) (text unchanged)

(70) “Seasonal farmer’s market producer sampling food service facility” means a facility that:

(a) Serves only foods that are prepared and offered as samples by a producer of a farm product at a farmer’s market or a public event, such as:

(i)—(ii) (text unchanged)

(b)—(d) (text unchanged)

(71)—(72) (text unchanged)

(73) “Service animal” [means an animal such as a dog that is individually trained to provide assistance to an individual with a disability] has the meaning stated in Human Services Article, §7-701, Annotated Code of Maryland.

(74)—(86) (text unchanged)

.14 Personnel Health and Sanitation.

The person-in-charge shall ensure that:

A.—H. (text unchanged)

I. An employee does not use bare hands for handling ready-to-eat foods, as set forth in Regulation [.09F].09E of this chapter;

J.—L. (text unchanged)

.23 Building — Cleanliness and Operations.

A. The person-in-charge shall ensure that:

[A.] (1) The facility and parts of the property associated with the operation of the facility are kept:

[(1)] (a)—[(2)] (b) (text unchanged)

[B.] (2)—[D.] (4) (text unchanged)

[E.] (5) At least one utility sink or curbed cleaning facility with a floor drain is provided and used for:

[(1)] (a)—[(2)] (b) (text unchanged)

[F.] (6)—[H.] (8) (text unchanged)

[I.] (9) Vacuum cleaning, wet cleaning, other dustless methods of floor and wall cleaning, or dust-arresting sweeping compounds and brooms are used in a manner that:

[(1)] (a)—[(2)] (b) (text unchanged)

[J.] (10) Linens and clothes are stored:

[(1)] (a)—[(2)] (b) (text unchanged)

[K.] (11) Employee clothing and personal belongings are stored in:

[(1)] (a) Dressing rooms or dedicated areas that are;

[(a)] (i)—[(c)] (iii) (text unchanged)

[(2)] (b) (text unchanged)

[L.] (12) Live birds and animals are not present on the premises of a food service facility except for:

[(1)] (a) (text unchanged)

[(2)] (b) Service animals that are controlled by the [disabled] individual with a disability; [and]

[(3)] (c) Pets in the common dining areas of health care facilities at times other than during meals if:

[(a)] (i) (text unchanged)

[(b)] (ii) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining area when pets are present; and

[(c)] (iii) Dining areas including tables and countertops are cleaned and sanitized before the next meal service; and

(d) A patron's dog in an outdoor dining area of a food service facility in conformance with applicable State and local laws, ordinances, and regulations.

B. Patrons' Dogs in Outdoor Dining Areas.

(1) Subject to the requirements of §§B(2)—(5) of this regulation, an owner of a restaurant may allow a patron's dog to accompany the patron in the outdoor dining area during the hours designated by the restaurant.

(2) Before an owner may allow a patron's dog to accompany the patron in the outdoor dining area, the owner shall:

(a) Provide written notice to the approving authority or the local health department in the jurisdiction where the restaurant is located that the owner intends to allow patrons' dogs to accompany patrons in the outdoor dining area of the restaurant 30 days prior to the days dogs will be allowed; and

(b) Place on permanent display in the restaurant a written notice that:

(i) States the restaurant's policy of allowing patrons' dogs in an outdoor dining area;

(ii) Is in a typeface that is large enough to be easily legible to the average person from a distance of 8 feet; and

(iii) Is in a location that is plainly visible to the patrons of the restaurant.

(3) In establishing the restaurant's policy concerning patron's dogs in outdoor dining areas, the owner may:

(a) Determine the location and the amount of space designated for a patron accompanied by the patron's dog; and

(b) Establish a limit on the size and type of dogs and any other limitations relating to a patron's dog.

(4) At the owner's discretion, the owner may deny entry to the restaurant or eject from the restaurant any patron and the patron's dog.

(5) A patron accompanied by a dog:

(a) Shall:

(i) Be an adult who is responsible for the behavior of the dog;

(ii) Keep the dog with the patron on a leash at all times at the table at which the patron is seated; and

(iii) Be liable for any damages caused by the dog to the restaurant or any other patron of the restaurant; and

(b) May not:

(i) Allow the dog to travel through an indoor space of a restaurant to enter or exit an outdoor dining area; or

(ii) Leave the dog unattended at any time.

.27 Farmer's Market and Bake Sales.

The approving authority shall:

A. (text unchanged)

B. Allow the preparation and sale of the following foods in accordance with §A of this regulation:

(1)—(4) (text unchanged)

(5) Foods manufactured on a farm by a licensed food processor in accordance with COMAR 10.15.04.19; [and]

(6) (Non-potentially hazardous candy; and

[(6)] (7) All other non-potentially hazardous foods produced by a licensed entity; and

[C. Inspect a farmer's market or bake sale to ensure compliance with this chapter; and]

[D.] C. (text unchanged).

.28 Licenses.

A. The approving authority shall require a farmer to obtain a producer mobile farmer's market unit license as specified in COMAR 10.01.17 and 10.15.04 for the sale of a farm product at a farmer's market or at a public event that is not:

(1)—(2) (text unchanged)

B. A local health department may:

(1) (text unchanged)

(2) Require a farmer to obtain a seasonal farmer's market producer sampling license if the farmer prepares and offers samples of a farm product for human consumption at a farmer's market or at a public event in that local jurisdiction.

C.—D. (text unchanged)

E. A person:

(1) (text unchanged)

(2) May not operate a food service facility if the person does not have a current and valid license issued by the approving authority, except:

(a) (text unchanged)

(b) A caterer:

(i) As provided in [§E] §G of this regulation; or

(ii) (text unchanged)

F.—I. (text unchanged)

.33 Plan Review.

A.—B. (text unchanged)

C. The approving authority shall:

(1)—(4) (text unchanged)

(5) Designate as a low priority facility, a facility that serves:

(a)—(b) (text unchanged)

[(c) Non-potentially hazardous food that is cut, assembled, or packaged on the premises, such as candy, popcorn, and baked goods; or]

(c) (text unchanged)

D. [The] Except for a temporary food service facility, the person-in-charge shall ensure that a HACCP plan is submitted to the approving authority for each high or moderate priority facility as specified in §C of this regulation.

E.—F. (text unchanged)

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

Subtitle 34 BOARD OF PHARMACY

10.34.32 Pharmacist Administration of Vaccinations

Authority: Health Occupations Article, §§12-101, 12-102(b), 12-508, and 12-6A-10, Annotated Code of Maryland

Notice of Proposed Action

[11-313-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .03 under **COMAR 10.34.32 Pharmacist Administration of Vaccinations**. This action was considered by the Board of Pharmacy at public meetings held June 15, 2011 and August 17, 2011, notice of which was given by publication on the Board of Pharmacy website, www.dhmm.maryland.gov/pharmacyboard, from May 20 through June 15, 2011, and July 15 through August 17, 2011, pursuant to the State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement S.B. 845 of 2011 by revising the regulations to allow pharmacists to administer influenza vaccinations to children 9 years old or older. For all other vaccinations, the pharmacist may not administer vaccinations to any individual younger than 18 years old. The regulations also have been revised to include the requirement that a pharmacist report to the Maryland Immunization Registry an influenza vaccination administered by the pharmacist to individuals who are from 9 to 18

years old. As part of the required training program for registration to administer vaccinations in Maryland, pharmacists are trained to observe patients for 15 minutes.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. This proposed revision would have no economic impact on the Board of Pharmacy because many pharmacists that would be immunizing children 9 years old or older have already registered with the Board to do so. There is no fee to register with the Board to administer vaccinations and procedures are currently in place to process any additional registrants. Pharmacists would have no additional costs incurred by these regulations. The public would have a direct benefit of convenience because families with children 9 years old or older could receive their influenza vaccinations at one location, facilitating greater compliance with recommended immunizations guidelines.

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:	(+)	Unquantifiable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unquantifiable

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

D. This proposal would have an unquantifiable benefit for pharmacists in Maryland because their ability to administer influenza vaccinations has been expanded to include a larger population of patients.

F. This proposal would have an unquantifiable positive benefit for the public because it would allow for families with children 9 years old or older to receive their influenza vaccinations at one location, facilitating greater compliance with recommended immunization guidelines.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be

accepted through December 5, 2011. A public hearing has not been scheduled.

.03 Requirements to Administer Vaccinations.

A. (text unchanged)

B. A licensed pharmacist may not administer [vaccinations]:

(1) *An influenza vaccination to an individual who is younger than 9 years old; and*

(2) *Vaccinations, other than influenza, to any individual younger than 18 years old.*

C. *A pharmacist shall report to the Maryland Immunization Registry an influenza vaccination administered by the pharmacist to individuals who are from 9 to 18 years old.*

D. A pharmacist shall:

(1) *Provide the patient with a vaccine information statement issued by the Centers for Disease Control and Prevention;*

(2) *Obtain a signed consent form from the patient or custodial parent; or*

(3) *Observe the patient for a period of 15 minutes after administration of the vaccine for adverse effects including syncope.*

[C.] E. (text unchanged)

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

Subtitle 38 BOARD OF PHYSICAL THERAPY EXAMINERS

10.38.10 Disciplinary Sanctions, Monetary Penalties, and Civil Fines

Authority: Health Occupations Article, §1-606, Annotated Code of Maryland

Notice of Proposed Action

[11-311-P]

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulations .01—.06 under **COMAR 10.38.10 Monetary Penalties** and adopt new Regulations .01—.07 under a new chapter, **COMAR 10.38.10 Disciplinary Sanctions, Monetary Penalties, and Civil Fines**. This action was considered by the Board of Physical Therapy Examiners at public meetings held August 16, 2011, notice of which was given by publication on the Board of Physical Therapy Examiners website, www.dnhm.state.md.us/bphte, from January 1, 2011, to the present, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

(1) Establish sanctioning guidelines for disciplining a licensee for a violation of COMAR 10.38 or of the Maryland Physical Therapy Act;

(2) Authorize and establish a civil fine for practicing on an expired license and for practicing without a license; and

(3) Require that the Board pay all monies collected pursuant to this chapter into the State General Fund, except for the monies collected from the imposition of the civil fine for practicing without a license or on an expired license, which shall be deposited into the Board of Physical Therapy Examiners Fund.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Licensees found in violation of the sanctioning guidelines may be fined from \$100 up to \$10,000. A physical therapist or physical therapist assistant found to be

practicing physical therapy or limited physical therapy on an expired license may be fined \$100 per day of practice past the expiration date of the license. An individual practicing physical therapy or limited physical therapy without a licensee may be assessed a civil fine of no less than \$5,000 and no more than \$50,000. Monies collected from violations of the sanctioning guidelines will be deposited into the State's General Fund and will not be retained by the Board. Monies collected from civil fines for practicing without a license or for practicing on an expired license shall be deposited into the State Board of Physical Therapy Examiners Fund.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-) Magnitude	
A. On issuing agency:	(R+)	\$14,700
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	\$14,700
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. and D. Fines levied against licensees will depend on the violations that are incurred. The Board estimates that it fines an average of three licensees per year an average of \$5,000 each for practicing without a license ($3 \times 5,000 = \$15,000$). In the past 3 fiscal years, the Board has issued an average of \$10,700 in fines for disciplinary violations (FY 09: \$5,000; FY 10: \$1,000; FY 11: \$26,100 in fines were assessed to three licensees). The board charges five people per year for practicing on expired license and estimates each person practices an average of 5 days on their expired license ($5 \text{ people} \times 5 \text{ days} \times \$100 \text{ fine per day} = \$2,500$).

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 December 5, 2011. A public hearing has not been scheduled.

.01 Scope.

This chapter establishes standards for the imposition of disciplinary sanctions, monetary penalties, and civil fines for violations of the Maryland Physical Therapy Act.

.02 Definitions.

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

B. Terms Defined.

(1) "Act" means the Maryland Physical Therapy Act, Health Occupations Article, Title 13, Annotated Code of Maryland.

(2) "Board" means the State Board of Physical Therapy Examiners.

(3) "Civil fine" means a fine assessed by the Board against an individual for practicing physical therapy or limited physical therapy without a license.

(4) "License" means a license issued by the Board to practice physical therapy or limited physical therapy.

(5) "Licensee" means a physical therapist or physical therapist assistant who is licensed by the Board to practice physical therapy or limited physical therapy.

(6) "Penalty" means monetary penalty.

(7) "Sanction" means a disciplinary action reprimanding, restricting, suspending, or revoking a license.

.03 Imposition of a Penalty—General.

Imposition of a Penalty after a Hearing. If the Board finds that there are grounds under Health Occupations Article, §13-316, Annotated Code of Maryland, to reprimand a licensee or suspend or revoke a license, the Board may impose a penalty as set forth in this chapter:

A. Instead, of, or in addition to, reprimanding the licensee or suspending the license; or

B. In addition to revoking the license.

PROPOSED ACTION ON REGULATIONS

.04 Guidelines for Imposition of Disciplinary Sanctions or Monetary Penalties.

A. Subject to the provisions of this chapter, the Board may impose the following sanctions and, if appropriate, penalties for violations of the Act and its regulations according to the minimum and maximum sanctions and penalties set forth in the following categories:

	<i>Violation</i>	<i>Minimum Sanction</i>	<i>Maximum Sanction</i>	<i>Minimum Penalty</i>	<i>Maximum Penalty</i>
(1)	<i>Continuing education violation</i>	<i>Reprimand</i>	<i>Active suspension for 1 year</i>	<i>\$100</i>	<i>\$1000</i>
(2)	<i>Criminally convicted of, or pled guilty to, a felony, crime of moral turpitude, or violation of narcotics law</i>	<i>Probation for 3 years</i>	<i>Denial of license application or revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(3)	<i>Documentation violation</i>	<i>Reprimand</i>	<i>Active suspension for 2 years</i>	<i>\$500</i>	<i>\$2,500</i>
(4)	<i>Professional incompetence; grossly negligent practice</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(5)	<i>Mental or physical impairment</i>	<i>Probation for 2 years</i>	<i>Denial of license application or revocation</i>	<i>N/A</i>	<i>N/A</i>
(6)	<i>Submitting false billings</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(7)	<i>Practicing beyond the scope of license</i>	<i>Reprimand</i>	<i>Active suspension for 2 years</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(8)	<i>Failure to cooperate with a lawful Board investigation</i>	<i>Reprimand</i>	<i>Denial of license application or revocation</i>	<i>\$1,000</i>	<i>Maximum amount allowable under the Act</i>
(9)	<i>Reciprocal discipline</i>	<i>Reprimand</i>	<i>Denial of license application or revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(10)	<i>Sexual misconduct</i>	<i>Active suspension for 1 year</i>	<i>Revocation</i>	<i>\$3,000</i>	<i>Maximum amount allowable under the Act</i>
(11)	<i>Unprofessional conduct in the practice of physical therapy; Code of Ethics violation not specifically enumerated in this chapter</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(12)	<i>Aiding the unauthorized practice of physical therapy</i>	<i>Reprimand</i>	<i>Active suspension for 1 year</i>	<i>\$1,500</i>	<i>Maximum amount allowable under the Act</i>
(13)	<i>Improper supervision</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(14)	<i>Standard of practice violation not specifically enumerated in this chapter</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(15)	<i>Other violation of the Act not specifically enumerated in this chapter</i>	<i>Reprimand</i>	<i>Denial of license application or revocation</i>	<i>\$100</i>	<i>Maximum amount allowable under the Act</i>
(16)	<i>Fraudulently or deceptively obtaining, attempting to obtain, or using a license</i>	<i>Reprimand</i>	<i>Denial of license application or revocation</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(17)	<i>Treating more than an average of 3 patients per clinical treatment hour per calendar day</i>	<i>Reprimand</i>	<i>Active suspension for 1 year</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(18)	<i>Treating patients without evaluation or reevaluation</i>	<i>Reprimand</i>	<i>Active suspension for 1 year</i>	<i>\$500</i>	<i>Maximum amount allowable under the Act</i>
(19)	<i>Failure to comply with probationary condition of an order</i>	<i>Active suspension for 1 year</i>	<i>Revocation</i>	<i>\$1,000</i>	<i>Maximum amount allowable under the Act</i>

B. If a licensee is found in violation of more than one category enumerated in this regulation, the category or categories containing the highest maximum sanction and penalty shall control.

C. Notwithstanding the guidelines set forth in this regulation, in order to resolve a pending disciplinary action, the Board and licensee may agree to a surrender of license or a consent order with terms, sanction, and penalty agreed to by the Board and the licensee.

D. A departure from the guidelines set forth in this regulation, on its own, is not grounds for any hearing or appeal of a Board action.

E. The Board may not consider a petition for reinstatement of a license that has been revoked until at least 3 years have passed from the date of revocation.

.05 Mitigating and Aggravating Factors to be Considered in the Assessment of the Sanction and Penalty.

A. Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider, but not be limited to, the mitigating and aggravating factors outlined in §§B and C of this regulation in determining whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines.

B. Mitigating Factors. The Board may consider the following mitigating factors:

- (1) The licensee's lack of a prior disciplinary record;
- (2) The licensee self-reported the violation to the Board;
- (3) The licensee's full and voluntary admission of misconduct to the Board and cooperation during Board proceedings;
- (4) The licensee implemented remedial measures to correct or mitigate harm arising from the misconduct;
- (5) The licensee made timely good-faith effort to make restitution or to rectify the consequences of the misconduct;
- (6) Evidence of rehabilitation or rehabilitative potential;
- (7) Absence of premeditation to commit the misconduct;
- (8) Absence of potential harm to the public or adverse impact; and
- (9) The licensee's conduct was an isolated incident and not likely to recur.

C. Aggravating Factors. The Board may consider the following aggravating factors:

- (1) The licensee has a previous criminal or administrative disciplinary history;
- (2) The violation was committed deliberately or with gross negligence or recklessness;
- (3) The violation had the potential for, or caused, serious patient harm;
- (4) The violation was part of a pattern of detrimental conduct;
- (5) The licensee was motivated to perform the violation for financial gain;
- (6) The vulnerability of the patient or patients;
- (7) The licensee attempted to hide error or misconduct from patients or others;
- (8) Previous attempts at rehabilitation of the licensee were unsuccessful; and
- (9) The licensee committed the violation under the guise of treatment.

D. The existence of one or more of these factors does not impose on the Board or an Administrative Law Judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set forth in this chapter.

E. Nothing in this regulation requires the Board or an Administrative Law Judge to make findings of fact with respect to any of these factors.

.06 Civil Fines.

A. Practicing on an Expired License. The Board may assess a civil fine against a physical therapist or physical therapist assistant who practices physical therapy or limited physical therapy on an expired license in the amount of \$100 per day of practice past the expiration date of the license.

B. Practicing Without a License.

(1) The Board may assess a civil fine of no less than \$5,000 and no more than \$50,000 against an individual who practices physical therapy or limited physical therapy without a license.

(2) Factors in determining the amount of a fine include, but are not limited to, the following:

- (a) The extent to which the individual derived any financial benefit from the unauthorized practice;
- (b) The willfulness of the unauthorized practice;
- (c) Actual or potential public harm caused by the unauthorized practice; and
- (d) The length of time in which the individual engaged in the unauthorized practice.

.07 Payment of a Penalty.

A. Unless the Board specifies otherwise, a licensee shall pay to the Board a penalty imposed under this chapter as of the date the Board's order is issued.

B. Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, or Health Occupations Article, §13-318, Annotated Code of Maryland, does not automatically stay payment of a penalty imposed by the Board pursuant to this chapter.

C. If a licensee fails to pay, in whole or in part, a penalty imposed by the Board pursuant to this chapter, the Board may not restore, reinstate, or renew a license until the penalty has been paid in full.

D. In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings to ensure prompt payment.

E. Deposit of Monies.

(1) The Board shall pay all monies collected pursuant to this chapter, except for civil fines collected under Regulation .06 of this chapter, into the State's General Fund.

(2) The Board shall pay all civil fines collected under Regulation .06 of this chapter into the State Board of Physical Therapy Examiners Fund, in accordance with Health Occupations Article, §13-407(b)(2), Annotated Code of Maryland.

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

Title 11 DEPARTMENT OF TRANSPORTATION

Subtitle 14 MOTOR VEHICLE ADMINISTRATION — VEHICLE INSPECTIONS

Notice of Proposed Action [11-307-P]

The Administrator of the Motor Vehicle Administration proposes to amend:

(1) Regulations .01, .03, .04, .06, .07, .10, .11, and .14—.16 under **COMAR 11.14.01 General Inspection**;

(2) Regulations .01, .06, .12, .14, and .17 under **COMAR 11.14.02 Safety Standards for Passenger Cars, Taxicabs, Light Trucks, Vans, Multipurpose Passenger Vehicles, and Type II School Vehicles**; and

(3) Regulations .14, .16, and .19 under **COMAR 11.14.04 Safety Standards for Trucks, Truck Tractors, Commercial Buses, and Type I School Vehicles**.

Statement of Purpose

The purpose of this action is to amend current regulations related to:

(1) Updated standards for vehicle glazing, signs and lettering, roof vent/emergency exit buzzers, and vehicle inspections and certifications conducted by Maryland authorized inspection stations;

(2) Definitions, personnel requirements, administrative penalties, inspection area requirements, inspection test tools and equipment, obligations of authorized inspection stations Maryland manufacturers, second-stage manufacturers, and dealers, records, effect of vehicle sales or transfers, certificates, and safety equipment repair orders associated with general vehicle inspections;

(3) Exemptions of certain features on specially constructed vehicle replicas, and tailpipes on electric, hybrid, compressed natural gas, and hydrogen (fuel cell) vehicles, from vehicle safety inspection standards for passenger cars, taxicabs, light trucks, vans, multipurpose passenger vehicles, and Type II school vehicles; and

(4) Amend current regulations and provide updated standards to vehicle glazing regulations and to establish regulations requiring Maryland authorized inspection stations, when applicable, to conduct inspections and certifications of post manufacture window tint applied to vehicle glazing.

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 Tracey C. Sheffield, Regulations Coordinator, MVA, Room 200, 6601 Ritchie Highway N.E., Glen Burnie, MD 21062, or call 410-768-7545, or email to

tsheffield@mdot.state.md.us, or fax to 410-768-7506. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

11.14.01 General Inspection

Authority: Transportation Article, §§12-104(b), 23-101—23-109, and 24-106.1, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(3) “Authorized inspection station” means a facility which has been licensed to perform inspections on, issue certificates to, or certify safety equipment repair orders for a specific class of vehicle. The following classes of stations are authorized to inspect the types of vehicles listed and any other type of vehicle authorized by the Division:

(a)—(b) (text unchanged)

(c) C—trucks, truck tractors, buses, recreational motor homes, [and] converted buses, and *limousines* over 10,000 pounds GVWR;

(d)—(g) (text unchanged)

(h) T—any trailer up to 10,000 pounds GVWR *not equipped with air brakes*; and

(i) (text unchanged)

(4) (text unchanged)

(5) [Controller.

(a) [“Controller” means an individual who has [made] submitted a Division application [for], passed a written examination administered by the Division, and been approved by the Division to control the dispensing of inspection certificates to registered inspection mechanics at an authorized inspection station.

[(b) “Controller” includes a temporary controller.]

(6)—(16) (text unchanged)

(17) “Limousine” means a vehicle that:

(a) Has been modified or stretched for transportation of passengers; [and]

(b) *Is driven as part of a service provided by a person that advertises itself as a provider of limousine services or registers with the Public Service Commission as a provider of limousine services; or*

[(b)] (c) (text unchanged)

(18)—(21) (text unchanged)

(22) “Motorcycle” means a motor vehicle that:

(a) Has motive power;

(b) Has a seat or saddle for the use of the rider;

(c) Is designed to travel:

(i) *On not more than three wheels in contact with the ground; and*

(ii) *At speeds exceeding 35 miles per hour; and*

(d) *Is of a type required to comply with all motor vehicle safety standards applicable to motorcycles under federal law.*

[(22)] (23)—[(23)] (24) (text unchanged)

(25) “Post manufacture window tint inspection report” means a form that:

(a) *Has been approved by the Division;*

(b) *Has been completed by a registered inspection mechanic of an authorized inspection station approved to inspect post manufacture vehicle window tint; and*

(c) *Includes owner and vehicle information and light transmittance readings of regulated windows equipped with post manufacture window tint.*

(26) “Post manufacture window tint medical exemption form” means a form issued by the Division for the purpose of providing

notification and documentation to an authorized inspection station performing an inspection of a vehicle that:

(a) *Is owned by a person who must be protected from the sun for medical reasons and has been determined by the Division that the owner has met the medical exemption requirements established in Transportation Article, §22-406, Annotated Code of Maryland; and*

(b) *Excluding the light transmittance requirement, is compliant with all other post manufacture window tinting regulations under this subtitle.*

[(24)] (27)—[(31)] (34) (text unchanged)

[(32)] (35) “Supervisor” means an individual who:

(a) Has [made] submitted a Division application [for], passed a written examination administered by the Division, and been approved by the Division to act on behalf of a licensee; and

(b) (text unchanged)

[(33)] (36) Vehicle.

(a) “Vehicle” means, except as otherwise provided in this regulation, any vehicle registered or to be registered in this State as:

(i)—(x) (text unchanged)

(xi) For the purpose of safety equipment repair orders only, any motor vehicle, trailer, or semitrailer, except as provided in [§B(29)(b)] §B(36)(b) of this regulation.

(b) (text unchanged)

[(34)] (37) “Vehicle inspection handbook” means copies of regulations governing motor vehicle inspection which have been compiled in a handbook [furnished by]obtained from the Office of the Secretary of State, Division of State Documents, for the State of Maryland.

.03 Personnel Requirements.

A. (text unchanged)

B. Inspection Mechanic Requirements.

(1) Each licensee open to the public shall have available for duty during regular daytime business hours at least one full-time registered inspection mechanic at each authorized inspection station who shall:

(a)—(i) (text unchanged)

(j) Be responsible for and capable of:

(i) Performing partial and complete inspections[.];

(ii) Completing all inspection certificates and safety equipment repair orders[.]; and

(iii) Maintaining records pertaining to all complete or partial inspections that the mechanic performs; and

(k) (text unchanged)

(2) (text unchanged)

(3) Under §B(1)(h) of this regulation, in cases when a written examination is required, or upon transfer from one authorized inspection station to another, the Division may require a registered inspection mechanic to pass the demonstrated ability exam. Three consecutive failures of any demonstrated ability exam shall require at least a 6-month waiting period before any subsequent exam. Demonstrated ability exams will be administered by the trooper or civilian employee of the Division assigned supervision of the station where the individual is employed only on routine station visit days and reexamination after failure will be conducted upon the next routine station visit, unless exigent circumstances exist.

(4) *Registered inspection mechanics may only be registered at one authorized inspection station on a full-time basis.*

[C. Inspection mechanics may only be registered at one inspection station on a full-time basis.

D. The applicant/licensee shall designate a controller or temporary controller to control inspection certificates within the facility who shall:

(1) Be authorized to receive inspection certificates from the Division by signed receipt;

(2) Be responsible for issuing in strict numerical sequence all inspection certificates to registered inspection mechanics upon satisfactory completion of inspection;

(3) Assure that all certificates contain the date the vehicle is fully certified and are issued before the vehicle leaves the facility premises;

(4) Maintain strict security of all unused inspection certificates in a locked desk, cabinet, or safe, and assure that only the designated personnel have access to the unused inspection certificates. All records of inspections shall be available at the facility during normal working hours.

E. In addition to the personnel requirements in A and B of this regulation, the applicant/licensee shall designate personnel to supervise inspections.]

C. Controller Requirements.

(1) *The applicant/licensee shall designate a controller to control inspection certificates within the facility who shall:*

(a) *Be approved by the Division to function in that capacity after successfully submitting a Division application and passing a written Supervisor/Controller Examination administered by the Division;*

(b) *Be authorized to receive inspection certificates from the Division;*

(c) *Be responsible for issuing in strict numerical sequence all inspection certificates to registered inspection mechanics upon satisfactory completion of inspection;*

(d) *Assure that all certificates contain the date the vehicle is fully certified and are issued before the vehicle leaves the facility premises;*

(e) *Maintain strict security of all unused inspection certificates in a locked desk, cabinet, or safe, and assure that only designated personnel have access to the unused inspection certificates; and*

(f) *Have all records of inspections available at the facility during normal working hours that may be removed by Division personnel as needed.*

D. Supervisor Requirements.

(1) *The applicant/licensee shall designate supervisory personnel who shall:*

(a) *Be approved by the Division to function in that capacity after successfully submitting a Division application and passing a written Supervisor/Controller Examination administered by the Division; and*

(b) *Be responsible for and supervise the daily operation of the inspection program at the licensee's facility.*

.04 Administrative Penalties.

A. The registration under Regulation .03 of this chapter may be refused, revoked, or suspended if the registered inspection mechanic, controller, supervisor, or inspection station licensee, has committed any of the following offenses:

(1)—(7) (text unchanged)

(8) Conviction for:

(a) A felony[.];

(b) Assault[.];

(c) Battery[.];

(d) Theft[.];

(e) A crime involving fraud[.]; or

(f) A controlled dangerous substance (CDS) violation[.].

(9) Making, issuing, or knowingly using any fictitious inspection certificate, [or] repair order certification, or other document approved or issued by the Division;

(10)—(15) (text unchanged)

B. A registered inspection mechanic shall discontinue inspections and notify the Division of any of the following circumstances and may not resume inspections until authorized to do so by the Division:

(1)—(3) (text unchanged)

(4) Condition or circumstance which may affect the mechanic's ability to conduct inspections or sign inspection certificates or safety equipment repair orders; *or*

(5) (text unchanged)

C.—D. (text unchanged)

.06 Inspection Area Requirements.

A. An inside inspection area shall have a smooth, level hard-surfaced concrete or cement floor which:

(1)—(2) (text unchanged)

(3) Shall be free of work benches, displays, machinery, stairways, shelves, car washing equipment or any other obstructions which would create a hazard; *and*

(4) (text unchanged)

B. Authorized inspection stations with two or more inspection areas may designate one area as a headlight testing/alignment area, provided this area meets the *size* requirements of *the type of vehicle to be inspected* and the requirements of [§§A and C(4)] §§A and C(2) of this regulation.

C. Class A, C, or R authorized inspection stations shall be designed and equipped with:

[(1) A drive-over scuff gauge;]

[(2)] (1) Two [12-inch] convex mirrors, *a minimum of 12 inches in diameter each*, one mounted facing forward from the left rear corner and one facing rearward on the right front corner of the inspection bay; and

[(3)] (2) A track-mounted approved-type headlight tester.

D. (text unchanged)

[E]. (proposed for repeal)

E. Diagram of Bay Layout.

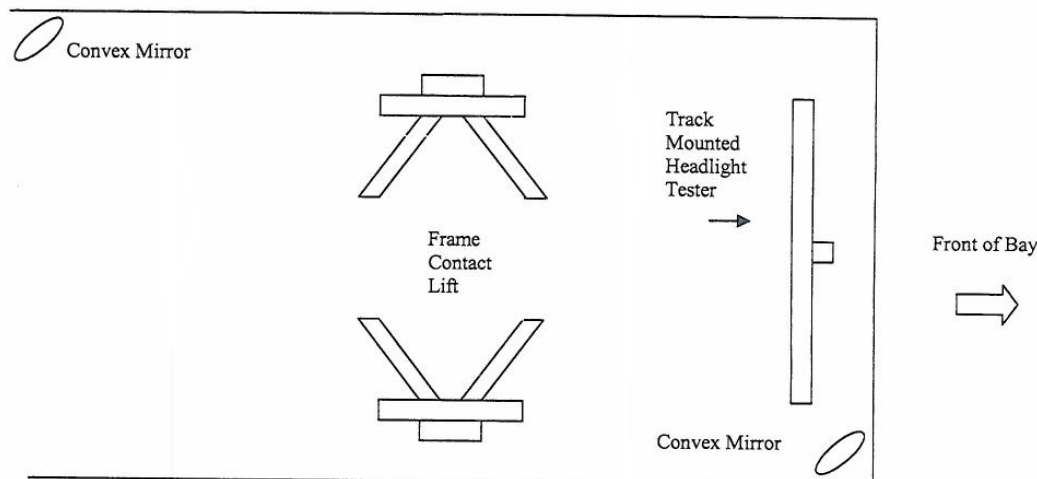


Diagram of Bay Layout

.07 Inspection Test Equipment and Tools.

A. Applicants and licensees shall have the following test equipment and tools[,as] approved by the Division, except as specified in [§A(1), (2), (5), (6), (7), (12), and (16) of] this regulation:

(1) One headlight tester (not required for Class B, M, or T), any track-mounted make or model:

(a) Capable of accurately testing and aiming headlamp beam patterns and high intensity zones[.];

(b) Equipped with an accurate beam candlepower output display[.]; and

(c) Including necessary calibration equipment[.];

[(2) One drive-over scuff gauge, any make or model capable of accurately measuring for the appropriate type of vehicle the toe of front or rear wheels, side slip of tires in feet per mile after conversion from inches (not required for Class B, M, or T) or a toe bar or other approved scuff gauge (required for Class C, D, or R);]

[(3)] (2)—[(4)] (3) (text unchanged)

[(5)] (4) One ball joint checker, any make or model equipped with a dial indicator and capable of accurately measuring ball joint or king pin movement in increments of 0.001 of an inch (not required for Class B[, M,] or T);

[(6)] (5) Two jack stands, any make or model, capable of supporting the types of vehicles subject to inspection [(not required for Class M)];

[(7)] (6) One roller/floor jack, any make or model capable of lifting types of vehicles subject to inspection [(not required for Class M)];

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

[(9)] (8) A disc brake micrometer, any make or model *with a pointed anvil*, capable of *accurately* measuring for the appropriate type of vehicle the thickness of discs or rotors in increments of at least 0.001 of an inch;

[(10)] (9)—[(11)] (10) (text unchanged)

[(12)] (11) One ammeter, any make or model having a range of 0—40 amperes DC current (not required for Classes C[, M] or R);

[(13)] (12)—[(14)] (13) (text unchanged)

[(15)] (14) One *minimum* 25-foot steel tape of any type with clearly legible S.A.E. figures and markings;

[(16)] (15) Two [12-inch] convex mirrors, *a minimum of 12 inches in diameter each*, any type providing a wide angle view of the front and rear of the inspection bay (not required for Classes B, M, or T);

[(17)] (16) Miscellaneous hand tools necessary to perform mechanical disassembly of vehicle components to conduct inspections; [and]

[(18)] (17) One typewritten or commercially printed S.A.E.-to-metric and metric-to-S.A.E. conversion chart enclosed in clear plastic[.];

(18) *One tire pressure gauge, any make or model, capable of measuring air pressure in pounds per square inch (PSI) for type of vehicle being inspected;*

(19) *One 4-foot carpenter's level, any make or model, capable of determining horizontal and vertical levelness (required only if using the Hoppy Vision 100 or the Symtech Corporation "HBA 5" headlight tester); and*

(20) *One window tint meter (not required for Class B or T), any make or model:*

(a) *Manufactured as a two-piece device, portable and compact, with digital readout to the nearest percent;*

(b) *Suitable for testing standard automotive glazing on roll down and fixed windows;*

(c) *Designed to be operated by one person;*

(d) *Equipped with an alignment aid feature to assist in obtaining and maintaining accuracy throughout the period of measurement;*

(e) *Equipped with an activation switch or button, off switch or button, or self-deactivation;*

(f) *Equipped with the manufacturer's reference sample/calibration standards that are labeled with the manufacturer's name, serial number (if equipped), and percentage of light transmittance;*

(g) *Equipped with a light transmittance meter which shall maintain unit accuracy within + or - 2 percentage points (certified by an independent testing laboratory);*

(h) *Designed to maintain repeatability within + or - 1 percentage point; and*

(i) *Equipped with a portable carrying case.*

(Manufacturers shall provide information to the Division regarding any change in specifications of any approved products used for tint inspection and certification in Maryland.)

B. Care of Test Equipment and Tools. [Test equipment and tools:]

(1) *Test equipment and tools [Shall] be maintained in proper working order at all times[.];*

(2) *Any test equipment or tool [Requiring] requiring calibration shall be calibrated as required by the manufacturer, or more frequently, if necessary. [and]*

(3) *Any test equipment or tool [Not] that is not permanently mounted shall be kept together in or within close proximity to the inspection bay.*

C. (text unchanged)

D. [All licensed stations shall have specification charts or manuals which include, but are not limited to, alignment, brakes, suspension, and emission control equipment.] *Inspection stations shall have the following reference material for the appropriate class of station:*

(1) *Class A inspection stations and any Class F fleet inspection stations inspecting the types of vehicles inspected by a Class A inspection station shall have:*

(a) *Current model year brake, ball joint and tire guide specifications by July 1st of that year; and*

(b) *Emission guide specifications that are within two model years by July 1st of that year (for example, on July 1, 2011, such stations would be required to have either 2010 or 2011 model year emission guide specifications).*

(2) *Class C, D, F, R, and G inspection stations are required to have current model year brake specifications by July 1st of that year.*

Agency Note: *The required specifications may take the form of a printed or electronic reference source from a computerized system, provided the reference material contains required specifications by July 1st of that year.*

E. Calibration and Certification of Equipment.

(1) Licensed inspection stations shall calibrate their equipment once a month, or as required by [§A] §B(2) of this regulation.

(2) Maryland manufacturers, second-stage manufacturers, or authorized dealers:

(a) May calibrate the standard automotive air pressure gauge specified in [§H(1)] §J(1) of this regulation daily;

(b) Shall certify the standard automotive air pressure gauge specified in [§H(1)] §J (1) of this regulation at least semiannually; and

(c) Shall certify the scale or scales specified in [§H(2)] §J(2) of this regulation at least semiannually.

(3) The calibration and certification data specified in [§C(1) and (2)] §§ E(1) and (2) of this regulation shall be:

(a)—(b) (text unchanged)

(c) Given, with respect to the calibration date specified in [§C(1)] §E(1) of this regulation, to the supervising trooper or civilian employee of the Division at the time of the monthly station check.

F.—J. (text unchanged)

K. The Division Commander shall approve *all required* measuring devices [other than those listed in §A(8) and (9)] of this regulation before use.

.10 Obligations of Authorized Inspection Stations, Maryland Manufacturers, Second-Stage Manufacturers, and Dealers.

A.—C. (text unchanged)

D. *Except as provided in §§ D(2) and (3) of this regulation, the [The] licensee and the supervisor shall permit only registered inspection mechanics to perform inspections [and] only within the designated inspection area.*

(1) Certification of defects on safety equipment repair orders which require only a visual inspection may be performed outside the designated area but on the premises of the business.

(2) *The inspection and certification of defect #61 "TINT" on safety equipment repair orders may be performed outside the designated inspection area but on the premises of the business.*

E. The licensee and the supervisor shall permit only registered inspection mechanics to sign inspection certificates [or], *vehicle inspection reports, safety equipment repair orders, or post manufacture window tint inspection reports.*

F.—K. (text unchanged)

L. Inspection Fee.

(1) The licensee of an authorized inspection station open to the public may establish a fee for a complete inspection based on the

times listed in this section at the hourly flat rate charged for similar mechanical repairs:

(a)—(e) (text unchanged)

(f) Trailers over 10,000 pounds GVWR—0.5 hour:

(i) Each additional axle with single wheels add 0.75 hour[.]; and

(ii) Each additional axle with dual wheels add 1.5 hours[.];

(g) Motorcycles—0.75 hour[.]; and

(h) *Vehicles with post manufacture window tint applied to windows required to meet at least 35 percent light transmittance and compliant with all other post manufacture window tinting regulations under this subtitle—0.2 hour of hourly flat rate in addition to applicable inspection fees established under this section.*

(2) (text unchanged)

(3) Safety Equipment Repair Order Certification Procedures. A fee for certification of defects on a safety equipment repair order may be charged as follows and based on the prevailing hourly labor flat rate at the authorized inspection station. Those defects which can be merged shall be charged at the single highest rate, for example, tires and steering, 0.2 hour of the facility's hourly labor flat rate, or tires and wheel alignment, 0.3 hour of the facility's hourly labor flat rate. The inspection fee for multiple defects which can be merged may not be higher than the highest single time increment. Those which cannot be merged may be charged separately provided the total inspection fee is not exceeded. An inspection fee may not be charged for the certification of a SERO with defects which may be visually inspected. These defects are noted with an asterisk on the SERO and do not require the use of test or inspection equipment. The licensee may establish a fee for certification of a SERO which cannot be visually inspected based on the following fee charged for inspections:

(a) Defect #50 brakes:

(i) (text unchanged)

(ii) Vehicles over 10,000 pounds GVWR with single wheels—0.5 hour of the facility's hourly labor flat rate per axle for removing each wheel and inspecting the brakes on each axle; and

(iii) (text unchanged)

(b) Other defects:

(i)—(x) (text unchanged)

(xi) Defect #61 glass* tint—0.2 hour of the facility's hourly labor flat rate to test the light transmittance of windows equipped with post manufacture window tint and required to have at least 35 percent light transmittance;

Agency Note: Before use of the station's window tint meter is permitted and a fee is charged to inspect regulated windows equipped with post manufacture window tint, the vehicle must first be compliant with all other post manufacture window tinting regulations under this subtitle. The inspection and certification for the defect "tint" not requiring the use of a window tint meter shall be performed without charge and only by an authorized inspection station approved to inspect that class of vehicle.

(xii)—(xxvii) (text unchanged)

(xxviii) Defect #90 lift axle air/weight ratio—0.5 hour of the facility's hourly labor flat rate; and

(xxix) (text unchanged)

(4)—(5) (text unchanged)

.11 Records.

A. To enable the Division to determine the ability of each authorized inspection station to continue to conduct inspections and make corrections to equipment, *each authorized inspection station [there] shall [be maintained] maintain on their premises, adequate records in strict numerical sequence [which] and as otherwise required by the Division. These records shall be available to the Division and other police officers during normal working hours. The*

inspection certificates and the Division's vehicle inspection reports shall be maintained for at least 8 months from the date of issuance and safety equipment repair orders and certifications for at least 2 years from the date of certification. *Post manufacture window tint inspection reports and medical exemption forms shall be maintained by authorized inspection stations as required by the Division. These records shall include:*

(1) (text unchanged)

(2) Safety equipment repair order certifications filed numerically by calendar year; [and]

(3) Two-part vehicle inspection reports, for the appropriate vehicle classes, signed by the registered inspection mechanics who performed the inspections[.];

(4) *Two-part post manufacture window tint inspection reports, completed and signed by the registered inspection mechanics who performed the inspections of post manufacture window tint applied to regulated windows of vehicles; and*

(5) *Post manufacture window tint medical exemption forms issued by the Division.*

B. The two-part vehicle inspection report shall be *printed in black ink and made from carbonless paper, so that the second part [will] shall have the exact information on it as the first [report] part. The original of the two part vehicle inspection report shall be white in color and the carbonless copy shall be yellow in color. The inspection report shall be completed in black ink. The original of the report shall be maintained at the inspection station and the copy shall be given to the vehicle owner, [or the] owner's agent, or the dealer. The vehicle inspection report shall:*

(1) Contain the name, *complete* address, and phone number of the owner, owner's agent, or dealer requesting the vehicle inspection;

(2) Contain the year, make, model, and [the] serial number or manufacturer's vehicle identification number (VIN) as obtained from the vehicle *and indicate any information relevant to possible tampering with a serial number plate;*

[(3) Indicate any information relevant to possible tampering with a serial number plate;]

(3) *Indicate the inspection station assigned number;*

(4) *Contain the date of initial inspection which shall include the name of the month, a two-digit date, and the year (for example, June 04, 2011);*

[(4)] (5)—[(9)] (10) (text unchanged)

[(10)] (11) *Indicate a "P" for headlight alignment that passes, or an "F" for headlight alignment that fails, in the block for headlight [aim] readings obtained by use of a Division-approved headlight tester before adjustments are made; and*

[(11) Indicate toe measurement as obtained by scuff gauge or toe bar after conversion into feet per mile;

(12) Indicate repair work, according to the following, which results from an inspection and has been performed at the authorized inspection station:

(a) If an internal work order is used, a cross-reference of numbers will fulfill this requirement,

(b) Permissions shall be obtained from the vehicle owner or agent before any repairs are performed,

(c) If repairs over \$50 are necessary, permission should be in writing,

(d) All the requirements of the auto repair facilities law, Commercial Law Article, Title 14, Subtitle 10, Annotated Code of Maryland, shall be complied with by each authorized inspection station; and

(13) Indicate the initial inspection date.]

(12) *Indicate the work order number from a preprinted numbered internal work order that cross-references the initial inspection and any repair work performed by the inspection station related to the inspection.*

C. Initial inspections and any repair work performed by the inspection station related to the inspection shall be [cross-referenced with] *documented on a preprinted numbered internal work order.*

D. *Permission shall be obtained from the vehicle owner or agent before any repair resulting from an inspection is performed at the authorized inspection station. If any such repair work over \$50 is necessary, this permission should be in writing. All the requirements of the auto repair facilities law, Commercial Law Article, Title 14, Subtitle 10, Annotated Code of Maryland, shall be complied with by each authorized inspection station.*

[D.] E. The inspection station shall give the owner, the owner's agent, or the dealer [a] *the completed carbonless copy of the two-part vehicle inspection report, and on reinspection shall indicate on the original report whether the equipment has been repaired and meets established safety standards.*

F. *The two-part post manufacture window tint inspection report shall be printed in black ink and made from carbonless paper, so that the second part shall have the exact information on it as the first part. The original shall be white in color and the carbonless copy shall be yellow in color. The inspection report shall be completed in black ink.*

(1) *The post manufacture window tint inspection report shall be completed as required by the Division and shall:*

(a) *Contain the date of inspection which shall include the name of the month, a two-digit date, and the year (for example, June 04, 2011);*

(b) *Contain, when applicable, the corresponding inspection certificate number or safety equipment repair order number;*

(c) *Contain the year, make, model, and serial number or manufacturer's vehicle identification number (VIN) as obtained from the vehicle;*

(d) *Contain the name, address, and phone number of the owner, owner's agent, or the dealer requesting the vehicle inspection;*

(e) *Indicate the percentage of light transmittance of each regulated window containing post manufacture vehicle window tint;*

(f) *Indicate in the appropriate (Pass / Fail) box the results of the post manufacture window tint inspection;*

(g) *Contain the written signature and legibly printed name of the registered inspection mechanic who performed the inspection; and*

(h) *Contain the name, address, station number, and classification of the authorized inspection station using a legible stamp and black ink.*

(2) *Upon completion of the post manufacture window tint inspection report, the original of the report shall be maintained at the inspection station as required by the Division and the carbonless copy shall be given to the vehicle owner, owner's agent, or the dealer for their records.*

G. *The post manufacture window tint medical exemption form shall be established and issued only by the Division for the purpose of providing notification and documentation to an authorized inspection station performing an inspection of a vehicle that:*

(1) *Is owned by a person who must be protected from the sun for medical reasons and has been determined by the Division that the owner has met the medical exemption requirements established in Transportation Article, §22-406, Annotated Code of Maryland; and*

(2) *Excluding the light transmittance requirement, is compliant with all other post manufacture window tinting regulations under this subtitle.*

H. *The post manufacture window tint medical exemption form issued by the Division shall be maintained by the authorized inspection station as required by the Division.*

[E.] I.—[G.] K. (text unchanged)

.14 Vehicle Sale or Transfer of Ownership.

A. (text unchanged)

B. An inspection is not required for:

(1) (text unchanged)

(2) Sales or transfers accompanied by a signed statement by the purchaser or transferee that the sale or transfer is made for the purpose of rebuilding, as defined in [Regulation .01B(20)] *Regulation .01B(27)* of this chapter, or dismantling the vehicle;

(3)—(6) (text unchanged)

(7) Transfers of used vehicles among State agencies; [or]

(8) Transfers of used vehicles as described in Transportation Article, §13-503.2, Annotated Code of Maryland[.];

(9) *The transfer of a used vehicle into a written inter vivos trust in which the transferor is the primary beneficiary; or*

(10) *The transfer of a used island vehicle, as defined in Transportation Article, §13-935, Annotated Code of Maryland, registered, or to be registered, as a Class K (farm area/island) vehicle.*

C. (text unchanged)

D. *If a used vehicle is transferred other than by voluntary transfer or is transferred by a political subdivision of the State after that subdivision obtains the vehicle by proceedings pursuant to Criminal Procedure Article, Title 12, Annotated Code of Maryland, the transferee shall obtain the inspection certificate from an authorized inspection station.*

.15 Inspection Certificate.

A. Upon successful completion of an inspection, the registered inspection mechanic who performed the inspection shall issue a prenumbered inspection certificate before the vehicle leaves the premises. The inspection certificate shall be completed in black ink and:

(1)—(3) (text unchanged)

(4) Contain a certification date which shall include the name of the month, a two-digit date, and the year, for example, January 02, [1998] 2010, or March 23, [1999] 2012;

(5) (text unchanged)

(6) Be distributed as follows:

(a) The original copy of the certificate shall be furnished to the vehicle owner, dealer, or agent[.];

(b) The purchaser's copy shall be given to the owner, dealer, or agent who shall deliver this copy to the purchaser upon transfer of ownership of the vehicle[.];

(c) Inspection station copy shall be maintained as required by Regulation .11 of this chapter[.]; and

(d) (text unchanged)

B. If the original inspection certificate is lost, damaged, or contains incorrect or illegible information and a duplicate certificate is necessary, the following will apply:

(1) (text unchanged)

(2) Except for corrections, a duplicate certificate shall contain exactly the same date, odometer reading, and all other pertinent information as the original certificate; and

(3) (text unchanged)

C.—F. (text unchanged)

.16 Safety Equipment Repair Orders.

A. The vehicle owner or his agent shall present the No. 3, 4, and 5 copies of the safety equipment repair order to an authorized inspection station. The registered inspection mechanic shall inspect as set forth in the Vehicle Inspection Handbook, or as directed by the Division, only those defects indicated on the repair order to determine if the defects have been corrected and meet or exceed established safety standards. *Inspection mechanics who are presented with a fictitious safety equipment repair order as defined in Regulation .01B(13) of this chapter, shall complete an inspection of only those defects indicated on the fictitious safety equipment repair*

order in accordance with established procedures and in a manner identical to an actual repair order. If the defects have been corrected and meet or exceed established safety standards, the registered inspection mechanic shall certify the safety equipment repair order using the method prescribed for inspection certificates contained in Regulation .15A(3)—(5) of this chapter, in the space provided and copies shall be distributed as follows:

- (1) (text unchanged)
- (2) Number 4 (owner/agent) copy—returned to the vehicle owner or the owner's agent for his records; and
- (3) (text unchanged)
- B. (text unchanged)
- C. If a notice of suspension is presented for certification, the procedures set forth in §A of this regulation will apply and the copies shall be distributed as follows:
 - (1) (text unchanged)
 - (2) Yellow (inspection station/police department) copy—retained on file as required by §A(1) of this regulation; and
 - (3) (text unchanged)
- D.—G. (text unchanged)

11.14.02 Safety Standards for Passenger Cars, Taxicabs, Light Trucks, Vans, Multipurpose Passenger Vehicles, and Type II School Vehicles

Authority: Transportation Article, §§12-104(b), 23-101—23-105, and 24-106.1, Annotated Code of Maryland

.01 Applicability.

- A.—B. (text unchanged)

.06 Exhaust System.

A. The exhaust system includes the exhaust manifold and all piping leading from the flange of the exhaust manifold, to and including the muffler, resonator, and the tail piping.

Procedures:	Reject Vehicle If:
(1)—(2) (text unchanged)	(1)—(2) (text unchanged)
(3) On all other vehicles the tail pipe shall <i>be located as originally designed by the vehicle manufacturer, or if not as originally designed shall extend beyond the passenger or occupant compartment and enclosed cargo area if it is open to the driver or passenger area. The tail pipe shall extend at least to the front of the rear wheels, beyond the rearmost door opening, and exit beyond the side or rear of the body.</i>	(3) (text unchanged)
(4) (text unchanged)	(4) Tail pipe end is pinched or obstructed [or does not extend beyond the side or rear of the body]. (5)—(8) (text unchanged)
	(9) The tail pipe on all other vehicles, <i>if not as originally designed by the vehicle manufacturer</i> , does not extend beyond the occupant compartment and the enclosed cargo area if it is open to the occupant compartment, to at least the front of the rear wheels and beyond the rear of the rearmost door opening, or does not exit beyond the side or rear of the body.
	(10)—(13) (text unchanged)

C. Vehicles [which are] specially constructed as an exact replica of a previously manufactured vehicle, which [has] *have* been designated or otherwise would qualify as an historic vehicle or a vehicle of unique interest as defined by the Motor Vehicle Administration for registration of these original vehicles, shall meet all applicable established minimum standards for vehicles of the same model year in which the vehicle is actually constructed and titled with the following exceptions:

- (1) Regulation 10A(2)(c), side marker lamps: If the original counterpart of the specially constructed vehicle was manufactured without side marker lamps, side marker lamps are not required on the exact replica[.];
- (2) Regulation .08A: If the original counterpart of the specially constructed vehicle was manufactured without fenders or with fenders which do not meet current established minimum standards, the specially constructed vehicle need only conform to the exact design of its original counterpart to meet the requirements for fenders; [and]
- (3) Regulation .07A: If the original counterpart of the specially constructed vehicle was manufactured without bumpers, with concealed bumpers, or with bumpers which do not meet current established minimum standards, the specially constructed vehicle need only conform to the exact design of its original counterpart to meet the requirements for bumpers[.];
- (4) Regulation .10A(1)(c)(iv), red high mounted stop lamp: *If the original counterpart of the specially constructed vehicle was manufactured without a red high mounted stop lamp, a red high mounted stop lamp is not required on the exact replica; and*
- (5) *The Division Commander may authorize in writing a waiver of additional inspection requirements to be consistent with the original vehicle counterpart.*

.12 Interior and Emergency Equipment—Applicable to Type II School Vehicles Only.

A.—E. (text unchanged)

F. Color, Signs, Lettering, *Retro-Reflective Tape*, and Identification.

Procedures:	Reject Vehicle If:
(1) (text unchanged)	(1) (text unchanged)
<p>(2) Signs and Lettering. Inspect for Lettering.</p> <p>(a)—(d) (text unchanged)</p> <p>(e) <i>Side Emergency Windows (if equipped).</i></p> <p>(i) <i>“EMERGENCY EXIT” (2 inch by 3/8 inch stroke black lettering, mounted directly above the emergency window on both the inside and outside surfaces of the vehicle).</i></p> <p>(ii) <i>Operating instructions necessary to unlatch and open emergency exit shall be in letters of a color that contrasts with its background and located within 6 inches of the release mechanism on the inside surface of the vehicle. A decal containing the instructions may be placed on the window. For buses manufactured after July 31, 2009, the decal shall be transparent except for the lettering.</i></p> <p>(f) <i>Roof Vent/Emergency Exit.</i></p> <p>(i) <i>“EMERGENCY EXIT” (in letters at least 2 inches high, of a color that contrasts with its background and located on an inside and outside surface of the exit, or within 12 inches of the roof exit opening).</i></p> <p>(ii) <i>Operating instructions necessary to unlatch and open emergency exit shall be in letters of a color that contrasts with its background and located within 6 inches of the release mechanism on the inside and outside surface of the vehicle.</i></p>	<p>(2) Signs or lettering:</p> <p>(a) (text unchanged)</p> <p>(b) Are not proper size or color;</p> <p>(c) (text unchanged)</p>
<p>(3) <i>Retro-Reflective Tape. Each opening for a required emergency exit on a school vehicle manufactured after May 2, 1994 shall be outlined around its outside perimeter with yellow retro-reflective tape having a minimum width of 1 inch.</i></p>	<p>(3) <i>Retro-reflective tape:</i></p> <p>(a) <i>Is missing when required, or is loose, defective, or obscured;</i></p> <p>(b) <i>Is not the proper size or color;</i></p> <p>(c) <i>Is not located as required.</i></p>
[(3)] (4)—[(5)] (6) (text unchanged)	[(3)] (4) (text unchanged)

.14 Vehicle Glazing

A. Safety glazing material is marked with the manufacturer’s *distinctive designation or trademark, model number*, and the letters “AS” followed by a number from 1 through [11. Only AS1 or AS10 may be used in the windshield.] *16B, which indicates where the glazing may be used on the vehicle.* Safety glazing [for 1966 and later models] material also has [a glass manufacturer’s model number or a DOT code number] the symbol “DOT” (Department of Transportation) and a manufacturer’s code mark that the NHTSA (National Highway Traffic Safety Administration) assigns to the manufacturer. Any questions regarding glazing shall be referred to the Automotive Safety Enforcement Division of the [Maryland] Department of State Police.

B. *Proper Marking and Operation.*

Procedures:	Reject Vehicle If:
<p>(1) Proper Marking.</p> <p>Inspect [glass] glazing material for proper markings. <i>The following is a brief list of “AS” markings and applications. Safety glazing material marked:</i></p> <p>(a) <i>AS-1 is used in the windshield and may be used anywhere in a motor vehicle.</i></p> <p>(b) <i>AS-2 may be used anywhere in a motor vehicle except for the windshield.</i></p> <p>(c) <i>AS-3 may be used in windows to the rear of the driver in trucks, truck tractors, buses and multipurpose passenger vehicles. The vehicle must be equipped with an outside rearview mirror on each side.</i></p> <p>(d) <i>AS-4 or AS-6 may be used in the rear windows of convertible passenger car tops.</i></p> <p>(e) <i>AS-10 may be used where bullet resistance is required anywhere in a motor vehicle including the windshield.</i></p> <p>(f) <i>AS-14 may be used anywhere in a motor vehicle except that it may not be used in the windshields of any of the following vehicles: convertibles, vehicles that have no roof or vehicles whose roofs are completely removable.</i></p>	<p>(1) (text unchanged)</p>

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<p>(2) Window on Driver's Side. Inspect operation of window at driver's side. Window shall open and close readily even though the vehicle has approved turn signals.</p>	<p>(2) Window on driver's side [cannot be readily opened] <i>does not open and close as designed</i> to permit arm signals.</p>
<p>(3) Side Windows, <i>Emergency Window Exits, and Roof Vent/Emergency Exits</i> (school vehicles only). [Determine whether each full side window can be opened readily to provide at least a 9 inch x 22 inch emergency opening. Also check closing.]</p> <p>(a) <i>Side Windows.</i></p> <p>(i) <i>Open and close each passenger compartment side window and inspect for proper operation.</i></p> <p>(ii) <i>Inspect passenger compartment side windows for unframed exposed edges of glass.</i></p> <p>(b) <i>Side Emergency Windows (if equipped).</i></p> <p>(i) <i>Inspect inside release mechanism.</i></p> <p>(ii) <i>Check operation.</i></p> <p>(iii) <i>Check function of audible signal.</i></p> <p>(c) <i>Roof Vent/Emergency Exit —</i></p> <p>(i) <i>Inspect release mechanism.</i></p> <p>(ii) <i>Check operation.</i></p> <p>(iii) <i>If equipped, check function of audible signal.</i></p>	<p>(3) [(School Vehicles Only)] <i>Side Windows, Emergency Window Exits, and Roof Vent/Emergency Exits (school vehicles only).</i></p> <p>(a) <i>Side Windows.</i></p> <p>(i) Any side window [cannot be readily opened to permit at least 9 inch x 22 inch but not more than 12 inch x 22 inch unobstructed opening] <i>fails to function as designed.</i></p> <p>[(b)] (ii) Any [side window does not close properly] <i>exposed edges of glass are not framed or framing is loose or broken.</i></p> <p>(b) <i>Side Emergency Windows (if equipped).</i></p> <p>(i) <i>Window release mechanism is loose or broken.</i></p> <p>(ii) <i>Window will not operate properly.</i></p> <p>(iii) <i>Audible signal fails to function in driver's compartment and indicate to the seated driver when the engine is running a distinctive audible signal when release mechanism is moved, or sounds continuously when release mechanism is latched.</i></p> <p>(c) <i>Roof Vent/Emergency Exit.</i></p> <p>(i) <i>Release mechanism is loose or broken.</i></p> <p>(ii) <i>Fails to operate properly.</i></p> <p>(iii) <i>Audible signal, if equipped, fails to function in driver's compartment and indicate to the seated driver when the engine is running a distinctive audible signal when release mechanism is moved, or sounds continuously when release mechanism is latched.</i></p>
[(4)] (proposed for repeal)	[(4)] (proposed for repeal)

[B.] (proposed for repeal)

C. *Signs and Materials on Windshield or Windows. Inspect all glazing for unauthorized material or conditions that obscure the driver's vision.*

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
<p>(1) <i>Except as provided in §C(2) of this regulation, a vehicle may not be equipped with any sign, poster, card, sticker, or other nontransparent material on the windshield, side wings, or side or rear windows of the vehicle.</i></p> <p>(2) <i>This does not apply to:</i></p> <p>(a) <i>Materials placed on the windshield or rear window, within a 7 inch square area in the lower corner, or on the side windows of the vehicle to the rear of the driver, if the materials are placed so as not to interfere with the driver's clear view of traffic;</i></p> <p>(b) <i>Direction, destination, or termini signs on any passenger common carrier motor vehicle;</i></p> <p>(c) <i>An electronic toll collection device placed in the windshield of a vehicle in accordance with guidelines established by the Maryland Transportation Authority; or</i></p> <p>(d) <i>Security stickers authorized by a federal or State government agency that measure not more than 2 inches high and not more than 4 inches long, and are placed at the upper edge of the center of the windshield.</i></p> <p>(3) <i>All vehicles equipped with permitted signs, posters, cards, stickers or other nontransparent materials on windows to the rear of the driver must be equipped with an outside rearview mirror on each side.</i></p>	<p>(1) (a) <i>Glazed surfaces contain any sign, poster, card, decal, sticker, or other nontransparent material in violation of this regulation.</i></p> <p>(b) <i>Driver's vision is obscured.</i></p> <p>(c) <i>Equipped with permitted signs, posters, cards, stickers or other nontransparent materials on windows to the rear of the driver and not equipped with an outside rearview mirror on each side.</i></p>

D. *Post Manufacture Window Tinting.*

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
<p>(1) <i>Inspect all glazing for the application of post manufacture window tint. The following post manufacture window tint is prohibited on any window or windshield of any vehicle. Window tint that:</i></p> <p>(a) <i>Has a mirrored or one-way vision effect or a sparkling effect;</i></p> <p>(b) <i>Is red, yellow, or amber in color; or</i></p> <p>(c) <i>Changes to a red, yellow, or amber color.</i></p> <p>(2) <i>Post manufacture window tint is acceptable on the following</i></p>	<p>(1) Any glazing contains post manufacture window tint that causes a mirrored or one-way vision effect, a sparkling effect, is a prohibited color, or changes to a prohibited color.</p> <p>(2) (a) <i>Post manufacture window tint is applied to glazing in</i></p>

<p>vehicles in the listed locations:</p> <p>(a) Passenger cars, convertibles, and station wagons.</p> <p>(i) All side and rear windows of these vehicles are regulated windows requiring at least 35 percent light transmittance after the application of post manufacture window tint and the vehicle is equipped with an outside rearview mirror on each side.</p> <p>(ii) Windshield. Post manufacture window tint may not be applied to the windshield below the AS1 line or below 5 inches from the top of the windshield, whichever is less.</p> <p>(b) Light trucks, vans, and multipurpose passenger vehicles.</p> <p>(i) All side windows of these vehicles to the immediate right and left of the driver are regulated windows requiring at least 35 percent light transmittance after the application of post manufacture window tint.</p> <p>(ii) Windshield. Post manufacture window tint may not be applied to the windshield below the AS1 line or below 5 inches from the top of the windshield, whichever is less.</p> <p>(iii) Windows of these vehicles to the rear of the driver may be tinted with post manufacture window tint to any degree of darkness.</p> <p>(iv) When equipped with permitted post manufacture window tint on any side or rear window, the vehicle must be equipped with an outside rearview mirror on each side.</p> <p>(c) Inspect the light transmittance of each vehicle window equipped with post manufacture window tint and required to have at least 35 percent light transmittance after the application of post manufacture window tint.</p>	<p>violation of this regulation.</p> <p>(b) Equipped with permitted post manufacture window tint on any side or rear window and is not equipped with an outside rearview mirror on each side.</p>
<p>(3) Post manufacture window tint is prohibited on the following vehicles in the listed locations:</p> <p>(a) Limousines.</p> <p>(i) The windshield and all side windows to the immediate right and left of the driver are prohibited from the application of post manufacture window tint.</p> <p>(ii) Windows of these vehicles to the rear of the driver may be tinted with post manufacture window tint to any degree of darkness provided the vehicle is equipped with an outside rearview mirror on each side.</p> <p>(b) School Vehicles. Post manufacture window tint is prohibited on all windows and windshield of a school vehicle.</p>	<p>(3) (a) Post manufacture window tint is applied to glazing in violation of this regulation.</p> <p>(b) Equipped with permitted post manufacture window tint on any side or rear window and is not equipped with an outside rearview mirror on each side.</p>
<p>(4) Vehicles equipped with a high mounted stop lamp mounted inside the vehicle may not be equipped with post manufacture window tint in the area of the rear window in front of the high mounted stop lamp.</p>	<p>(4) Post manufacture window tint is applied to the area of the rear window in front of the high mounted stop lamp.</p>
<p>(5) Tint Manufacturer's Labels (if equipped): Tint manufacturer's labels may not be of a size or positioned in a manner that affects the driver's vision or obscures the glazing manufacturer's trademark or AS indicator.</p>	<p>(5) Tint manufacturer label, if equipped, is of a size or positioned in a manner that affects the driver's vision or obscures the glazing manufacturer's trademark or AS indicator.</p>

(6) Medical Exemption. (Applicable only to vehicles noted in §D(2) of this regulation.) Transportation Article, §22-406, Annotated Code of Maryland, provides an exemption for a person who must be protected from the sun for medical reasons from having a light transmittance of at least 35 percent on regulated windows equipped with post manufacture window tint. The law requires the owner to have, in the vehicle at the time the vehicle is stopped by a police officer, a written certification that details the owner's medical need for tinted windows, from a physician licensed to practice medicine in the State. A vehicle owner whose vehicle is undergoing an inspection, or has been issued a safety equipment repair order for defect #61 "TINT", and indicates to the authorized inspection station their compliance with a medical exemption, shall be referred to the

Automotive Safety Enforcement Division of the Department of State Police for examination of the vehicle owner's medical documentation and the vehicle's post manufacture window tint. If the owner meets the requirements specified in Transportation Article, §22-406, Annotated Code of Maryland, for the medical exemption and the vehicle is compliant with all post manufacture window tinting regulations in this chapter, excluding the light transmittance requirement of regulated windows equipped with post manufacture window tint, the Division, when applicable, shall be authorized to:

(a) Issue a post manufacture window tint medical exemption form to be provided to the authorized inspection station performing an inspection of the vehicle. The post manufacture window tint medical exemption form will then permit the registered inspection

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mechanic to exempt the vehicle's windows equipped with post manufacture window tint from meeting the light transmittance requirement; or

(b) Certify the safety equipment repair order for defect #61 "TINT".

[C. Authorized Stickers. Signs, posters, cards, stickers, or other materials may only be placed on the windshield within a 7-inch square in the lower corner or upon the side windows of the vehicle to the rear of the driver and so placed that the materials will not obstruct the driver's clear view of approaching traffic. The Administration shall exempt security stickers authorized by a federal or State government agency that measure not more than 2 inches high and not more than 4 inches long, and are placed at the upper edge of the center of the windshield.

D. Approved Glazing. In some earlier models of foreign cars, the windshield marking does not contain the designation of "AS-1". Any questions concerning vehicle glazing approval, contact Automotive Safety Enforcement Division of the Maryland State Police. The following have, however, been approved for use as windshield, and some are:

(1) Approval 1494-"Splintex" Safety Glass (Splintex Safety Glass, Limited and Splintex-Newtx Works and Humber Inc.);

(2) Approval 1546-"Gracetex" Laminated Safety Plate Glass (Glacieries Reunies and Volvo Import, Inc.);

(3) Approval 1548-"Sunex" Laminated Safety Plate Glass (Sunex Sakerhetsglas A.B. and Volvo Imports, Inc.);

(4) Approval 2268-"Triplex" 1/4 inch Laminated Safety Plate Glass (Triplex Safety Glass Company, Limited);

(5) Approval 2771-"Duplate" Laminated Safety Plate Glass (Duplate Canada, Limited).]

E. Definitions.

(1) (text unchanged)

(2) "Cloudiness" means any degree of visible discoloration or separation, except tinting that does not affect clear vision.

[(2)](3) "Critical area" means the normal windshield wiper sweep, except the area obscured by the hood, fenders, or rearview mirror.

(4) "Discoloration" means a condition which impairs the transparency of the glazing.

(5) "Non-critical area" means all windshield area outside the critical area.

[(3)](6) "Normal windshield wiper sweep" means the area of the windshield cleaned by the windshield wiper, excluding the return position on both passenger's and driver's sides.

[(4)] "Noncritical area" means all windshield area outside the critical area.

(5) "Cloudiness" means any degree of visible discoloration or separation, except tinting that does not affect clear vision.]

F. Glazing Damage.

Procedures:	Reject Vehicle If:
(1) <i>Inspect all windows for modification, damage, sharp edges, and discoloration of the glazing.</i>	<p>(1) (a) Any window is missing, modified, broken, or has exposed sharp edges.</p> <p>(b) There are cracks, discoloration, scratches, or conditions which interfere with the driver's view to the right or left.</p> <p>(c) The rear window of a passenger car, station wagon, or convertible is discolored so that the driver does not have a clear view 200 feet to the rear of the vehicle.</p> <p>(d) The driver's view to the rear in any vehicle except as provided above is obscured or obstructed and the vehicle is not equipped with an outside rear view mirror on each side.</p>
(2) <i>Windshield: Inspect windshield for modification and any cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures, discoloration, sharp edges, and wiper blade scratches.</i>	<p>(2) Windshield.</p> <p>(a) Is missing or has been modified.</p> <p>(b) Driver's Side.</p> <p>(i) Cloudiness exceeds 1 inch from the top or side or 1 inch into the critical area from the bottom. If the windshield is divided, the cloudiness may not exceed 1/2 inch from the center divider.</p> <p>(ii) Acute area contains any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of 1/4 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed 1/4 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision.</p> <p>(iii) Critical area contains wiper blade scratches which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of 1/2 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed 1/2 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</p> <p>(iv) Non-critical area contains any intersecting cracks or any one crack or combination of individual cracks extending inward more than 2 inches separately or cumulatively from the outer frame on flat or curved windshields or over 4 inches on wraparound windshields, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in</p>

	<p><i>excess of $\frac{3}{4}$ inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed $\frac{3}{4}$ inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</i></p> <p><i>(c) Passenger Side.</i></p> <p><i>(i) Cloudiness exceeds 2 inches from the top or side or extends more than 2 inches into the critical area from the bottom. If the windshield is divided, the cloudiness may not exceed $\frac{1}{2}$ inch from the center divider.</i></p> <p><i>(ii) Critical area contains wiper blade scratches which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of $\frac{1}{2}$ inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed $\frac{1}{2}$ inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</i></p> <p><i>(iii) Non-critical area contains any intersecting cracks or any one crack or combination of individual cracks extending inward more than 4 inches separately or cumulatively from the outer frame on flat or curved windshields or over 6 inches on wraparound windshields, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of $1\frac{1}{2}$ inches in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed $1\frac{1}{2}$ inches in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</i></p>
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Figure 26 VEHICLE GLAZING.

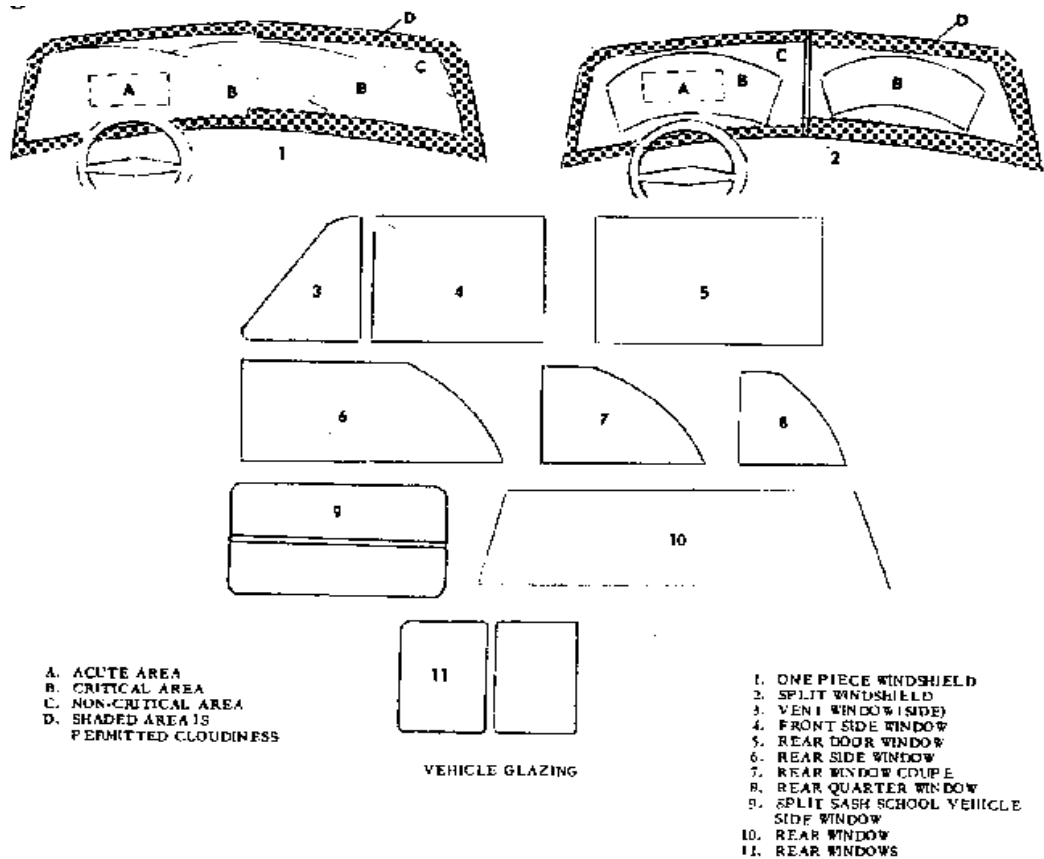


Figure 26

.17 Doors, Handles and Latches.

- A. (text unchanged)
- B. Doors—Service, Emergency (applicable to school vehicles only). Service doors may be split-type, sedan-type, or jackknife-type with vertical closing edges covered with flexible material.

Procedures:	Reject Vehicle If:
(1) (text unchanged)	(1) (text unchanged)
(2) (text unchanged)	(2) Emergency Door. (a)—(d) (text unchanged) (e) Buzzer fails to function in driver’s compartment <i>and indicate to the seated driver when the engine is running a distinctive audible signal when slide bar is moved.</i> (f)—(g) (text unchanged)

11.14.04 Safety Standards for Trucks, Truck Tractors, Commercial Buses, and Type I School Vehicles

Authority: Transportation Article, § 12-104(b), 23-101—23-105, and 24-106.1, Annotated Code of Maryland

.14 Interior and Emergency Equipment—Applicable to School Vehicles Only.

A.—F. (text unchanged)

G. Signs and Lettering.

Procedures:	Reject Vehicle If:
Signs and Lettering—Inspect for Lettering:	
(1)—(3) (text unchanged)	(1) (text unchanged) (2) Are not proper size <i>or color</i> . (3) (text unchanged)
(4) “STOP ON SIGNAL” when required (4 inch by 3/4 inch stroke black lettering below rear window)[.];	
(5) <i>Side Emergency Windows (if equipped):</i> (a) “EMERGENCY EXIT” (2 inch by 3/8 inch stroke black lettering, mounted directly above the emergency exit on both the inside and outside surfaces of the bus); (b) Operating instructions necessary to unlatch and open emergency exit shall be in letters of a color that contrasts with its background and located within 6 inches of the release mechanism on the inside surface of the vehicle (A decal containing the instructions may be placed on the window. For buses manufactured after July 31, 2009, the decal shall be transparent except for the lettering.);	
(6) <i>Rear Emergency Window (if equipped):</i> (a) “EMERGENCY EXIT” (at least 2 inch by 3/8 inch stroke black lettering, mounted above the window on the inside of the vehicle and above or below the window on the outside of the vehicle); (b) Operating instructions necessary to unlatch and open emergency exit shall be in letters of a color that contrasts with its background and located within 6 inches of the release mechanism on the inside and outside surface of the vehicle (Decals containing the instructions may be placed on the window. For buses manufactured after July 31, 2009, the decal shall be transparent except for the lettering.);	
(7) <i>Roof Vent/Emergency Exit:</i> (a) “EMERGENCY EXIT” (in letters at least 2 inches high, of a color that contrasts with its background and located on an inside and outside surface of the exit, or within 12 inches of the roof exit opening); (b) Operating instructions necessary to unlatch and open emergency exit shall be in letters of a color that contrasts with its background and located within 6 inches of the release mechanism on the inside and outside surface of the vehicle.	

H. Retro-Reflective Tape.

Retro-Reflective Tape: Each opening for a required emergency exit on a school vehicle manufactured after May 2, 1994 shall be outlined around its outside perimeter with yellow retro-reflective tape having a minimum width of 1 inch.	Retro-reflective tape: (1) Is missing when required, or is loose, defective or obscured; (2) Is not the proper size or color; (3) Is not located as required.
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[H.] (I). (text unchanged)

.16 Vehicle Glazing.

A. Safety glazing material is marked with the manufacturer’s distinctive designation or trademark, model number and the letters “AS” followed by a number from 1 through [11. Only AS1 or AS10 may be used in the windshield.] 16B, which indicates where the glazing may be used on the vehicle. Safety glazing [for 1966 and later models] material also has [a glass manufacturer’s model number or a DOT code number] the symbol “DOT” (Department of Transportation) and a manufacturer’s code mark that the NHTSA (National Highway Traffic Safety Administration) assigns to the manufacturer. Any questions regarding glazing shall be referred to the Automotive Safety Enforcement Division of the [Maryland] Department of State Police. [If glazing was originally installed in a vehicle it shall be present at all locations.]

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B. Proper Marking and Operation.

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
<p>(1) Proper Marking: Inspect <i>glazing material</i> for proper markings. <i>The following is a brief list of "AS" markings and applications.</i> <i>Safety glazing material marked:</i> <i>(a) AS-1 is used in the windshield and may be used anywhere in a motor vehicle.</i> <i>(b) AS-2 may be used anywhere in a motor vehicle except for the windshield.</i> <i>(c) AS-3 may be used in windows to the rear of the driver in trucks, truck tractors, buses and multipurpose passenger vehicles. The vehicle must be equipped with an outside rearview mirror on each side.</i> <i>(d) AS-10 may be used where bullet resistance is required anywhere in a motor vehicle including the windshield.</i></p>	<p>(1)[(a)] Improper or unmarked glazing materials are used for specific positions. [(b) Nontransparent materials are used to replace glass.]</p>
<p>(2) Window on Driver's Side: Inspect operation of window at driver's side. Window shall open and close readily even though the vehicle has approved turn signals.</p>	<p>(2) Window on driver's side [cannot be readily opened] <i>does not open and close as designed</i> to permit arm signals.</p>
<p>(3) Side Windows, Emergency Window Exits, and Roof Vent/Emergency Exits (school vehicles only): [Determine whether each full side window can be opened readily to provide at least a 9 x 22 inch emergency opening. Also check closing.] <i>(a) Side Windows —</i> <i>(i) Open and close each passenger compartment side window and inspect for proper operation.</i> <i>(ii) Inspect passenger compartment side windows for unframed exposed edges of glass.</i> <i>(b) Side Emergency Windows (if equipped) —</i> <i>(i) Inspect inside release mechanism.</i> <i>(ii) Check operation.</i> <i>(iii) Check function of audible signal.</i> <i>(c) Rear Emergency Window (if equipped).</i> <i>(i) Inspect inside and outside release mechanism.</i> <i>(ii) Check operation.</i> <i>(iii) Check function of audible signal.</i> <i>(d) Roof Vent/Emergency Exit —</i> <i>(i) Inspect release mechanism.</i> <i>(ii) Check operation.</i> <i>(iii) If equipped, check function of audible signal.</i></p>	<p>(3) <i>Side Windows, Emergency Window Exits, and Roof Vent/Emergency Exits (school vehicles only):</i> <i>(a) Side Windows.</i> <i>(i) Any side window [cannot be readily opened to permit at least 9 inch x 22 inch, but not more than 12 inch x 22 inch, unobstructed opening] fails to function as designed.</i> <i>(ii) Any exposed edges of glass are not framed or framing is loose or broken.</i> <i>(b) [Any side window does not close properly.] Side Emergency Windows (if equipped).</i> <i>(i) Window release mechanism is loose or broken.</i> <i>(ii) Window will not operate properly.</i> <i>(iii) Audible signal fails to function in driver's compartment and indicate to the seated driver when the engine is running a distinctive audible signal when release mechanism is moved, or sounds continuously when release mechanism is latched.</i> <i>(c) Rear Emergency Window (if equipped).</i> <i>(i) Window release mechanism is loose or broken.</i> <i>(ii) Window will not operate property.</i> <i>(iii) Audible signal fails to function in driver's compartment and indicate to the seated driver when the engine is running a distinctive audible signal when release mechanism is moved, or sounds continuously when release mechanism is latched.</i> <i>(d) Roof Vent/Emergency Exit.</i> <i>(i) Release mechanism is loose or broken.</i> <i>(ii) Fails to operate properly.</i> <i>(iii) Audible signal, if equipped, fails to function in driver's compartment and indicate to the seated driver when the engine is running a distinctive audible signal when release mechanism is moved, or sounds continuously when release mechanism is latched.</i></p>
[(4)]—[(5)] (proposed for repeal)	[(4)] (proposed for repeal)

[B.] (proposed for repeal)

C. Signs and Materials on Windshield or Windows. Inspect all glazing for unauthorized material or conditions that obscure the driver's vision.

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
<p>(1) Except as provided in §C(2) of this regulation, a vehicle may not be equipped with any sign, poster, card, sticker, or other nontransparent material on the windshield, side wings, or side or rear windows of the vehicle. (2) This does not apply to: (a) Materials placed on the windshield or rear window, within a 7 inch square area in the lower corner, or on the side windows of the vehicle to the rear of the driver, if the materials are placed so as not to interfere with the driver's clear view of traffic; (b) Direction, destination, or termini signs on any passenger common carrier motor vehicle;</p>	<p>(1) (a) Glazed surfaces contain any sign, poster, card, decal, sticker, or other nontransparent material in violation of this regulation. (b) Driver's vision is obscured. (c) Equipped with permitted signs, posters, cards, stickers, or other nontransparent materials on windows to the rear of the driver and not equipped with an outside rearview mirror on each side.</p>

<p>(c) An electronic toll collection device placed in the windshield of a vehicle in accordance with guidelines established by the Maryland Transportation Authority; or</p> <p>(d) Security stickers authorized by a federal or State government agency that measure not more than 2 inches high and not more than 4 inches long, and are placed at the upper edge of the center of the windshield.</p> <p>(3) All vehicles equipped with permitted signs, posters, cards, stickers or other nontransparent materials on windows to the rear of the driver must be equipped with an outside rearview mirror on each side.</p>	
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D. Post Manufacturer Window Tinting.

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
<p>(1) Inspect all glazing for the application of post manufacture window tint. The following post manufacture window tint is prohibited on any window or windshield of any vehicle. Window tint that:</p> <p>(a) Has a mirrored or one-way vision effect or a sparkling effect;</p> <p>(b) Is red, yellow, or amber in color; or</p> <p>(c) Changes to a red, yellow, or amber color.</p>	<p>(1) Any glazing contains post manufacture window tint that causes a mirrored or one-way vision effect, a sparkling effect, is a prohibited color, or changes to a prohibited color.</p>
<p>(2) Post manufacture window tint is prohibited on the following vehicles in the listed locations:</p> <p>(a) The application of post manufacture window tint to the windshield or windows to the immediate right and left of the driver is prohibited on the following vehicles:</p> <p>(i) Trucks, truck tractors and buses;</p> <p>(ii) Multipurpose passenger vehicles which have a seating capacity for 16 or more passengers including the driver, or were previously registered as a school vehicle or a passenger bus, and used to primarily transport passengers, or used in the furtherance of a commercial enterprise; and</p> <p>(iii) Limousines.</p> <p>(b) Windows of these vehicles to the rear of the driver may be tinted with post manufacture window tint to any degree of darkness provided the vehicle is equipped with an outside rearview mirror on each side.</p>	<p>(2) (a) Post manufacture window tint is applied to glazing in violation of this regulation.</p> <p>(b) Equipped with permitted post manufacture window tint on any side or rear window and is not equipped with an outside rearview mirror on each side.</p>
<p>(3) Post manufacture window tint is prohibited on all windows and windshield of a school vehicle.</p>	<p>(3) Post manufacture window tint is applied to glazing in violation of this regulation.</p>
<p>(4) Post manufacture window tint is acceptable on the following vehicles in the listed locations:</p> <p>(a) All other multipurpose passenger vehicles.</p> <p>(i) All side windows of these vehicles to the immediate right and left of the driver are regulated windows requiring at least 35 percent light transmittance after the application of post manufacture window tint.</p> <p>(ii) Windshield. Post manufacture window tint may not be applied to the windshield below the ASI line or below 5 inches from the top of the windshield, whichever is less.</p> <p>(iii) Windows of these vehicles to the rear of the driver may be tinted with post manufacture window tint to any degree of darkness.</p> <p>(iv) When equipped with permitted post manufacture window tint on any side or rear window, the vehicle must be equipped with an outside rearview mirror on each side.</p> <p>(b) Inspect the light transmittance of each vehicle window equipped with post manufacture window tint and required to have at least 35 percent light transmittance after the application of post manufacture window tint.</p>	<p>(4) (a) Post manufacture window tint is applied to glazing in violation of this regulation.</p> <p>(b) Equipped with permitted post manufacture window tint on any side or rear window and is not equipped with an outside rearview mirror on each side.</p>
<p>(5) Tint Manufacturer's Labels (if equipped): Tint manufacturer's labels may not be of a size or positioned in a manner that affects the driver's vision or obscures the glazing manufacturer's trademark or AS indicator.</p>	<p>(5) Tint manufacturer label, if equipped, is of a size or positioned in a manner that affects the driver's vision or obscures the glazing manufacturer's trademark or AS indicator.</p>

(6) *Medical Exemption. (Applicable only to multipurpose passenger vehicles noted in §D(4) of this regulation.)*

Transportation Article, §22-406, Annotated Code of Maryland, provides an exemption for a person who must be protected from the sun for medical reasons from having a light transmittance of at least 35 percent on regulated windows equipped with post manufacture window tint. The law requires the owner to have, in the vehicle at the time the vehicle is stopped by a police officer, a written certification that details the owner's medical need for tinted windows, from a physician licensed to practice medicine in the State. A vehicle owner whose vehicle is undergoing an inspection, or has been issued a safety equipment repair order for defect #61 "TINT", and indicates to the authorized inspection station their compliance with a medical exemption, shall be referred to the Automotive Safety Enforcement Division of the Department of State Police for examination of the vehicle owner's medical documentation and the vehicle's post manufacture window tint. If the owner meets the requirements specified in Transportation Article, §22-406, Annotated Code of Maryland, for the medical exemption and the vehicle is compliant with all post manufacture window tinting regulations in this chapter, excluding the light transmittance requirement of regulated windows equipped with post manufacture window tint, the Division, when applicable, shall be authorized to:

(a) Issue a post manufacture window tint medical exemption form to be provided to the authorized inspection station performing an inspection of the vehicle which shall permit the registered inspection mechanic to exempt the vehicle's windows equipped with post manufacture window tint from meeting the light transmittance requirement; or

(b) Certify the safety equipment repair order for defect #61 "TINT".

[C. Approved Glazing. In some earlier models of foreign vehicles, the windshield marking does not contain the designation of "AS-1".

For questions concerning vehicle glazing approval, contact Automotive Safety Enforcement Division of the Maryland State Police. The following have, however, been approved for use as windshields:

(1) Approval 1494—SPLINTEX Safety Glass (Splintex Safety Glass, Limited and Splintex-Newtx Works and Lumber Inc.);

(2) Approval 1546—Gracetex Laminated Safety Plate Glass (Glacieries Reunies and Volvo Import, Inc.);

(3) Approval 1548—Sunex Laminated Safety Plate Glass (Sunex Sakerhetsglas A.B. and Volvo Imports, Inc.);

(4) Approval 2268—Triplex 1/4 inch Laminated Safety Plate Glass (Triplex Safety Glass Company, Limited);

(5) Approval 2771—Duplate Laminated Safety Plate Glass (Duplate Canada, Limited).]

[D.]E. Definitions.

(1) (text unchanged)

(2) "Cloudiness" means any degree of visible discoloration or separation, except tinting that does not affect clear vision.

[(2)](3) "Critical area" means the normal windshield wiper sweep, except the area obscured by the hood, fenders, or rearview mirror.

(4) "Discoloration" means a condition which impairs the transparency of the glazing.

(5) "Non-critical area" means all windshield area outside the critical area.

[(3)](6) "Normal windshield wiper sweep" means the area of the windshield cleaned by the windshield wiper, excluding the return position on both passenger's and driver's sides.

[(4) "Noncritical area" means all windshield area outside the critical area.

(5) "Cloudiness" means any degree of visible discoloration or separation, except tinting that does not affect clear vision.]

F. Glazing Damage.

Procedures:	Reject Vehicle If:
(1) <i>Inspect all windows for modification, damage, sharp edges, and discoloration of the glazing.</i>	<p>(1) (a) Any window is missing, modified, broken or has exposed sharp edges.</p> <p>(b) There are cracks, discoloration, scratches, or conditions which interfere with the driver's view to the right or left.</p> <p>(c) The rear window is discolored so that the driver does not have a clear view 200 feet to the rear of the vehicle.</p> <p>(d) The driver's view to the rear is obscured or obstructed and the vehicle is not equipped with an outside rearview mirror on each side.</p>
(2) <i>Windshield: Inspect windshield for modification and any cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures, discoloration, sharp edges, and wiper blade scratches.</i>	<p>(2) Windshield:</p> <p>(a) Is missing or has been modified.</p> <p>(b) Driver's Side.</p> <p>(i) Cloudiness exceeds 1 inch from the top or side or 1 inch into the critical area from the bottom. If the windshield is divided, the cloudiness may not exceed 1/2 inch from the center divider.</p> <p>(ii) Acute area contains any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of 1/4 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed 1/4 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision.</p> <p>(iii) Critical area contains wiper blade scratches which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of 1/2 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed 1/2 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</p>

	<p>(iv) Non-critical area contains any intersecting cracks or any one crack or combination of individual cracks extending inward more than 2 inches separately or cumulatively from the outer frame on flat or curved windshields or over 4 inches on wraparound windshields, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of $\frac{3}{4}$ inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed $\frac{3}{4}$ inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</p> <p>(c) Passenger Side:</p> <p>(i) Cloudiness exceeds 2 inches from the top or side or extends more than 2 inches into the critical area from the bottom. If the windshield is divided, the cloudiness may not exceed $\frac{1}{2}$ inch from the center divider.</p> <p>(ii) Critical area contains wiper blade scratches which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of $\frac{1}{2}$ inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed $\frac{1}{2}$ inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</p> <p>(iii) Non-critical area contains any intersecting cracks or any one crack or combination of individual cracks extending inward more than 4 inches separately or cumulatively from the outer frame on flat or curved windshields or over 6 inches on wraparound windshields, or any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of $1\frac{1}{2}$ inches in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures which cumulatively exceed $1\frac{1}{2}$ inches in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.</p>
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Figure 32—VEHICLE GLAZING.

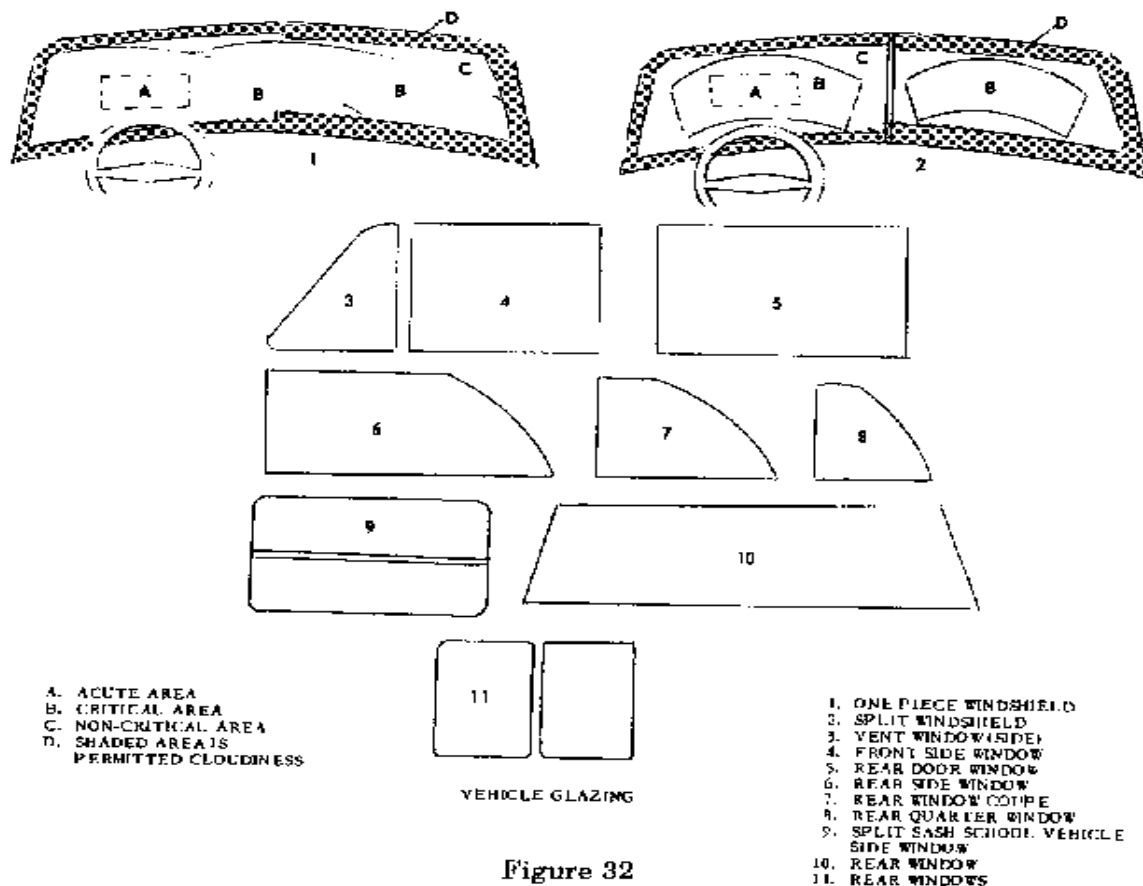


Figure 32

.19 Doors, Handles, and Latches.

A. (text unchanged)

B. Doors—Service, Emergency (applicable to school vehicles only). Service doors may be split-type, sedan-type, or jackknife-type with vertical closing edges covered with flexible material.

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
(1)—(2) (text unchanged)	(1) (text unchanged)
	(2) Emergency Door: (a)—(d) (text unchanged) (e) Buzzer fails to function in driver's compartment <i>and indicate to the seated driver when the engine is running a distinctive audible signal</i> when slide bar is moved; (f)—(g) (text unchanged)

JOHN T. KUO

Administrator

Motor Vehicle Administration

Subtitle 21 MOTOR VEHICLE ADMINISTRATION — COMMERCIAL MOTOR VEHICLES

11.21.01 Motor Carrier Safety

Authority: Transportation Article, §§ 12-104(b), 16-820, 25-111(f), and 25-111.1(a), Annotated Code of Maryland.

Notice of Proposed Action

[11-306-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulations **.01—.03** under **COMAR 11.21.01 Motor Carrier Safety**.

Statement of Purpose

The purpose of this action is to amend regulations for Motor Carrier Safety to conform to House Bill 204, Chapter 111, Acts of 2011. These amendments modify the effective date of the regulations, add an additional provision of the Code of Federal Regulations (CFR) to an existing regulation, make technical changes regarding the application of certain regulations, and extend federal minimum financial responsibility requirements to for-hire vehicles of more than 26,000 pounds that are designed to carry property and that are engaged in intrastate commerce.

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 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, or fax to 410-768-7506. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

.01 Effective Date of Enforcement.

[A. Except for Regulation .06E, G, and H of this chapter, the remaining regulations of this chapter take full force and effect as of the effective date of these regulations.

B. Regulation .06E, G and H of this chapter is effective January 1, 1995.

C. Regulations .04-1 and .04-2 of this chapter are effective on January 1, 1996, for employers with less than 50 drivers holding commercial driver's licenses.

D. Regulations .04-1 and .04-2 of this chapter are effective August 1, 1995, for employers with 50 or more drivers holding commercial driver's licenses.] *Regulation .03F of this chapter is effective January 1, 2012.*

.02 Incorporation by Reference of the Federal Motor Carrier Safety Regulations.

The federal motor carrier safety regulations contained in 49 CFR 40, 382, 383, 387, 390—393, [and] 395—399, *and 1572, as amended*, are incorporated by reference, [as amended,] subject to the application provision in [Regulation .03] *Regulations .03, .04-1—.08, and .11—.14* of this chapter and the amendments and exemptions cited in [Regulations .04-1—.14] *.09 and .10* of this chapter.

.03 Application.

A. — B. (text unchanged)

C. The [amendments] *application provisions, amendments, and exemptions set forth in [Regulations .05—.14] Regulations .05—.08 and .11—.14* of this chapter apply to those intrastate carriers not:

(1) — (2) (text unchanged)

D. *The amendments and exemptions set forth in Regulations .09 and .10 of this chapter apply to interstate and intrastate carriers.*

E. Regulations .04-1—.04-3 of this chapter [are applicable] *apply* to interstate carriers, intrastate carriers, and individuals driving a commercial motor vehicle requiring a commercial driver's license and employed by the State or a political subdivision of the State.

F. *Regulation .04-4 of this chapter applies to interstate for hire carriers and intrastate for hire carriers with vehicles that exceed a gross vehicle weight rating of 26,000 pounds and are designed to carry property.*

JOHN T. KUO

Administrator

Motor Vehicle Administration

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

13A.05.09 Programs for Homeless Children

Authority: Education Article, §§2-205 and 7-301, Annotated Code of Maryland

Notice of Proposed Action [11-309-P]

The Maryland State Board of Education proposes to amend Regulation .02 under **COMAR 13A.05.09 Programs for Homeless Children**.

Statement of Purpose

The purpose of this action is to add children in the custody of the Department of Juvenile Services to the definition of “child awaiting foster care placement” so that they will be considered homeless students and thus be entitled to the same school stability provisions set forth in the McKinney-Vento Act as other homeless children.

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 John McGinnis, Pupil Personnel/Social Work Specialist, Division of Student, Family and School Support, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0295 (TTY 410-333-6442), or email to jmcginnis@msde.state.md.us, or fax to 410-333-8148. Comments will be accepted through December 5, 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 January 24—25, 2012, at 200 West Baltimore Street, Baltimore, MD 21201.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) *Child Awaiting Foster Care Placement*.

(a) “Child awaiting foster care placement” means:

[(a)] (i) A child placed out of the child’s home pursuant to a shelter care order [or a voluntary placement agreement documented] by the Department of Social Services *or the Department of Juvenile Services*; or

(ii) *A child placed out of the child’s home pursuant to a voluntary placement agreement documented by the Department of Social Services.*

(b) [A] “*Child awaiting foster care placement*” includes a child [committed to] *placed in* the care and custody of the Department of Social Services *or the Department of Juvenile Services* who is placed into a temporary, short-term placement of not longer than 90 school days, such as in:

(i) — (iv) (text unchanged)

(v) Another temporary, short-term placement[.] *not described in §B(2)(c) of this regulation.*

(c) “*Child awaiting foster care placement*” *does not include a child placed into a temporary, short-term placement such as in:*

(i) *A detention facility;*

(ii) *A forestry camp;*

(iii) *A training school;*

(iv) *Any State owned and operated facility accommodating more than 25 youth; or*

(v) *Any other facility operated primarily for the purpose of detaining youth who are determined to be delinquent and require secure custody in a physically restrictive setting.*

(3) — (9) (text unchanged)

BERNARD J. SADUSKY
Interim State Superintendent of Schools

Title 14 INDEPENDENT AGENCIES

Subtitle 01 STATE LOTTERY AGENCY

Notice of Proposed Action [11-319-P]

The Maryland State Lottery Agency proposes to:

(1) Amend Regulation .04 under **COMAR 14.01.11 Video Lottery Facility Operation License**; and

(2) Amend Regulation .03 under **COMAR 14.01.18 Violations, Civil Penalties, and Sanctions**.

This action was considered at the Maryland State Lottery Commission open meeting held on September 22, 2011, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update regulations to incorporate provisions required for the operation of the State’s Video Lottery Terminal program and for the VLT Facilities which are now open and in the process of opening.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert W. Howells, Regulations Coordinator, Maryland State Lottery Agency, 1800 Washington Blvd, Suite 330, Baltimore, MD 21230, or call 410-230-8789, or email to rhowells@msla.state.md.us, or fax to 410-230-8727. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

14.01.11 Video Lottery Facility Operation Licenses

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.04 Qualification by the Commission.

A. — B. (text unchanged)

C. The Commission shall disqualify an applicant for an operation license on the basis of any of the following criteria:

(1) — (8) (text unchanged)

(9) The committing of an act by the applicant, or a person who is required to be qualified as a condition of a license, that would constitute an offense described under §C(5) of this regulation, even if the act has not been or may not be prosecuted under the criminal laws of the State; or

(10) Willful defiance by the applicant, or a person who is required to be qualified as a condition of a license, of a legislative investigatory body or other official investigatory body of the United States, or a jurisdiction within the United States, when the body is engaged in the investigation of crimes relating to gambling, official corruption, or organized crime activity; or

(11) Any other reason established in regulations of the Commission as a reason for denying a license].

D. — E. (text unchanged)

F. Interpretation of §C(9) of this Regulation.

(1) Act Committed in the State.

(a) An act that was committed in the State by an applicant or a person who is required to be qualified shall disqualify the applicant or person if the act would constitute a criminal offense involving moral turpitude or a gambling offense under the criminal laws of the State, and the act:

(i) Was not prosecuted under the criminal laws of the State; or

(ii) Cannot be prosecuted under the criminal laws of the State.

(b) If an act described in §F(1)(a) of this regulation was prosecuted but did not result in a conviction, it may be considered by the Commission in determining whether the applicant or person has established the required qualification criteria.

(2) Act Committed in Another Jurisdiction.

(a) Except for an act described in §F(1) of this regulation, an act that was committed by an applicant or a person who is required to be qualified shall disqualify the applicant or person if the act occurred within 10 years before the date of the application and would constitute a criminal offense involving moral turpitude or a gambling offense under the criminal laws of any jurisdiction, and the act:

(i) Was not prosecuted under the criminal laws of any jurisdiction; or

(ii) The act cannot be prosecuted under the criminal laws of any jurisdiction.

(b) If an act described in §F(2)(a) of this regulation was prosecuted but did not result in a conviction, it may be considered by the Commission in determining whether the applicant or person has established the required qualification criteria.

(3) The Commission must determine the existence of an act described in §F by a preponderance of the evidence.

14.01.18 Violations, Civil Penalties, and Sanctions

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.03 Violations.

A. — C. (text unchanged)

D. Noninterference.

(1) Unless allowed by the First Amendment of the Constitution of the United States, a licensee may not knowingly, directly or indirectly, interfere with, hinder, obstruct, impede, or take any action to delay the implementation or establishment of a video lottery facility.

(2) The restrictions specified in §D(1) of this regulation shall:

(a) Prohibit, as unlawful indirect conduct, activity:

(i) By an entity in which the licensee owns a beneficial or proprietary interest; or

(ii) By an entity in which an affiliate of the licensee owns a beneficial or propriety interest; and

(b) Be deemed to prohibit as unlawful, activity:

(i) By an entity in which the licensee owns a beneficial or proprietary interest; or

(ii) By an entity in which an affiliate of the licensee owns a beneficial or propriety interest.

(3) A knowing violation of §D(1) of this regulation may be used by the Commission to impose civil penalties or sanctions pursuant to Regulation .04 of this chapter.

STEPHEN L. MARTINO

Director

State Lottery Agency

Subtitle 01 STATE LOTTERY AGENCY

Notice of Proposed Action

[11-320-P]

The Maryland State Lottery Agency proposes to:

(1) Amend Regulation .08 under **COMAR 14.01.11 Video Lottery Operation License**;

(2) Amend Regulation .47 under **COMAR 14.01.14 Video Lottery Facility Minimum Internal Control Standards**; and

(3) Amend Regulations .03, .04, .08, and .09 and adopt new Regulation .11 under **COMAR 14.01.16 Voluntary Exclusion and Responsible Gaming**.

This action was considered at the Maryland State Lottery Commission open meeting held on September 22, 2011, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update regulations to incorporate provisions required for the current operation of the State's Video Lottery Terminal program and for the VLT facilities which are now opening and in the process of opening.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Robert W. Howells, Regulations Coordinator, Maryland State Lottery Agency, 1800 Washington Blvd, Suite 330, Baltimore, MD 21230, or call 410-230-8789, or email to rhoells@msla.state.md.us, or fax to 410-230-8727. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

14.01.11 Video Lottery Operation License

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.08 Predatory Marketing.

A. [Definition.

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

[(2) Term Defined.]

B. *Predatory Marketing Practice.*

(1) "Predatory marketing practice" means an advertisement or promotion of an activity, product or service related to play of a video lottery terminal that is:

(a) — (c) (text unchanged)

(2) "*Predatory marketing practice*" includes an advertisement or promotion of an activity, product, or service related to play of a video lottery terminal that:

(a) *Uses or depicts an individual who is, or appears to be, under the age of 21 years;*

(b) *By font, color, placement or any other means:*

(i) *Obscures or fails to disclose any material condition or limiting factor associated with the activity, product or service that is being marketed; or*

(ii) *Obscures the gambling assistance message required under COMAR 14.01.16.*

[B.] C. (text unchanged)

14.01.14 Video Lottery Facility Minimum Internal Control Standards

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.47 Signs.

A. (text unchanged)

B. A facility operator shall post signs containing the following [messages] *message* in a conspicuous location not more than 20 feet from each entrance and exit to the facility:

[(1) "Maryland law requires an individual to be 21 years of age or older in order to enter the gaming floor or play video lottery terminals";

(2)] "An individual, including an off duty officer or agent of a local, state, or federal law enforcement agency, may not possess a weapon or other device designed to be used to inflict pain or cause injury in (name of facility) without the prior written approval of the Maryland Lottery Commission"; and

(3) A sign to be specified by the Commission displaying a message and a contact number for use by problem gamblers].

C. A facility operator shall post signs [containing the messages in §B(1) and (3) of this regulation:

(1) Within 5 feet of an automated teller machine or ticket redemption unit; and

(2) At reasonable intervals at the cashiers' cage and any satellite cage] *required under COMAR 14.01.16.*

14.01.16 Voluntary Exclusion and Responsible Gaming

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.03 Application for Voluntary Exclusion.

A. An application for voluntary exclusion shall be available at each licensed video lottery facility [and on the Commission's website] *or upon request of Commission staff.*

B. An individual may request to be excluded from a video lottery facility in the State by[:

(1) Completing an application for voluntary exclusion on a form designated by the Commission; and

(2) Submitting] *submitting* [the] *a* completed application form *in person* to[:

(a) The] Commission *staff* [; or

(b) A facility operator].

[C. A facility operator that receives an application for voluntary exclusion shall immediately forward the application to the Commission.]

[D.] C.—[E.] D. (text unchanged)

.04 [Mandatory] Voluntary Surrender.

A. An individual who [receives notice of being] *applies to be* placed on the voluntary exclusion list [shall immediately surrender to the Commission all unredeemed items with monetary value that the individual has received from a facility] *may contractually agree to*].

B. For the items that the individual surrenders under §A of this regulation, the Commission shall[:

(1) Redeem or liquidate [the] *all unredeemed* items [at by the] *with monetary value that the individual has received from a facility* [from which they were received] and;

(2) [Transfer] *Designate that the proceeds of the redeemed items be contributed* to the Problem Gambling Fund established under State Government Article, §9-1A-33(b), Annotated Code of Maryland.

.08 Enforcement.

A.—B. (text unchanged)

C. A facility operator shall not:

(1)—(2) (text unchanged)

(3) Disclose information about individuals on the voluntary exclusion list beyond the disclosures that are authorized under Regulation [.05C] *.07C* of this chapter.

.09 Responsible Gaming Plan.

A. A facility shall establish a responsible gaming plan that sets forth the facility's plan for addressing problem gambling at the facility that shall include at least the following elements of the plan:

(1)—(6) (text unchanged)

(7) Means of educating players about:

(a)—(b) (text unchanged)

(c) Voluntary exclusion; [and]

(8) *Placement of responsible gambling awareness materials in the facility as required under regulation .11 of this chapter; and*

[(8)] (9) (text unchanged)

B.—D. (text unchanged)

.11 Requirements.

A. *In addition to the terms defined in COMAR 14.01.10 and 14.01.12, which have the same meaning in this chapter, in this regulation the following terms have the meaning indicated.*

(1) "*Advertisement*" means any material that is:

(a) *Disseminated to the public through broadcasting, publication, mail, or any other means; and*

(b) *Intended to encourage video lottery terminal play.*

(2) “Gambling assistance message” means the phrase “Remember it’s only a game. Please play responsibly. For confidential help or information at any time about gambling problems, please visit mdgamblinghelp.org or call 1-800-522-4700”;

(3) “Printed advertisement” means an advertisement that appears in or on a sign, direct mailing, poster, brochure, or other written material and is intended to encourage video lottery terminal play.

(4) “Responsible gambling awareness materials” means a sticker, brochure, wallet card, or other material that conveys only problem gambling resource information.

(5) “Underage warning message” means the phrase “No person under the age of 21 is permitted on the casino floor”.

B. A facility operator shall:

(1) Post signage provided by the Commission that prominently bears the gambling assistance message and the underage warning message at each entrance and exit of the gaming floor;

(2) Include the gambling assistance message on an advertisement that is intended to encourage video lottery terminal play at its facility;

(3) Ensure that a printed advertisement bears the gambling assistance message in a font height that is the greater of:

(a) The same size as the majority of the text used in the advertisement; or

(b) Two percent of the height or width of the size of the advertisement;

(4) Ensure that a billboard bearing a printed advertisement bears the gambling assistance message in a font height that is at least 5 percent of the height of the face of the billboard;

(5) Ensure that a television or video advertisement bears the gambling assistance message that and the gambling assistance message is:

(a) Displayed in a font that is at least two percent of the height of the image that will be displayed; and

(b) Visible for the entire time the television or video advertisement is displayed;

(6) Ensure that the gambling assistance message is printed on a paper product that is associated with player consumption of food or beverage if the paper product is:

(a) Special ordered; and

(b) Branded with the facility’s logo;

(7) Ensure that the gambling assistance message is printed on ticket stock; and

(8) Shall place in the facility responsible gambling awareness materials according to its responsible gaming plan required under Regulation .09 of this chapter.

STEPHEN L. MARTINO
Director
State Lottery Agency

Subtitle 09 WORKERS’ COMPENSATION COMMISSION

14.09.03 Guide of Medical and Surgical Fees

Authority: Labor and Employment Article, §§ 9-309, 9-663, and 9-731,
Annotated Code of Maryland

Notice of Proposed Action

[11-305-P]

The Workers’ Compensation Commission proposes to amend Regulations .01 and .04 and adopt new Regulation .09 under **COMAR 14.09.03 Guide of Medical and Surgical Fees**. This action was considered at an open meeting on August 11, 2011, notice of which was given by publication in 38:15 Md. R. (July 15, 2011) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish a uniform fee or pricing schedule for reimbursing prescription drugs required to treat an injured covered employee irrespective of the identity of the person or entity that dispenses the prescription drug. Specifically, the pharmaceutical fee schedule is designed to eliminate the existing disparity in reimbursement rates between physician-dispensed and pharmacy-dispensed prescriptions by establishing a single reimbursement rate tied to the average wholesale price (“AWP”). In a recent study, the Workers Compensation Research Institute found that “for several common physician-dispensed drugs, workers [in Maryland] received more prescriptions and pills than in other states where physician dispensing was not common. For these medications, physician-dispensers [in Maryland] were paid nearly double or triple the price paid to a pharmacy for the same prescription.” Workers Compensation Research Institute, Prescription Benchmarks for Maryland, at 11 (March 2010). “Maryland physicians were paid an average of \$2.59 per pill when they dispensed, while retail pharmacies were paid \$0.67 per pill.” *Id.*, at 14.

Under the proposed fee schedule, the reimbursement rate a dispenser will be reimbursed for a brand drug is calculated by subtracting 10% of the AWP from the AWP and adding a \$3 dispensing fee: $BR = AWP - (0.10 \times AWP) + 3$. Similarly, the reimbursement rate a dispenser will be reimbursed for a generic drug is calculated by subtracting 10% of the AWP from the AWP and adding a \$5 dispensing fee as follows: $GR = AWP - (0.10 \times GEAP) + 5$. For repackaged or compounded drugs, the AWP utilized in calculating the reimbursement shall be the AWP and corresponding NDC (National Drug Code) number, or AWP of the primary underlying active drug product used in the repackaging or compounding. This action further directs the Commission to designate a nationally recognized pharmaceutical publication as the source of AWP pricing and recognizes that a pharmacy and payer, or a pharmacy and a pharmacy benefits manager (“PBM”), may continue to enter into private contracts for pharmaceutical reimbursement.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action is anticipated to have a small beneficial economic impact on self-insured businesses, self-insured governmental entities and insurance carriers, entities that directly bear the cost of pharmaceutical reimbursement, who may realize cost savings resulting from decreased pharmaceutical expenditures. National and independent pharmacies may experience a slight increase in revenues based on the mandated dispensing fee. Dispensing physicians and repackagers that provide physicians with pharmaceuticals may experience a slight decrease in revenues when reimbursement is limited to the same amount as a pharmacy.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Workers' Compensation Commission	(E-)	Minimal
B. On other State agencies: Other State Agencies	(E-)	Minimal
C. On local governments: Local Governments	(E-)	Minimal
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Insurance Carriers	(+)	Significant drop in costs
E. On other industries or trade groups: (1) Maryland Self-Insured Businesses	(+)	Minimal
(2) National Pharmacies	(+)	Minimal
(3) Small Independent Pharmacies	(+)	Slight gain
(4) Dispensing Physicians	(-)	Unable to estimate
(5) Repackagers	(-)	Significant loss
(6) Maryland Businesses	(+)	Significant drop in rates

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

A. The State of Maryland and coordinate agencies may realize cost savings resulting from decreased pharmaceutical expenditures.

B. Self-insured employers including the State of Maryland, may realize cost savings resulting from decreased pharmaceutical expenditures.

C. Self-insured employers, including local governments and self-insured groups, may realize cost savings resulting from decreased pharmaceutical expenditures.

D. Insurance carriers are projected to realize significant cost savings resulting from decreased pharmaceutical expenditures.

E(1). Maryland businesses who are permitted to self-insure may realize cost savings resulting from decreased pharmaceutical expenditures.

E(2). National pharmacies may experience a slight increase in revenue based on dispensing fee.

E(3). Small independent pharmacies may experience a slight increase in revenue based on dispensing fee.

E(4). Dispensing physicians may experience a decrease in revenues when reimbursement is limited to the same amount as a pharmacy.

E(5). Repackagers may experience a decrease in revenues when reimbursement is limited to the same amount as a pharmacy.

E(6). Cost savings realized by insurance carriers stemming from contained pharmaceutical costs may result in reduced premiums for Maryland businesses.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Amy S. Lackington, Administrator, Workers' Compensation Commission, 10 E. Baltimore Street, Baltimore, MD 21202, or call 410-864-5300, or email to alackington@wcc.state.md.us, or fax to alackington@wcc.state.md.us. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(3) "Average wholesale price (AWP)" means a figure reported by a commercial publisher of drug pricing data, based on wholesale pricing information provided by drug manufacturers including repackagers and relabelers.

[(3)] (4) (text unchanged)

(5) "Compounded drug" means a prescription drug that has been prepared by a pharmacist who mixes or adjusts drug ingredients to customize a medication to meet a patient's individual needs.

[(4)] (6)—[(8)] (10) (text unchanged)

(11) "Food and Drug Administration (FDA)" is a federal agency housed within the United States Department of Health and Human Services and is charged with a myriad of tasks including protecting the public health by assuring that foods are safe, wholesome, sanitary and properly labeled and that human and veterinary drugs, and vaccines and other biological products and medical devices intended for human use are safe and effective.

[(9)] (12) (text unchanged)

(13) "Generic Equivalent Drug" or "generic drug" means a drug that is identical, or bioequivalent, to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use.

[(10)] (14)—[(15)] (19) (text unchanged)

(20) "National Council for Prescription Drug Programs ("NCPDP") is a non-profit, American National Standards Institute accredited, standards development organization which creates and promotes standards for electronic healthcare transactions.

(21) “National Drug Code (NDC)”.

(a) “National drug code” means the unique, three-segment number that identifies the labeler, product, and trade package size of human drugs.

(b) The NDC is comprised of three segments:

(i) The first segment, the labeler code, is assigned by the FDA and identifies the manufacturer (including repackagers or relabelers), or distributor of the drug;

(ii) The second segment, the product code, identifies a specific strength, dosage form, and formulation for a particular firm; and

(iii) The third segment, the package code, identifies package sizes and types.

(22) “Pharmacy Benefits Manager (PBM)” means a third party administrator of a prescription drug program that may process and pay prescription drug claims, contract with pharmacies, and negotiate discounts and rebates with drug manufacturers.

(23) Prescription Drug.

(a) “Prescription drug” means any drug required by federal law or regulation to be dispensed only by a prescription.

(b) “Prescription drug” includes:

(i) A biological product; and

(ii) Finished dosage forms and bulk drug substances subject to § 503(b) of the Federal Food, Drug, and Cosmetic Act.

(c) “Prescription drug” does not include blood and blood components intended for transfusion or biological products that are also medical devices.

(24) Repackage.

(a) “Repackage” means to repackage or otherwise change the container, wrapper, or labeling of a prescription drug to further the distribution of the prescription drug.

(b) “Repackage” does not include changes to a container, wrapper, or labeling of a prescription drug completed by the pharmacist responsible for dispensing the prescription drug to a patient.

[(16)] (25)—[(18)] (27) (text unchanged)

.04 MRA or Fee Not Established.

A. The Commission has not established a medical fee schedule for dental services, and durable medical equipment[, and pharmaceuticals].

B. For products and services for which the Commission has not established an MRA or medical fee schedule, including dental services, and durable medical equipment, [and pharmaceuticals,] the insurance carrier shall assign a relative value to the product or service.

C.—F. (text unchanged)

.09 Pharmaceutical Fee Schedule.

A. Scope.

(1) The pharmaceutical fee schedule applies to all prescription drugs required to treat an injured covered employee regardless of whether the prescription drugs are dispensed by a pharmacist, physician, dentist, or podiatrist.

(2) Unless a pharmacy and payer, or a pharmacy and a pharmacy benefits manager (PBM) with whom the payer contracts, have a contractual agreement governing pharmaceutical reimbursement, the pharmaceutical fee schedule shall govern the reimbursement of prescription drugs.

(3) Unless the pharmacy and payer, or a pharmacy and a PBM with whom the payer contracts, have a contractual agreement authorizing network discounts, network discounts do not apply.

(4) The calculation of the reimbursement rate under the pharmaceutical fee schedule does not apply to an injured worker’s direct purchase of prescription medications and does not limit an

injured worker’s right to reimbursement for actual out-of-pocket expenses.

B. Generic and Brand Name Drugs.

(1) A pharmacist may dispense generic equivalent drugs to injured covered employees in accordance with Health Occupations Article, §12-504(c), Annotated Code of Maryland.

(2) A physician, dentist, or podiatrist may dispense generic equivalent drugs to injured covered employees in accordance with Health Occupations Article, §12-102, Annotated Code of Maryland.

C. Rules Regarding Payment of Maximum Allowable Fee.

(1) A physician, dentist or podiatrist that dispenses prescription drugs shall be reimbursed based on the drug dispensed.

(2) A pharmacy or other entity for which a pharmacist dispenses prescription drugs shall be reimbursed based on the drug dispensed.

(3) In calculating the reimbursement rate for a prescription drug, the parties shall utilize the NDC number and the AWP for the dispensed drug set forth in the nationally-recognized pharmaceutical publication designated by the Commission.

(4) The Commission shall post on its website, under the fee schedule link of its homepage, the name of the nationally-recognized pharmaceutical publication designated by the Commission as the source of AWP pricing.

D. Determination of AWP.

(1) For prescription drugs, the average wholesale price is the AWP established by the manufacturer that produces the drug, as validated by the corresponding NDC number.

(2) In calculating the reimbursement rate for a prescription drug, the parties shall determine the AWP on the date the drug is dispensed based on the pricing published in the most recent issue, as updated quarterly, of the pharmaceutical publication designated by the Commission.

(3) For compounded drugs, the AWP utilized in calculating the reimbursement shall be the AWP, and corresponding NDC, of the primary underlying active drug product used in the compounding.

(4) For repackaged drugs, the AWP utilized in calculating the reimbursement shall be the AWP that corresponds to the NDC of the original drug manufacturer/labeler, and not the entity that repackaged the drug.

(5) If information concerning the original labeler of the underlying drug product is not provided or unknown, the payer may select the AWP, and corresponding NDC number, as published in the nationally-recognized pharmaceutical publication designated by the Commission, to use in calculating reimbursement for a repackaged or compounded drug.

(6) If the quantity (number of tablets or pills) of the dispensed prescription drug is different than the quantity published in the pharmaceutical publication, the parties shall adjust the AWP to reflect the ratio between the quantity of drug dispensed and quantity of drug published.

E. Calculation of Reimbursement.

(1) For generic prescription drugs dispensed after the effective date of this regulation, the parties shall calculate the generic reimbursement rate by subtracting 10 percent of the AWP from the AWP and adding a \$5 dispensing fee as follows: $GR = AWP - (0.10 \times AWP) + 5$.

(2) For brand name prescription drugs dispensed after the effective date of this regulation, the parties shall calculate the brand name reimbursement rate by subtracting 10 percent of the AWP from the AWP and adding a \$3 dispensing fee as follows: $BR = AWP - (0.10 \times AWP) + 3$.

F. Reimbursement Procedures.

(1) *Physicians, Dentists, and Podiatrists.* To obtain reimbursement under this section, a physician, dentist, or podiatrist shall:

(a) *Complete Form CMS-1500 in accordance with the written instructions posted on the Commission's website and in compliance with the reimbursement procedures governing reimbursement for medical services if prescription drugs were dispensed in conjunction with the provision of medical services;*

(b) *Include on the CMS-1500, in the description field, the relevant NDC as set forth above; and*

(c) *Submit the completed CMS-1500 to the employer or insurer.*

(2) *Pharmacies.* To obtain reimbursement under this section, a pharmacy shall submit to the employer or insurer, on the most current National Council for Prescription Drug programs (NCPDP) form, a complete electronic claim.

(3) *Time for Reimbursement.* Reimbursement by the employer or insurer shall be made within 45 days of the date on which the Form CMS-1500 or NCPDP form was received by the employer or insurer, unless the claim for pharmaceutical reimbursement is denied in full or in part under §5 of this regulation.

(4) *Untimely Reimbursement.* If an employer or insurer does not pay the fee calculated under this section or file a notice of denial of reimbursement, within 45 days of receipt of the CMS-1500 or NCPDP form, the Commission may assess a fine against the employer or its insurer, and award interest to the provider in accordance with Labor and Employment Article, §§9-663 and 9-664, Annotated Code of Maryland, and COMAR 14.09.01.22.

(5) *Denial of Reimbursement.*

(a) *If an employer or insurer denies, in full or in part, a claim for pharmaceutical reimbursement, the employer or insurer shall:*

(i) *Notify the provider of the reasons for the denial in writing; and*

(ii) *Mail the notice of denial of reimbursement to the provider within 45 days of the date on which Form CMS-1500 or NCPDP form was received.*

(b) *An employer or insurer who fails to file a notice of denial of reimbursement within 45 days of receipt of the CMS-1500 or NCPDP form waives the right to deny reimbursement, and is subject to the provisions of Labor and Employment Article, §§9-663 and 9-664, Annotated Code of Maryland, and COMAR 14.09.01.22.*

(6) *Objection to Denial of Reimbursement.*

(a) *A physician, dentist, or podiatrist may contest a partial or total denial of reimbursement, by submitting to the Commission the following items:*

(i) *A "Claim for Medical Services" on a form provided by the Commission;*

(ii) *The Form CMS-1500 that relates to the unpaid claims; and*

(iii) *All correspondence relating to the unpaid claim.*

(b) *A pharmacy may contest a partial or total denial of reimbursement, by submitting to the Commission the following items:*

(i) *A "Claim for Pharmaceutical Reimbursement" on a form provided by the Commission;*

(ii) *The information contained on the submitted NCPDP form; and*

(iii) *All correspondence relating to the unpaid claim.*

(c) *The Commission shall review the items submitted, without hearing, and issue its decision in an Order Nisi.*

(7) *Hearing on Objection to Commission's Order Nisi.*

(a) *The pharmacy, physician, dentist, podiatrist, employer, or insurer may contest the Commission's Order Nisi by filing with the*

Commission a controversy of medical claim, on a form provided by the Commission, within 30 days of the date of the Order Nisi.

(b) *The Commission shall schedule a hearing on the matter and render a decision.*

R. KARL AUMANN

Chairman

Workers' Compensation Commission

Title 29 DEPARTMENT OF STATE POLICE

Subtitle 02 MOTOR VEHICLES

29.02.01 Vehicle Inspection

Authority: Transportation Article, §23-105, Annotated Code of Maryland.

Notice of Proposed Action

[11-318-P]

The Secretary of State Police proposes to amend existing Regulations .01, .02, .11, and .14 under **COMAR 29.02.01 Vehicle Inspection**.

Statement of Purpose

The purpose of this action is to add the full name of the Department of State Police to Regulation .01; amend Regulation .02 to reflect that post-manufacture window tinting certifications will only be done by registered inspection mechanics; amend the criteria to certify vehicle glass as safe and the criteria associated with certifying post-manufacture window tinting under Regulation .11; and add to Regulation .14 the rear view mirror requirements for 1978 or newer motorcycles.

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 Thomas Vondersmith, Administrator, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, or call 410-653-4253, or email to tvondersmith@mdsp.org, or fax to 410-653-4250. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

.01 Certification of Safety Equipment Repair Orders.

Visual Inspection and Certification of Safety Equipment Repair Orders. In accordance with [the] Transportation Article, §23-105, Annotated Code of Maryland, the Automotive Safety Enforcement Division of the *Department of State Police* has established the following procedures for visual inspection and certification of certain equipment and mechanism defects on certain types of State-registered motor vehicles or trailers by the State Police and police departments.

.02 Defects Which May Be Certified by Visual Inspection.

A.—B. (text unchanged)

C. Certification of [window tinting shall only be done by the Department of State Police from 8:30 a.m. to 4:30 p.m.] *Post-Manufacture Window Tinting.*

(1) *Except as noted in §C(2) of this regulation, the Department of State Police will no longer certify post-manufacture window tinting. The certification of post-manufacture window tinting shall only be done at authorized inspection stations for that class of vehicle by a registered inspection mechanic.*

(2) *The inspection and certification of post-manufacture window tinting involving a medical exemption shall be referred to the Automotive Safety Enforcement Division of the Department of State Police.*

.11 Defect 61Glass (Not Applicable to Trailers).

A. Vehicle Glazing Windshield, Side and Rear Windows.

(1) All glazing material shall be checked for the manufacturer's trademark and the words "American Standard" or the letters "AS" followed by a number indicating the positions in the vehicle in which the material may be used. Reference [American Standard Safety Code 226.1-150, Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways.] *American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways — Safety Standard, Standard ANSI/SAE Z26.1-1996, Approved by American National Standards Institute (August 11, 1997).*

(2) (text unchanged)

(3) [If there is any question concerning windshield glass, the Motor Vehicle Administration or the State Police shall be contacted for clarification.] *Any questions regarding glazing shall be referred to the Automotive Safety Enforcement Division of the Department of State Police.*

B. [Windshield Damage] Definitions.

(1)—(2) (text unchanged)

(3) "Critical area" means the normal windshield wiper sweep, except the area obscured by the hood, fenders, or rearview mirror.

(4) "Discoloration" means a condition which impairs the transparency of the glazing.

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

[(5)] (6) "Normal windshield wiper sweep" means the area of the windshield cleaned by the windshield wiper, excluding the return position on both passenger's and driver's sides.

C. Windshield — Driver's Side. Do not certify if:

[(1)] Cloudiness exceeds 1 inch inward from all edges, or if the windshield is divided, cloudiness exceeds 1/2 inch from the center divider;

(2) The acute area contains any one crack, nick, pit, chip, star break, half moon or bull's-eye fracture in excess of 1/4 inch diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moon, or bull's-eye fractures which cumulatively exceed 1/4 inch in diameter or length, or any permanent condition which significantly interferes with the vision of the driver;

(3) The critical area contains wiper blade scratches, except those at the extreme top or bottom of the wiper sweep, which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon, or bull's-eye fracture in excess of 1/2 inch diameter or length, or any combination of individual cracks, nicks, pits, star breaks, half moons, or bull's-eye fractures which cumulatively exceed 1/2 inch in diameter or length except in the permitted cloudy area;

(4) The noncritical area contains any cracks over 4 inches extending from the outer frame on flat or curved windshields or over 8 inches on wrap-around windshields, or any star break, stone nick,

pit, chip, half moon, or bull's-eye fracture in excess of 3/4 inch diameter except in the allowed cloudy areas.]

(1) *Cloudiness exceeds 1 inch from the top or side or 1 inch into the critical area from the bottom or, if the windshield is divided, exceeds 1/2 inch from the center divider;*

(2) *The acute area contains any one crack, nick, pit, chip, star break, half moon, or bull's-eye fracture in excess of 1/4 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons, or bull's-eye fractures which cumulatively exceed 1/4 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision;*

(3) *The critical area contains wiper blade scratches which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon, or bull's-eye fracture in excess of 1/2 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons, or bull's-eye fractures which cumulatively exceed 1/2 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area; or*

(4) *The noncritical area contains any intersecting cracks or any one crack or combination of individual cracks extending inward more than 2 inches separately or cumulatively from the outer frame on flat or curved windshields or over 4 inches on wraparound windshields, or any one crack, nick, pit, chip, star break, half moon, or bull's-eye fracture in excess of 3/4 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons, or bull's-eye fractures which cumulatively exceed 3/4 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.*

D. Windshield — Passenger's Side. Do not certify if:

[(1)] Cloudiness exceeds 2 inches inward from any edge;

(2) The critical area contains wiper blade scratches severe enough to distort vision, or any crack, stone nick, pit, chip, half moon, or bull's-eye fracture in excess of 1/2 inch diameter;

(3) The noncritical area contains any cracks over 11 inches extending from the outer frame on flat or curved windshields or over 12 inches on wrap-around windshields, or any star break, stone nick, pit, chip, half moon, or bull's-eye fracture in excess of 1-1/2 inches diameter except in the allowed cloudy areas.]

(1) *Cloudiness exceeds 2 inches from the top or side or extends more than 2 inches into the critical area from the bottom or, if the windshield is divided, exceeds 1/2 inch from the center divider;*

(2) *The critical area contains wiper blade scratches which are severe enough to distort vision, or any one crack, nick, pit, chip, star break, half moon, or bull's-eye fracture in excess of 1/2 inch in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons, or bull's-eye fractures which cumulatively exceed 1/2 inch in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area;*

(3) *The noncritical area contains any intersecting cracks or any one crack or combination of individual cracks extending inward more than 4 inches separately or cumulatively from the outer frame on flat or curved windshields or over 6 inches on wraparound windshields, or any one crack, nick, pit, chip, star break, half moon, or bull's-eye fracture in excess of 1-1/2 inches in diameter or length, or any combination of individual cracks, nicks, pits, chips, star breaks, half moons, or bull's-eye fractures which cumulatively exceed 1-1/2 inches in diameter or length, or any permanent condition which significantly interferes with the driver's vision except in the permitted cloudy area.*

E. The windshield and all windows shall be inspected for cracks, sharp edges, obstructions, discoloration, *modification*, unauthorized material, proper glazing material, and conditions which interfere with vision. Do not certify if:

(1) There are breaks, cracks, discolorations, *modifications*, or scratches in the windshield (see Regulation .22, diagram 7);

(2) The window on the driver's side of the vehicle [is inoperative] *does not open and close as designed*;

(3) Any window shows sharp edges, is badly scratched, broken, discolored, *modified*, has been replaced with [nontransparent] *other than proper safety glazing material*, or shows conditions which interfere with vision;

(4) Posters, stickers, or other nontransparent materials on the windshield or other windows of the vehicle [interfere with the driver's view;] *are in violation of the following*:

(a) *Except as provided in §E(4)(b) of this regulation, a vehicle may not be equipped with any sign, poster, card, sticker, or other nontransparent material on the windshield, side wings, or side or rear windows of the vehicle.*

(b) *This does not apply to:*

(i) *Materials placed on the windshield or rear window, within a 7-inch square area in the lower corner, or on the side windows of the vehicle to the rear of the driver, if the materials are placed so as not to interfere with the driver's clear view of traffic;*

(ii) *Direction, destination, or termini signs on any passenger common carrier motor vehicle;*

(iii) *An electronic toll collection device placed in the windshield of a vehicle in accordance with guidelines established by the Maryland Transportation Authority; or*

(iv) *Security stickers authorized by a federal or State government agency that measure not more than 2 inches high and not more than 4 inches long, and are placed at the upper edge of the center of the windshield;*

(c) *All vehicles equipped with permitted signs, posters, cards, stickers or other nontransparent materials on windows to the rear of the driver must be equipped with an outside rearview mirror on each side; or*

(5) (text unchanged)

F. Tinting.

[(1) Certification of window tinting shall only be done by the Automotive Safety Enforcement Division of the Department of State Police. Window tinting is allowed on any window of a passenger car, convertible, station wagon, multipurpose passenger vehicle (limousine to be treated as a multipurpose passenger vehicle), any type truck, truck tractor, bus, and van except on the windshield as noted in §F(2)(d) of this regulation.

(2) Do not certify if:

(a) Light transmittance is not at least 35 percent on all windows including side wings;

(b) An adequate label provided by the tinting material manufacturer, 1/2 inch by 1-1/2 inches containing the manufacturer's name and percentage of light transmittances of the tinting material, is not permanently installed between the tint and glass, or a label provided by the Automotive Safety Enforcement Division of the Department of State Police, 1/2 inch by 1-1/2 inches containing the Maryland State Police shield, Motor Vehicle Administration logo, 35 percent and 040191, is not permanently installed on the tint;

(c) The vehicle is not equipped with an outside mirror on each side;

(d) Tint is below the AS1 line or more than 5 inches below the top of the windshield, whichever is less; or

(e) Tint is reflective, red, yellow, or amber in color.

(3) A label shall be placed in the top left corner of the windshield, lower front corner of all side windows, including side

wings and lower left of rear window when all positions are viewed from the outside, that is:

(a) Provided by the tinting material manufacturer and contains the manufacturer's name and percentage of light transmittances of the tinting material; or

(b) Provided by the Department of State Police Automotive Safety Enforcement Division.

(4) Any color or type of nonreflective material may be installed on any type truck, truck tractor, bus, van, or multipurpose vehicle (limousine to be treated as a multipurpose vehicle), except on the windshield, the driver's side window, and the front passenger side window.

G. Window Modification.

(1) Window modification is allowed except to the windshield or side window to the immediate right and left of the driver.

(2) Do not certify if:

(a) Other windows have been modified and the vehicle is not equipped with an outside mirror on each side; or

(b) A window has been modified by temporary means.]

(1) *Except as noted in §F(2) of this regulation, the certification of post-manufacture window tinting shall only be performed at authorized inspection stations for that class of vehicle by a registered inspection mechanic.*

(2) *The inspection and certification of post-manufacture window tinting involving a medical exemption shall be referred to the Automotive Safety Enforcement Division of the Department of State Police. Regulations governing the application of post-manufacture window tinting on vehicles and the requirements for a medical exemption are listed in §F(3)—(7) of this regulation.*

(3) *Post-manufacture window tint is acceptable on the following vehicles in the listed locations:*

(a) *Passenger cars, convertibles, and station wagons:*

(i) *All side and rear windows of these vehicles are regulated windows requiring at least 35 percent light transmittance after the application of post-manufacture window tint and the vehicle is equipped with an outside rearview mirror on each side.*

(ii) *Post-manufacture window tint may not be applied to the windshield below the AS1 line or below 5 inches from the top of the windshield, whichever is less.*

(b) *Light trucks, vans, and multipurpose passenger vehicles except multipurpose passenger vehicles noted in §F(4) of this regulation:*

(i) *All side windows of these vehicles to the immediate right and left of the driver are regulated windows requiring at least 35 percent light transmittance after the application of post-manufacture window tint.*

(ii) *Post-manufacture window tint may not be applied to the windshield below the AS1 line or below 5 inches from the top of the windshield, whichever is less.*

(iii) *Windows of these vehicles to the rear of the driver may be tinted with post-manufacture window tint to any degree of darkness.*

(iv) *When equipped with permitted post-manufacture window tint on any side or rear window, the vehicle must be equipped with an outside rearview mirror on each side.*

(4) *Post-manufacture window tint is prohibited on the following vehicles in the listed locations:*

(a) *The application of post-manufacture window tint to the windshield or windows to the immediate right and left of the driver is prohibited on the following vehicles:*

(i) *Trucks over 10,000 pounds GVWR, truck tractors, and buses;*

(ii) *Multipurpose passenger vehicles which have a seating capacity for 16 or more passengers including the driver, or were previously registered as a school vehicle or a passenger bus,*

and used to primarily transport passengers, or exceed 10,000 pounds GVWR and are used in the furtherance of a commercial enterprise; and

(iii) Limousines.

(b) Windows of these vehicles to the rear of the driver may be tinted with post-manufacture window tint to any degree of darkness provided the vehicle is equipped with an outside rearview mirror on each side.

(5) The application of post-manufacture window tint is prohibited on all windows and the windshield of a school vehicle.

(6) The following post-manufacture window tint is prohibited on any window or windshield of any vehicle:

(a) A mirrored, one-way vision, or sparkling effect tint;

(b) A red, yellow, or amber color tint; or

(c) Changes to a red, yellow, or amber color tint.

(7) Medical Exemption. Transportation Article, §22-406, Annotated Code of Maryland, provides an exemption for a person who must be protected from the sun for medical reasons from having a light transmittance of at least 35 percent on regulated windows equipped with post-manufacture window tint. The law requires the owner to have, in the vehicle at the time the vehicle is stopped by a police officer, a written certification that details the owner's medical need for tinted windows, from a physician licensed to practice medicine in the State. A vehicle owner whose vehicle is undergoing an inspection, or has been issued a safety equipment repair order for defect #61 "TINT", and indicates to the authorized inspection station their compliance with a medical exemption, shall be referred to the Automotive Safety Enforcement Division of the Department of State Police for examination of the vehicle owner's medical documentation and the vehicle's post-manufacture window tint. If the owner meets the requirements specified in Transportation Article, §22-406, Annotated Code of Maryland, for the medical exemption and the vehicle is compliant with all post-manufacture window tinting regulations in this chapter, excluding the light transmittance requirement of regulated windows equipped with post-manufacture window tint, the Division shall be authorized to certify the safety equipment repair order for defect #61 "TINT". A medical exemption is not applicable to vehicles listed in §F(4) and (5) of this regulation.

.14 Defect 68—Rearview Mirror (Not Applicable to Trailers).

A.—C. (text unchanged)

D. Do not certify a motorcycle if it is not equipped with two rearview mirrors, one on left and one on right handlebar, with a reflective area of at least 7 square inches each. *Mirrors on 1978 or newer motorcycles with a plane surface shall have at least 12.5 square inches of reflective surface or, if convex, at least 10 square inches of reflective surface. The mirrors shall be securely mounted, regular in shape (circular, oval, rectangular, or square) and may not contain sharp edges, projections, or irregular indents capable of producing injury.*

MARCUS L. BROWN
Secretary of State Police

Title 33 STATE BOARD OF ELECTIONS

Notice of Proposed Action

[11-315-P]

The State Board of Elections proposes to:

(1) Amend Regulation .01 under **COMAR 33.01.01 Definitions;**

(2) Adopt new Regulations .01—.04 under a new chapter, **COMAR 33.07.07 Challengers or Watchers;**

(3) Recodify existing **COMAR 33.07.07 Challenging Voters** to be **COMAR 33.07.08 Challenging Voters;**

(4) Amend Regulations .01 and .03 under **COMAR 33.07.08 Challenging Voters;**

(5) Recodify existing **COMAR 33.07.08 Electioneering; Exit Polling** to be **COMAR 33.07.09 Electioneering; Exit Polling;** and

(6) Adopt new Regulation .08, amend and recodify existing Regulation .08 to be Regulation .09, and recodify existing Regulations .09 and .10 to be Regulations .10 and .11 under **COMAR 33.17.06 Early Voting Activities.**

This action was considered at its September 22, 2011, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to define certain terms, establish requirements for certain entities entitled to designate challengers or watchers, and specify certain permissive and prohibited activities of certain individuals.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis MD 21401-0486, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

Subtitle 01 DEFINITIONS; GENERAL PROVISIONS

31.01.01 Definitions

Authority: Election Law Article, §§2-102(b)(4), Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) “Accredited challenger or watcher” means an individual who:

- (a) Is a Maryland registered voter;
- (b) Has been appointed by a designating entity to serve as a challenger or watcher; and

(c) Has a certificate signed by a designating entity.

[(2)] (3)—[(9)] (10) (text unchanged)

(11) “Designating entity” means:

(a) A candidate, including a write-in candidate who has filed a Certificate of Candidacy under Election Law Article, §5-301, Annotated Code of Maryland;

(b) A political party;

(c) A group of voters that:

(i) Is supporting or opposing a candidate, principle, or proposition on the ballot; and

(ii) Has formed a political committee under Election Law Article, §13-207, Annotated Code of Maryland;

(d) The State Board for any polling place in the State; or

(e) A local board for any polling places within its jurisdiction.

[(10)] (12)—[(17)] (19) (text unchanged)

(20) “Non-accredited challenger or watcher” means an individual who wishes to challenge the right to vote of any individual but has not been appointed by a designating entity.

[(18)] (21)—[(31)] (34) (text unchanged)

Subtitle 07 ELECTION DAY ACTIVITIES

31.07.07 Challengers or Watchers

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 10-303, and 10-311, Annotated Code of Maryland

.01 Designating Entities.

A. State Board as Designating Entity. The State Board may:

(1) Designate an individual as an accredited challenger or watcher if the individual submits a written request that includes polling places in more than one county; and

(2) Require the individual to attend a training session, read any State Board issued information, or both.

B. Local Board as Designating Entity. A local board may:

(1) Designate an individual as an accredited challenger or watcher if the individual submits a written request that includes polling places in its jurisdiction; and

(2) Require the individual to attend a training session, read any State Board issued information, or both.

C. Other Designating Entities. If a designating entity intends to distribute instructions to the individual or individuals it designates, the designating entity:

(1) May not provide information that conflicts with the Election Law Article, Annotated Code of Maryland, Title 33 of COMAR, and other State Board issued information; and

(2) May submit a written draft of the instructions to the State Board for review.

D. Certificate.

(1) A designating entity shall provide each challenger or watcher it designates with a signed certificate, in the form prescribed by the State Board.

(2) The certificate shall be signed by:

(a) If a candidate is the designating entity, the candidate;

(b) If a political party is the designating entity, an officer, executive director of the entity, or other person authorized to sign on behalf of the entity; or

(c) If a group of voters is the designating entity, the chairman or treasurer of the political committee.

(3) An original signature on the certificate is not required.

(4) A designating entity shall provide the local board with:

(a) Copies of completed certificates; or

(b) A list of individuals designated as challengers and watchers.

.02 Permissive Activities of Accredited Challengers or Watchers.

A. In General. An accredited challenger or watcher may perform the activities defined in Election Law Article, §10-311(b), Annotated Code of Maryland.

B. Before Voting.

(1) Except as provided in §B(2) of this regulation, before voting begins on election day, an accredited challenger or watcher may observe the election judges setting up the voting room, including:

(a) Observing the election judges print voting system reports and review these reports;

(b) Verifying the number of voters who have been checked-in and the number of votes that have been cast; and

(c) Verifying that required security seals have been applied on the voting system.

(2) An election judge shall not permit an accredited challenger or watcher entry to the polling place during the 30 minutes immediately before the opening of the polls.

C. During Voting Hours.

(1) (a) The Chief Judges shall determine the location of accredited challengers or watchers in the voting room.

(b) When determining the location of the accredited challengers and watcher in the voting room, the Chief Judges shall ensure:

(i) The accredited challenger or watcher may see and hear each person as the person offers to vote; and

(ii) The efficient management of the voting room.

(c) The Chief Judges are not required to locate the accredited challengers and watchers directly behind the check-in table or in a position where they can directly view the electronic pollbook.

(2) During voting hours, an accredited challenger or watcher shall, accompanied by a Chief Judge and at a convenient time for the election judges:

(a) Verify the security seals on voting units to which voters have not been assigned; and

(b) Verify the number of voters who have been checked in to vote.

D. After Voting.

(1) To observe the post-voting hours procedures, an accredited challenger or watcher shall be in the polling place before voting hours end.

(2) During this time, an accredited challenger or watcher may:

(a) Observe the election judges print voting system reports and review these reports;

(b) Verify that required security seals have been applied on the voting system; and

(c) Observe the transmission by modem of election results if the local board has instructed the Chief Judges to perform this task.

.03 Prohibited Acts of Challengers or Watchers.

A. Prohibited Acts. A challenger or watcher may not:

(1) Perform or attempt to perform the activities defined in Election Law Article, §10-311(d), Annotated Code of Maryland;

(2) Bring into a polling place any device listed in COMAR 33.07.04.02 or political materials, newspapers, or news magazines;

(3) Wear clothing or accessories with a political message;

(4) Act or attempt to act as an advocate for one or more voters;

(5) *Exercise or attempt to exercise political influence while in a polling place;*

(6) *Communicate or attempt to communicate with a voter while inside a polling place or within the electioneering boundary defined in Election Law Article, §16-206(b), Annotated Code of Maryland; or*

(7) *Challenge or attempt to challenge an act of an election judge.*

B. Removal. A challenger or watcher may be removed by an election judge if the challenger or watcher is interfering with the work of the election judges.

.04 Election Judges.

Election judges shall:

A. Protect a challenger or watcher in the exercise of the rights of a challenger or watcher; and

B. If an accredited challenger or watcher arrives at least 30 minutes before a polling place opens, admit the accredited challenger or watcher upon arrival.

Subtitle 07 ELECTION DAY ACTIVITIES

[33.07.07] 33.07.08 Challenging Voters

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 10-312, Annotated Code of Maryland

.01 [Challenger/Watcher To Be Registered in State.] Scope.

[An individual may serve as an accredited challenger or watcher only if that individual:

A. Is a Maryland registered voter; and

B. Has been designated as a challenger or watcher by:

(1) A candidate,

(2) A political party,

(3) A group of voters supporting or opposing a candidate, principle, or proposition on the ballot,

(4) The State Board, or

(5) For polling places within its jurisdiction, a local board.]

This chapter applies to accredited and non-accredited challengers or watchers.

.03 Challenge Record.

A. (text unchanged)

B. Contents. The form shall contain appropriate places for:

(1) Each of the challenger and the challenged voter to sign an oath or affirmation, under penalties of perjury, that the individual's responses and statements [will be the truth] *are true*;

(2)—(3) (text unchanged)

Subtitle 17 EARLY VOTING

33.17.06 Early Voting Activities

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 10-303, 10-311, and 10-312, Annotated Code of Maryland

.08 Challengers and Watchers.

A. Designating Entities. The procedures specified in COMAR 33.07.07.01 apply to designating entities appointing challengers or watchers for early voting.

B. Permissive Activities of Accredited Challengers or Watchers . An accredited challenger or watcher may perform the activities defined in Election Law Article, §10-311(b), Annotated Code of Maryland, and COMAR 33.07.07.02.

C. Prohibited Acts of Challengers or Watchers. The prohibited acts and removal process specified in COMAR 33.07.07.03 apply during early voting.

D. Election Judges. The requirements for election judges specified in COMAR 33.07.07.04 apply during early voting.

[.08].09 Challenging Voters.

A. [Challenger/Watcher to be Registered in State. An individual may serve as an accredited challenger or watcher at an early voting center only if that individual:

(1) Is a Maryland registered voter; and

(2) Has been designated as a challenger or watcher by:

(a) A candidate;

(b) A political party;

(c) A group of voters supporting or opposing a candidate, principle, or proposition on the ballot;

(d) The State Board; or

(e) For early voting centers within its jurisdiction, a local board.] *The process specified in COMAR 33.07.08 for challenging voters applies during early voting.*

B.—C. (text unchanged)

LINDA H. LAMONE
State Administrator of Elections

Subtitle 11 ABSENTEE BALLOTS

Notice of Proposed Action

[11-314-P]

The State Board of Elections proposes to amend:

(1) Regulation .08 under **COMAR 33.11.03 Issuance and Return**; and

(2) Regulation .03 under **COMAR 33.11.04 Canvass of Ballots — Procedures**.

This action was considered at the State Board's September 22, 2011, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend the requirements for an absentee ballot to be considered timely and the date when certain canvasses may be conducted.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis, MD 21401-0486, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

33.11.03 Issuance and Return

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

.08 When Ballots Are Timely.

A. (text unchanged)

B. In General. An absentee ballot is considered to have been timely received only if:

(1) (text unchanged)

(2) The ballot:

(a) Is received by the local board office from the United States Postal Service or a private mail carrier:

(i) On or before 10 a.m. on the second Wednesday after a primary election preceding a [gubernatorial election] *Baltimore City General Election*; or

(ii) On or before 10 a.m. on the second Friday after [a general or special election or in a primary election preceding a presidential] *any other* election; and

(b) (text unchanged)

C. (text unchanged)

33.11.04 Canvass of Ballots — Procedures

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

.03 Start of Canvass.

A. When Required.

(1) (text unchanged)

(2) The board shall start the second absentee ballot canvass at:

(a) 10 a.m. on the second Wednesday after a [Gubernatorial] *Baltimore City Primary Election*; or

(b) (text unchanged)

B. (text unchanged)

LINDA H. LAMONE
State Administrator of Elections

Subtitle 13 CAMPAIGN FINANCING

Notice of Proposed Action

[11-316-P]

The State Board of Elections proposes to:

(1) Amend Regulations .03 and .05 under **COMAR 33.13.06 Campaign Accounts**; and

(2) Adopt new Regulations .01 and .02 under a new chapter, **COMAR 33.13.10 Prohibitions**.

This action was considered at the State Board's September 22, 2011, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to define acceptable investment accounts for political committees and define and prohibit certain entities from making contributions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis, MD 21401-0486, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through December 5, 2011. A public hearing has not been scheduled.

33.13.06 Campaign Accounts

Authority: Election Law Article, §§ 2-102(b)(4) and 13-220, Annotated Code of Maryland

.03 Required Elements.

A. (text unchanged)

B. Other Permissible Accounts or Investments. A political committee may, in addition to [a] *the* checking account *required in §A of this regulation*, establish additional [campaign] accounts [at financial institutions only if the accounts are] *or temporarily invest campaign funds as provided in this section. Permissible accounts or investments are limited to:*

(1) Insured by the Federal Deposit Insurance Corporation; [and]

(2) [Accessible at all times without penalty.] *Certificates of deposit with a stated rate of interest and a term of 3 years or less;*

(3) *Obligations of the U.S. Government or its agencies with maturities of 3 years or less; and*

(4) *Cash management accounts, money market accounts, or money market mutual funds that are offered and available to the general public.*

C. *Use of Other Permissible Accounts or Investments. Any funds transferred from the registered campaign account into an FDIC-insured deposit account or temporary investment vehicle shall be returned to the registered campaign account before such funds may be used to make expenditures.*

[C.] D — [D.] E. (text unchanged)

.05 Prohibitions.

A political committee may not:

A. (text unchanged)

B. Invest campaign funds in[:

(1) A certificate of deposit;

(2) Commercial paper; or

(3) Stocks, mutual funds, or] any [other] investment *vehicles* [involving buying or selling of stocks, bonds, or securities, including mortgage backed securities] *other than those listed in Regulation .03B of this chapter.*

C. (text unchanged)

33.13.10 Prohibitions

Authority: Election Law Article, §§2-102(b)(4) and 13-225, Annotated Code of Maryland

.01 Definitions.

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

B. *Terms Defined.*

(1) *"Contribution" has the meaning stated in Election Law Article, §1-101, Annotated Code of Maryland.*

(2) *"Person" has the meaning stated COMAR 33.01.01.01B.*

.02 Prohibited Contributions.

A person may not make any contribution through use of a legal entity that was not created for a bona fide purpose unrelated to contributions. This prohibition does not apply to contributions made through a political committee registered under Election Law Article, Title 13, Annotated Code of Maryland.

LINDA H. LAMONE
State Administrator of Elections

Special Documents

DEPARTMENT OF THE ENVIRONMENT

Proposed Calendar Year 2012 Standard Permit Application Turnaround Times

As required by Environment Article, §1-607(A)(2), Annotated Code of Maryland, the Maryland Department of the Environment (MDE) is seeking comment on the proposed standard turnaround times for all types of permit applications. For further information, please contact Andrew Gosden in MDE's MDEStat Office at 410-537-4158.

Details about the proposed changes and the full list of proposed turnaround times are available on MDE's website, www.mde.state.md.us.

MDE reviews and adjusts these turnaround times annually to give permit applicants current information regarding the processing time.

Please note the following important points about these standard times:

(1) These standards refer to the time between MDE's receipt of a complete permit application and MDE's issuance or denial of the permit, excluding delays caused by factors beyond MDE's control. Many applications are incomplete when they first arrive at MDE. The appropriate MDE permit writer can provide guidance on how to ensure that an application is complete when submitted.

(2) In most permitting programs, each application has unique characteristics that influence its processing time. For each program listed, the standard time represents the time in which 90% of applications can be processed. Many applications will require less time; a few will require more time due to unusual circumstances.

Paper copies of the proposed times are available on request. Requests, comments, and questions can be directed to Mr. Andrew Gosden at agosden@mde.state.md.us; by phone at 410-537-4158; via postal mail to MDE/OS, 1800 Washington Boulevard, Suite 745, Baltimore, MD 21230-1720; or by fax to 410-537-3888. Comments will be accepted until December 4, 2011.

[11-23-52]

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: August 1, 2011, through September 30, 2011.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR §806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR §806.22(f):

Talisman Energy USA Inc., Pad ID: 05 098 Younger, ABR-201108001, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

Talisman Energy USA Inc., Pad ID: 02 010 DCNR 587, ABR-201108002, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

Talisman Energy USA Inc., Pad ID: 03 113 Vanblarcom, ABR-201108003, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

Talisman Energy USA Inc., Pad ID: 03 110 Barlow, ABR-201108004, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

Cabot Oil & Gas Corporation, Pad ID: Mogridge P1, ABR-201108005, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 1, 2011.

EXCO Resources, (PA), LLC, Pad ID: Lamborne Pad 195, ABR-201108006, Jordan Township, Clearfield County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 1, 2011.

Southwestern Energy Production Company, Pad ID: Cramer Pad, ABR-201108007, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 4, 2011.

Seneca Resources Corporation, Pad ID: Rich Valley Pad B, ABR-201108008, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 8, 2011.

Talisman Energy USA Inc., Pad ID: 03 111 Stephani, ABR-201108009, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 8, 2011.

Talisman Energy USA Inc., Pad ID: 05 229 Acres, ABR-201108010, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 8, 2011.

EXCO Resources (PA), LLC, Pad ID: Remley Drilling Pad #1, ABR-201012035.1, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 8, 2011.

EXCO Resources (PA), LLC, Pad ID: Hess Drilling Pad #1, ABR-201012037.1, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 8, 2011.

Southwestern Energy Production Company, Pad ID: Shively Pad, ABR-201108011, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 8, 2011.

- Carrizo (Marcellus), LLC, Pad ID: Frystak Central Pad, ABR-201108012, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: August 8, 2011.
- Chesapeake Appalachia, LLC, Pad ID: CSB, ABR-201108013, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date : August 8, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Joe, ABR-201108014, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date : August 8, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Rock Ridge, ABR-201108015, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 8, 2011.
- J-W Operating Company, Pad ID: Pardee-F, ABR-201108016, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 9, 2011.
- Anadarko E&P Company LP, Pad ID: COP Tract 356 Pad G, ABR-201108017, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 10, 2011.
- Chief Oil & Gas LLC, Pad ID: Savage Drilling Pad #1, ABR-20118018, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: August 10, 2011.
- EXCO Resources (PA), LLC, Pad ID: Sterner Drilling Pad #1, ABR-201012036.1, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 12, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Colcam, ABR-201108019, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 12, 2011.
- Southwestern Energy Production Company, Pad ID: Roman Pad, ABR-201108020, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 15, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Mad Dog, ABR-201108021, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 15, 2011.
- Southwestern Energy Production Company, Pad ID: Alexander Pad, ABR-201108022, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 15, 2011.
- Southwestern Energy Production Company, Pad ID: Grizzanti Pad, ABR-201108023, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 15, 2011.
- EXCO Resources (PA), LLC, Pad ID: Marquardt Drilling Pad #1, ABR-201008008.1, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 15, 2011.
- EXCO Resources (PA), LLC, Pad ID: Quava Drilling Pad #1, ABR-201009068.1, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 15, 2011.
- EXCO Resources (PA), LLC, Pad ID: Wistar-Shaffer Tracts Drilling Pad #1, ABR-201009071.1, Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 15, 2011.
- EQT Production Company, Pad ID: Phoenix I, ABR-201108024, Duncan Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 16, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 595 Pad E 70V, ABR-201108025, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2011.
- Talisman Energy USA Inc., Pad ID: 05 008 Michnich, ABR-201108026, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2011.
- Talisman Energy USA Inc., Pad ID: 05 057 Michnich, ABR-201108027, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2011.
- Talisman Energy USA Inc., Pad ID: 05 257 Lombardo J, ABR-201108028, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2011.
- Southwestern Energy Production Company, Pad ID: Zeffer Pad, ABR-201108029, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 19, 2011.
- Southwestern Energy Production Company, Pad ID: Scott Pad, ABR-201108030, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 19, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Alexander, ABR-201108031, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 19, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 100 Pad G, ABR-201108032, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2011.
- Seneca Resources Corporation, Pad ID: DCNR 595 Pad L, ABR-201108033, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Tyler, ABR-201108034, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Hillis, ABR-201108035, Herrick and Wyalusing Townships, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Susan, ABR-201108036, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2011.
- Talisman Energy USA Inc., Pad ID: 03 074 Haralambous, ABR-201108037, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 24, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Adams, ABR-201108038, Windham Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 24, 2011.
- Talisman Energy USA Inc., Pad ID: 02 105 Berguson J, ABR-201108039, Hamilton Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 25, 2011.
- XTO Energy, Pad ID: PA Tract Unit I, ABR-201108040, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 26, 2011.
- XTO Energy, Pad ID: PA Tract Unit E, ABR-201108041, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 26, 2011.
- Talisman Energy USA Inc., Pad ID: 03 034 Roy B, ABR-201108042, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.
- Talisman Energy USA Inc., Pad ID: 02 114 Shanley R, ABR-201108043, Union Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.
- Talisman Energy USA Inc., Pad ID: 05 104 Rennekamp R, ABR-201108044, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.
- Talisman Energy USA Inc., Pad ID: 02 121 Pine Hill Inc., ABR-201108045, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.

- Talisman Energy USA Inc., Pad ID: 02 109 Frederick L, ABR-201108046, Hamilton Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 30, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Merryall, ABR-201108047, Wyalusing Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 30, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Albertson, ABR-201108048, Athens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 30, 2011.
- Cabot Oil & Gas Corporation, Pad ID: CorbinJ P1, ABR-201108049, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 30, 2011.
- Talisman Energy USA Inc., Pad ID: 05 123 Rinker J, ABR-201108050, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 31, 2011.
- Talisman Energy USA Inc., Pad ID: 05 235 Rogers H, ABR-201108051, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 31, 2011.
- Talisman Energy USA Inc., Pad ID: 05 174 Carlsen C, ABR-201108052, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 31, 2011.
- Talisman Energy USA Inc., Pad ID: 05 203 Race, ABR-201109001, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 6, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Jag, ABR-201109002, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 6, 2011.
- Anadarko E&P Company, LP, Pad ID: Lycoming H&FC Pad C, ABR-201109003, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 6, 2011.
- Talisman Energy USA Inc., Pad ID: 02 113 Reinfried C, ABR-201109004, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 14, 2011.
- Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad G, ABR-201109005, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 3.500 mgd; Approval Date: September 14, 2011.
- Williams Production Appalachia LLC, Pad ID: Carty - Wisemen Well Pad, ABR-201109006, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2011.
- Williams Production Appalachia LLC, Pad ID: Kass North Well Pad, ABR-201109007, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2011.
- Talisman Energy USA Inc., Pad ID: 05 068 PNMT and Associates Inc, ABR-201109008, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 16, 2011.
- Williams Production Appalachia LLC, Pad ID: Robinson Well Pad, ABR-201109009, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 16, 2011.
- Talisman Energy USA Inc., Pad ID: 05 109 Ostrander R, ABR-201109010, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 19, 2011.
- Talisman Energy USA Inc., Pad ID: 05 152 Brown D, ABR-201109011, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 19, 2011.
- Chesapeake Appalachia, LLC, Pad ID: McGroarty, ABR-201109012, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 19, 2011.
- Chesapeake Appalachia, LLC, Pad ID: Manella Acres, ABR-201109013, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 19, 2011.
- Chesapeake Appalachia, LLC, Pad ID: LKM, ABR-201109014, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 19, 2011.
- Talisman Energy USA Inc., Pad ID: 07 018 Bennett R, ABR-201109015, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 20, 2011.
- Anadarko E&P Company, LP, Pad ID: COP Tract 731 Pad C, ABR-201109016, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2011.
- Anadarko E&P Company, LP, Pad ID: COP Tract 731 Pad D, ABR-201109017, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2011.
- XTO Energy Incorporated, Pad ID: PA Tract Unit G, ABR-201109018, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 23, 2011.
- Talisman Energy USA Inc., Pad ID: 02 110 Martin G, ABR-201109019, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 23, 2011.
- Chief Oil & Gas LLC, Pad ID: Yonkin Drilling Pad #1, ABR-201109020, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 23, 2011.
- Anadarko E&P Company, LP, Pad ID: COP Tract 731 Pad E, ABR-201109021, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.
- Anadarko E&P Company, LP, Pad ID: COP Tract 685 Pad B, ABR-201109022, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.
- Anadarko E&P Company, LP, Pad ID: Lycoming H&FC Pad A, ABR-201109023, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.
- Anadarko E&P Company, LP, Pad ID: Lycoming H&FC Pad D, ABR-201109024, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.
- Cabot Oil & Gas Corporation, Pad ID: HeitzenroderA P1, ABR-201109025, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 26, 2011.
- Cabot Oil & Gas Corporation, Pad ID: BurtsL P1, ABR-201109026, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 26, 2011.
- Cabot Oil & Gas Corporation, Pad ID: FrystakC P1, ABR-201109027, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 26, 2011.
- Carrizo (Marcellus), LLC, Pad ID: Bush Pad, ABR-201109028, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: September 27, 2011.
- Enerplus Resources (USA) Corporation, Pad ID: Winner 2 Well Pad, ABR-201109029, East Keating Township, Clinton County, Pa.;

Consumptive Use of up to 4.000 mgd; Approval Date: September 27, 2011.

Chief Oil & Gas LLC, Pad ID: Elliott B Drilling Pad #1, ABR-201109030, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 27, 2011.

Chief Oil & Gas LLC, Pad ID: Kerr B Drilling Pad #1, ABR-201109031, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 27, 2011.

Chesapeake Appalachia, LLC, Pad ID: Smurkoski, ABR-201109032, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 30, 2011.

Chesapeake Appalachia, LLC, Pad ID: Circle H, ABR-201109033, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 30, 2011.

Seneca Resources Corporation, Pad ID: DCNR 595 Pad N, ABR-201109034, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 30, 2011.

Chesapeake Appalachia, LLC, Pad ID: Stone, ABR-201109035, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 30, 2011.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: October 11, 2011

STEPHANIE L. RICHARDSON
Secretary to the Commission

[11-23-38]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Request for Informal Comments on Medicaid Subrogation Claims

Pursuant to Health General Article, §15-120, Annotated Code of Maryland, the Department of Health and Mental Hygiene (DHMH) has both a statutory right and financial obligation as a steward of tax dollars to recoup funds when a Medicaid recipient receives money from a settlement with a third party. DHMH believes that it is in all the affected parties' interests to do so transparently and consistently through regulation. Promulgating regulations will improve the equity of the State's approach across recipients, and also provide predictability to recipients, litigants, and their representatives. Accordingly, in the September 24, 2010, issue of the *Maryland Register*, DHMH published proposed third-party liability regulations, COMAR 10.09.81.01 — 10.09.81.07. These regulations: (1) would have allowed attorneys to receive their attorneys' fees and litigation costs prior to the application of any formula that would have been applied to calculate the State's recovery from the judgment, award, or settlement; (2) in cases where the court has not established an independent allocation, would have established a standard that 50 percent of the judgment, award, or settlement (after deducting attorneys fees and cost) would have been attributable to the plaintiff's medical costs; and (3) would have established a standard that the Department will recover the lesser of the full amount of past medical costs paid by DHMH or 50 percent of the judgment, award, or settlement.

Since September 2010, DHMH has extensively met with and carefully reviewed oral and written comments submitted by stakeholders. Given the Statewide interest in this issue and the impact

subrogation regulations could have on Medicaid recipients, DHMH, pursuant to Health-General Article, §2-104, Annotated Code of Maryland, seeks public comment from members of the public, interested parties, and persons knowledgeable about subrogation claims. Prior to submitting newly proposed regulations regarding this issue, DHMH seeks public comment to assist the Secretary of Health and Mental Hygiene in determining how, if at all, such newly proposed regulations would differ from the previously proposed regulations.

Specifically, the Department requests comment by December 2, 2011, concerning whether:

(a) There should be a different standard for the amount of money DHMH recovers in a subrogation claim when the litigation is resolved through settlement as compared to by a judge or jury;

(b) DHMH should proportionally reduce its subrogation interest to take into consideration the limits of available insurance coverage in a settlement;

(c) DHMH should reduce its subrogation interest if plaintiffs' lawyers agree to reduce their standard attorneys' fees and, if so, under what circumstances and conditions (e.g., how the State would ascertain the attorneys' "standard" fees);

(d) DHMH should reduce its subrogation interest if the recipient/plaintiff can demonstrate a hardship and, if so, what criteria would demonstrate a hardship;

(e) DHMH should seek recovery of its subrogation interest only from the portion of the settlement, judgment, or award allocated towards past medical expenses or if it can also seek recovery from the portion allocated to future medical expenses;

(f) Medical costs not reimbursed by insurance should be deducted from the settlement, judgment, or award before calculating DHMH's subrogation interest;

(g) DHMH's right to recovery should be limited to fee-for-service expenses incurred by DHMH or if it should also include costs incurred directly by DHMH through Medicaid managed care organizations;

(h) DHMH should differentiate how it determines the amount of its recovery based on the size of the judgment, settlement, or award; and/or

(i) DHMH should differentiate how it determines the amount of its recovery if the future medical expenses in a judgment, settlement, or award are \$0 or, if greater than \$0, will not be borne by DHMH.

Comments should be submitted by December 2, 2011.

Comments may be submitted by mail to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston St., Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258) or by email to regs@dhmh.state.md.us; or by fax to 410-767-6483.

Date of Request: November 4, 2011

[11-23-33]

MARYLAND HEALTH CARE COMMISSION

Notice of Docketing

The Maryland Health Care Commission (MHCC) hereby gives notice of docketing of the following applications for renewal of a waiver to provide primary percutaneous coronary intervention in a hospital without on-site cardiac surgery:

Holy Cross Hospital — Docket No. 11-15-0063 WR

Howard County General Hospital — Docket No. 11-13-0061 WR

Johns Hopkins Bayview Medical Center — Docket No. 11-24-0062 WR

Saint Agnes Hospital — Docket No. 24-13-0060 WR

The MHCC shall review the applications under COMAR 10.24.17. Questions may be directed to Dolores Sands, Chief, Specialized Services Policy & Planning, at (410) 764-3371. The applications are available for review in the office of the MHCC during regular business hours by appointment. Please refer to the specific Docket No. listed above in any correspondence on an application. All correspondence should be addressed to Paul E. Parker, Acting Director, Center for Hospital Services, Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Dolores Sands (410) 764-3371

[11-23-47]

General Notices

Notice of ADA Compliance

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

BOARD OF ARCHITECTS

Subject: Public Meeting
Date and Time: November 14, 2011, 10 a.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6262

[11-23-48]

BOARD OF AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

Subject: Public Meeting
Date and Time: November 17, 2011, 4 — 6 p.m.
Place: Metro Executive Bldg., 4201 Patterson Ave., Baltimore, MD
Contact: Christopher Kelter (410) 764-4725

[11-23-22]

BOARD OF BARBERS

Subject: Public Meeting
Date and Time: December 12, 2011, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195

[11-23-16]

CHESAPEAKE BAY TRUST

Subject: Public Meeting
Date and Time: November 16, 2011, 3 — 6 p.m.
Place: Double Tree Hotel, Annapolis, MD
Contact: Heather Adams (410) 974-2941

[11-23-37]

MARYLAND COLLECTION AGENCY LICENSING BOARD

Subject: Public Meeting
Date and Time: November 16, 2011, 10:30 a.m. — 12:30 p.m.
Place: 500 N. Calvert St., Baltimore, Maryland
Contact: Kelly Mack (410) 230-6079

[11-23-28]

COMPTROLLER OF THE TREASURY

Subject: Reduction of Bond Authorization Announcement

Add'l. Info: Pursuant to State Finance and Procurement Article, §8-128, Annotated Code of Maryland, which provides that, if, within 2 years after the date of an authorization of State debt, no part of the project or program for which the enabling act authorized the State debt is under contract and the Board of Public Works has not committed money for any part of the project or program, the authorization terminates unless:

- (1) The enabling act provides otherwise; or
- (2) In an emergency, the Board unanimously grants a temporary exception for a period of 1 year.

Therefore, with Board of Public Works approval of item #6 dated October 5, 2011, we submit for publication the following cancellation of bond authorizations in accordance with the above-referenced article:

Henson Valley Montessori School Loan of 2010:

Chapter 483, Acts of 2010; \$100,000; authorized the proceeds for the planning, design, construction, and capital equipping of the Henson Valley Montessori School.

American Visionary Art Museum Loan of 2009:

Chapter 485, Acts of 2009; \$32,672.50; authorized the proceeds for the acquisition, repair, renovation, and construction of the American Visionary Art Museum located in Baltimore City.

Montgomery Village Foundation Loan of 2006:

Chapter 46, Acts of 2006, amended by Chapter 488, Acts of 2007; \$13,116.75; authorized proceeds for the planning and design of the improvements to the Lake Whetstone facilities located in Montgomery Village.

Family Support Center Loan of 2010:

Chapter 483, Acts of 2010; \$10,000; authorized proceeds for the acquisition, planning, design, and construction of the Family Support Center located in Easton.

The John Hanson Memorial Loan of 2009:

Chapter 485, Acts of 2009; \$3,674.54; authorized proceeds for the design, construction, and sculpture of the John

Hanson Memorial located in the City of Frederick.

Coordinating Center for Home and Community Care Building Loan of 2009:

Chapter 485, Acts of 2009; \$3,387.50; authorized proceeds for the acquisition, planning, design, repair, and renovation of the building facilities for the Coordinating Center for Home and Community Care Building located in Hanover.

The Chelsea School Loan of 2004:

Chapter 204, Acts of 2004; \$3,241.25; authorized proceeds for the planning, design, repair, renovation, reconstruction, construction, and capital equipping of a classroom building and gymnasium and for the demolition and lead abatement of the annex of the Chelsea School.

GREEN HOUSE at Stadium Place Loan of 2009:

Chapter 485, Acts of 2009; \$1,055,000; authorized proceeds for the acquisition, design, construction, and capital equipping of a long-term care facility at Stadium Place located in Baltimore.

Harmony Hall Manor Loan of 2009:

Chapter 485, Acts of 2009; \$100,000; authorized proceeds for the repair and renovation of Harmony Hall located in Oxon Hill.

Homeport Farm Park Building Rehabilitation Project Loan of 2009:

Chapter 485, Acts of 2009; \$77,957.25; authorized proceeds for the planning, design, construction, repair, renovation, reconstruction, and capital equipping of buildings at the Homeport Farm Park Building located in Edgewater.

Benson- Hammond House Renovation Loan of 2009:

Chapter 485, Acts of 2009; \$60,000; authorized proceeds for the repair, renovation, reconstruction, and capital equipping of the Benson- Hammond House and related outbuildings located in Linthicum.

Olney Theater Center Campus Loan of 2009:

Chapter 485, Acts of 2009; \$58,000.32; authorized proceeds for the acquisition, construction, and capital equipping of the Olney Theater Center for the Arts located in Olney.

Parks and People Headquarters at Auchentroy Terrace Loan of 2009:

Chapter 485, Acts of 2009; \$50,000; authorized proceeds for the construction,

renovation, and reconstruction of the Parks and People Headquarters at Auchentroly Terrace located in Baltimore City.

Jaycees Field of Dreams Loan of 2009:

Chapter 485, Acts of 2009; \$30,000; authorized proceeds for the design, construction, and capital equipping of the Jaycees Field of Dreams located in Laurel Springs Park.

The Citizens Care and Rehabilitation Center Loan of 2009:

Chapter 485, Acts of 2009; \$8,405.50; authorized proceeds for construction, repair, and renovation of the fire sprinkler system located in Havre de Grace.

Northgate Homes Lighting Upgrade Loan of 2009:

Chapter 485, Acts of 2009; \$556.50; authorized proceeds for the design, construction, repair, reconstruction, renovation, and capital equipping, including environmental and upgrading to street lights located in Olney.

James M. Bilbrough II

Fiscal Specialist

Administration and Finance

Contact: Jim Bilbrough (410) 260-7909

[11-23-31]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting

Date and Time: December 5, 2011, 9:30 a.m. — 4:30 p.m.

Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD

Add'l. Info: Centre St. Entrance

Contact: Robert Wood (410) 230-6195

[11-23-15]

OFFICE OF THE DEAF AND HARD OF HEARING/MARYLAND ADVISORY COUNCIL ON THE DEAF AND HARD OF HEARING

Subject: Public Meeting

Date and Time: November 11, 2011, 11 a.m. — 12 p.m.

Place: MDAD Conference, Maryland School for the Deaf, 8169 Old Montgomery Rd., Columbia, MD

Add'l. Info: This meeting is to solicit public comment and feedback from the community. Information helpful to ODHh includes comments on the quality of State services and programs affecting deaf, deaf-blind, and hard of hearing individuals; ODHh-related functions and operations; and other issues affecting the community. Sign language interpreters, an assistive listening system, and CART will be provided. If you need additional accommodations, please e-mail odhh@gov.state.md.us or call 410-767-6290.

Contact: Lisa Kornberg (410) 767-1497

[11-23-27]

BOARD OF DIETETIC PRACTICE

Subject: Public Meeting on Regulations

Date and Time: November 17, 2011, 12:30 — 3:30 p.m.

Place: 4201 Patterson Ave., Rm. 100/107, Baltimore, MD

Contact: Lenelle Cooper (410) 764-4733

[11-23-24]

BOARD OF MASTER ELECTRICIANS

Subject: Public Meeting

Date and Time: December 27, 2011, 10 a.m. — 12 p.m.

Place: 500 N. Calvert St., Rm. 302, Baltimore, MD

Contact: Gae Herzberger (410) 230-6163

[11-23-21]

ELEVATOR SAFETY REVIEW BOARD

Subject: Public Meeting

Date and Time: December 1, 2011, 1:30 — 5 p.m.

Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD

Contact: Raquel M. Meyers (410) 230-6379

[11-23-01]

MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

Subject: Public Meeting

Date and Time: November 18, 2011, 10 a.m. — 12 p.m.

Place: 653 W. Pratt St., Ste. 508, Baltimore, MD

Add'l. Info: The Provider Review Panel meets regularly on the 3rd Friday of every other month.

Contact: Leandrea Gilliam (410) 706-4449

[11-23-14]

BOARD OF ENVIRONMENTAL SANITARIANS

Subject: Public Meeting

Date and Time: December 7, 2011, 10 a.m. — 4:30 p.m.

Place: Howard Co. 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

[11-23-10]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subject: Vacancy in DUR Board Membership — Call for Pharmacist and Physician Nominations

Add'l. Info: The Maryland Department of Health and Mental Hygiene Drug Use Review (DUR) Board is currently recruiting for a pharmacist and a physician to serve on the Maryland DUR Board beginning in March 2012.

The implementation of the Omnibus Budget Reconciliation Act of 1990 requires that the Maryland Department of Health and Mental Hygiene establish a DUR Board. The DUR Board is composed of both physicians and pharmacists and has been in operation since November 1992. The activities of the DUR Board include:

- Overseeing retrospective and prospective DUR within the Maryland Medicaid Program.

- Approving DUR criteria and standards.
- Making recommendations concerning education and other types of interventions based on prospective and retrospective DUR findings.

- Preparing an annual report for submission to the Centers for Medicare and Medicaid (CMS) describing the nature and scope of the DUR program, summarizing educational/interventional strategies used, and estimating cost savings generated.

- Board members may also review individual recipient profiles and make recommendations to restrict patients who might be abusing Medicaid prescription drugs.

The DUR Board has quarterly 3-hour meetings in the Baltimore area. Meetings are normally scheduled in the morning on a the first Thursday of the month during the months of March, June, September, and December.

The membership of the Maryland DUR Board includes health care professionals who have recognized knowledge and expertise in one of the following areas:

- (1) The clinically appropriate prescribing of outpatient drugs.

- (2) The clinically appropriate dispensing and monitoring of outpatient drugs.

- (3) Drug use review, evaluation and intervention.

- (4) Medical quality assurance.

Health Information Designs, Inc., is providing administrative and technical support to the Department of Health and Mental Hygiene with regard to the DUR Board. For an application packet, please contact Joseph Paradis PharmD at Health Information Designs at 443-690-1997 or via e-mail at joe.paradis@hidinc.com.

GENERAL NOTICES

The application deadline is November 30, 2011.

Contact: Joeseeph Paradis (443) 690-1997
[11-22-30]

**DEPARTMENT OF HEALTH AND
MENTAL HYGIENE/
LABORATORIES ADMINISTRATION**

Subject: Public Meeting

Date and Time: December 6, 2011, 8:30 a.m. — 12 p.m.

Place: O'Connor Bldg., 201 W. Preston St., Rm. L-37, Baltimore, MD

Contact: Georgette P. Zoltani (410) 764-2899

[11-23-46]

**DEPARTMENT OF HEALTH AND
MENTAL HYGIENE/MARYLAND
BOARD OF PHYSICIANS**

Subject: Public Meeting

Date and Time: November 16, 2011, 9 — 10 a.m.

Place: 4201 Patterson Ave., Rms. 108/109, Baltimore, MD

Add'l. Info: Appropriate auxiliary aids services provided for qualified individuals upon request. Call Ellen D. Smith at (410) 764-2477.

Contact: Tammy Austin (410) 764-4769

[11-23-23]

**BOARD OF HEATING,
VENTILATION, AIR-
CONDITIONING, AND
REFRIGERATION CONTRACTORS
(HVACR)**

Subject: Public Meeting

Date and Time: November 9, 2011, 9:30 a.m. — 12 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Steve Smitson (410) 230-6169

[11-23-19]

**BOARD OF HEATING,
VENTILATION, AIR-
CONDITIONING, AND
REFRIGERATION CONTRACTORS
(HVACR)**

Subject: Public Meeting

Date and Time: December 14, 2011, 9:30 a.m. — 12 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Steve Smitson (410) 230-6169

[11-23-20]

**STATE HIGHWAY
ADMINISTRATION/PROJECT
PLANNING DIVISION**

Subject: Public Hearing

Date and Time: November 17, 2011, 6 — 9 p.m.

Place: Meade Middle School, 1103 26th St., Fort Meade, MD

Add'l. Info: The Maryland Department of Transportation, State Highway Administration, Anne Arundel County, Fort George G. Meade, Federal Highway Administration, and the U.S. Army Corps of Engineers will conduct a Location/Design Public Hearing for MD 198 from MD 295 to MD 32 in Anne Arundel County.

The purpose of this hearing is to provide all interested persons the opportunity to comment on the project's location and general design and the associated social, economic, cultural, and natural environmental impacts of the proposed alternatives before an alternative is selected.

Beginning at 6 p.m., the project alternatives and other information will be on display. Public hearing displays will be available on the SHA website, <http://www.roads.maryland.gov>. Click on "Project & Studies," "SHA Projects Page," and "Anne Arundel County," then "MD 198, Laurel Fort Meade Road" under "Preconstruction." Representatives will be available to discuss the project and record comments.

A formal presentation beginning at 7 p.m. and lasting approximately 20 minutes will include a description of the project alternatives, a summary of environmental impacts, information about right-of-way acquisition and relocation assistance procedures, and an explanation of Title VI of the Equal Opportunity Program. The presentation will be followed by public testimony.

Contact Information: Ms. Kameel Hall, Project Manager, Project Management Division, Maryland State Highway Administration; 707 N. Calvert Street, MS C-301, Baltimore, MD 21202; 410-545-8542 or 1-800-548-5026; Khall1@sha.state.md.us.

Contact: Diane Rathmann (410) 545-8551

[11-23-30]

**MARYLAND INSURANCE
ADMINISTRATION**

Subject: Public Hearing

Date and Time: December 13 and 14, 2011, 10 a.m.

Place: Maryland Insurance Administration, 200 St. Paul Pl., 24th Fl., Hearing Rm., Baltimore, MD

Add'l. Info: The purpose of this hearing is to receive information regarding the current availability and affordability of personal and commercial property and casualty insurance in Maryland's coastal areas.

Contact: Megan Hayes (410) 468-2018

[11-23-49]

**MARYLAND STATE LOTTERY
COMMISSION**

Subject: Public Meeting

Date and Time: November 17, 2011, 10 a.m. — 12 p.m.

Place: Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD

Contact: Marie A. Torosino (410) 230-8790

[11-23-51]

**MARYLAND HEALTH CARE
COMMISSION**

Subject: Public Meeting

Date and Time: November 17, 2011, 1 p.m.

Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD

Add'l. Info: Individuals requiring special accommodations are requested to contact Valerie Wooding at (410) 764-3460, or the Department of Health and Mental Hygiene TTY (410) 383-7755, not later than 20 days before the meeting to make arrangements.

Contact: Valerie Wooding (410) 764-3460

[11-23-02]

**MARYLAND HEALTH CARE
COMMISSION**

Subject: Notice of Receipt of Application

Add'l. Info: On October 7, 2011, the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by ManorCare Health Services-Fairwood — Matter No. 11-16-2324 — Construction of a new 110-bed nursing home on Fairwood Parkway in Bowie, Prince George's County, via relocation of previously approved and licensed comprehensive care beds from other facilities (HHCC-Adelphi: 65 beds; HHCC-Hyattsville: 30 beds; and MCHC-Largo: 15 beds). Cost: \$16,042,836

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
[11-23-34]

MARYLAND HEALTH CARE COMMISSION

Subject: Notice of Proposed Project Change

Add'l. Info: On October 7, 2011, the Maryland Health Care Commission (MHCC) received notice and a request for approval of project changes under COMAR 10.24.01.17B from Waldorf Nursing & Rehabilitation Center, holder of a Certificate of Need (CON), Docket No. 10-08-2309.

The project's sponsor has requested approval for:

1. Change in the site of the previously approved project form 3735 Leonardtown Road, Waldorf, to Lot 1, Part of Parcel AA, Fairway Village in St. Charles Communities, located of Demarr Road near the intersection with St. Charles Parkway, Waldorf.

2. Revisions to the budget, operating projections, and manpower information.

Please refer to the Docket No. listed above in any correspondence on this request, a copy of which is available for review by appointment in MHCC offices during regular business hours. All correspondence should be addressed to Paul E. Parker, Chief, Certificate of Need, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Ruby Potter (410) 764-3276
[11-23-35]

MARYLAND PUBLIC BROADCASTING COMMISSION

Subject: Public Meeting

Date and Time: November 22, 2011, 8:30 a.m.

Place: Maryland Public Television, Owings Mills, MD

Contact: Sharon Abernathy (410) 581-4141

[11-23-07]

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

Subject: Public Meeting

Date and Time: November 16, 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
[11-23-18]

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Subject: Public Meeting

Date and Time: November 9, 2011, 9:30 a.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Patricia A. Hannigan (410) 764-4750

[11-23-25]

BOARD OF EXAMINERS IN OPTOMETRY

Subject: Public Meeting

Date and Time: November 16, 2011, 9:30 a.m. — 12 p.m.

Place: Metro Executive Bldg., 4201 Patterson Ave., Rm. 105, Baltimore, MD

Add'l. Info: Health Occupations Article, Title 11, Annotated Code of Maryland, and COMAR 10.28 amendments, additions, and revisions, including fee changes, may be discussed. It may be necessary to go into Executive Session.

Contact: Patricia G. Bennett (410) 764-4710

[11-23-06]

BOARD OF PLUMBING

Subject: Public Meeting

Date and Time: November 17, 2011, 10 a.m. — 12:30 p.m.

Place: 500 N. Calvert St., Rm. 302, Baltimore, MD

Contact: Brenda Clark (410) 230-6164
[11-23-17]

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
[11-23-03]

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
[11-23-04]

BOARD OF PUBLIC ACCOUNTANCY

Subject: Public Meeting

Date and Time: December 6, 2011, 9 a.m. — 12 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Dennis L. Gring (410) 230-6224
[11-23-05]

RACING COMMISSION

Subject: Public Meeting

Date and Time: November 21, 2011, 12:30 — 1 p.m.

Place: Laurel Park, Laurel, MD

Contact: J. Michael Hopkins (410) 296-9682

[11-23-43]

BOARD OF WATERWORKS AND WASTE SYSTEMS OPERATORS

Subject: Public Meeting

Date and Time: December 15, 2011, 10 a.m. — 4 p.m.

Place: Maryland Environmental Service, Millersville, MD

Add'l. Info: A portion of this meeting may be held in closed session.

Contact: Pat Kratochvil (410) 537-3167
[11-23-08]

BOARD OF WELL DRILLERS

Subject: Public Meeting

Date and Time: December 14, 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
[11-23-09]

COMAR PDF ORDER FORM

Titles		Agency Name	Price ¹	Subscription ²	Quantity	Total
Complete set of COMAR PDF format			\$1,000	\$500	_____	_____
Title 01	Executive Department		\$35	\$24	_____	_____
Title 02	Office of the Attorney General		\$22	\$13	_____	_____
Title 03	Comptroller of the Treasury		\$30	\$20	_____	_____
Title 04	General Services		\$16	\$10	_____	_____
Title 05	Housing and Community Development		\$78	\$50	_____	_____
Title 07	Human Resources		\$80	\$53	_____	_____
Title 08	Natural Resources		\$78	\$51	_____	_____
Title 09	Labor, Licensing and Regulation		\$89	\$60	_____	_____
Title 10	Health & Mental Hygiene (All parts) **		\$272	\$180	_____	_____
Title 10	Part 1 **		\$48	\$32	_____	_____
Title 10	Part 2 **		\$75	\$50	_____	_____
Title 10	Part 3 **		\$75	\$50	_____	_____
Title 10	Part 4 **		\$50	\$35	_____	_____
Title 10	Part 5 **		\$69	\$50	_____	_____
Title 11	Transportation (All parts) **		\$106	\$75	_____	_____
Title 11	Part 1 (Transportation) **		\$42	\$25	_____	_____
Title 11	Parts 2 & 3 (MVA)**		\$74	\$50	_____	_____
Title 12	Public Safety and Correctional Services		\$67	\$43	_____	_____
Title 13A	Board of Education		\$63	\$42	_____	_____
Title 13B	Higher Education Commission		\$25	\$15	_____	_____
Title 14	Independent Agencies		\$87	\$60	_____	_____
Title 15	Agriculture		\$48	\$30	_____	_____
Title 16	Juvenile Service		\$23	\$15	_____	_____
Title 17	Budget and Management		\$28	\$16	_____	_____
Title 18	Assessments and Taxation		\$20	\$12	_____	_____
Title 19A	State Ethics Commission		\$24	\$14	_____	_____
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Titles 10, 11, and 26 consist of more than one volume. Each volume may be purchased separately.

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- 12 Radiation Management

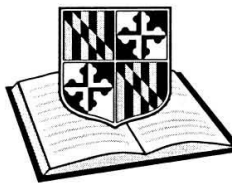
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