

Maryland Register

Issue Date: October 18, 2013

Volume 40 • Issue 21 • Pages 1757—1852

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before September 30, 2013, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of September 30, 2013.

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



Information About the Maryland Register and COMAR

MARYLAND REGISTER

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

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

The following information is also published regularly in the Register:

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

CITATION TO THE MARYLAND REGISTER

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

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

CODE OF MARYLAND REGULATIONS (COMAR)

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

CITATION TO COMAR REGULATIONS

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

DOCUMENTS INCORPORATED BY REFERENCE

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

HOW TO RESEARCH REGULATIONS

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

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

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

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

Martin O'Malley, Governor; **John P. McDonough**, Secretary of State; **Brian Morris**, Acting Administrator; **Gail S. Klakring**, Senior Editor; **Mary D. MacDonald**, Editor, Maryland Register and COMAR; **Elizabeth Ramsey**, Editor, COMAR Online, and Subscription Manager; **Tami Cathell**, Help Desk, COMAR and Maryland Register Online.

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

Illustrations by Carolyn Anderson, Dept. of General Services

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COMAR Online

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

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

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

Availability of Monthly List of Maryland Documents

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

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November 15	October 28	November 6	November 4
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December 13	November 25	December 4	December 2
December 27**	December 9	December 16	December 13
January 10**	December 23	December 30	December 27
January 24**	January 6	January 14	January 13

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

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

** Note closing date changes

*** Note issue date and closing date changes

The regular closing date for Proposals and Emergencies is Monday.

REGULATIONS CODIFICATION SYSTEM

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

09.12.01.01D(2)(c)(iii)
 Title Chapter Section Paragraph
 Subtitle Regulation Subsection Subparagraph

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

Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed

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

Table of Pending Proposals

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

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- 10.24.01.01 • 39:25 Md. R. 1622 (12-14-12)
- 10.24.09.01 • 40:18 Md. R. 1496 (9-6-13) (ibr)
- 10.27.01.09,.13 • 40:21 Md. R. 1834 (10-18-13)
- 10.29.01.01,.10—.13 • 39:20 Md. R. 1326 (10-5-12)
- 10.29.03.04 • 40:10 Md. R. 931 (5-17-13)
- 10.29.16.01,.02 • 39:20 Md. R. 1326 (10-5-12)
- 10.29.17.01—.10 • 39:20 Md. R. 1326 (10-5-12)
- 10.29.18.01—.06 • 39:20 Md. R. 1326 (10-5-12)
- 10.29.19.01—.12 • 39:20 Md. R. 1326 (10-5-12)
- 10.29.20.01,.02 • 39:20 Md. R. 1326 (10-5-12)
- 10.29.21.01—.11 • 40:11 Md. R. 990 (5-31-13)
- 10.32.10.04,.05,.05-1,.05-2,.06 • 40:2 Md. R. 106 (1-25-13)
- 10.34.22.02,.03,.03-1,.05,.09—.11 • 40:8 Md. R. 742 (4-19-13)
- 10.36.01.08 • 40:19 Md. R. 1561 (9-20-13)
- 10.36.06.02 • 40:19 Md. R. 1561 (9-20-13)

Subtitles 37—60 (5th Volume)

- 10.39.01.04,.06 • 40:21 Md. R. 1834 (10-18-13)
- 10.43.01.04,.05 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.02.04 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.03.02 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.04.02 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.06.01—.03 • 40:20 Md. R. 1671 (10-4-13)

- 10.43.07.02,.03,.05,.07—.10 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.11.02—.05 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.12.03,.04 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.13.03,.04 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.14.03,.05,.06 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.17.03,.04,.09,.11 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.18.02,.05 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.20.01—.03 • 40:20 Md. R. 1671 (10-4-13)
- 10.43.21.01,.02 • 40:20 Md. R. 1671 (10-4-13)
- 10.44.22.04 • 40:20 Md. R. 1677 (10-4-13)
- 10.44.27.04 • 40:19 Md. R. 1562 (9-20-13)
- 10.47.01.03,.08-1 • 40:19 Md. R. 1563 (9-20-13)
- 10.47.02.11 • 40:19 Md. R. 1563 (9-20-13)
- 10.50.01.06 • 40:18 Md. R. 1497 (9-6-13)
- 10.54.01.19 • 40:6 Md. R. 485 (3-22-13)
- 10.54.02.18 • 40:16 Md. R. 1354 (8-9-13)
- 10.58.09.01—.07 • 40:17 Md. R. 1432 (8-23-13)
- 10.58.13.01—.08 • 40:16 Md. R. 1355 (8-9-13)
- 10.58.14.01—.08 • 40:16 Md. R. 1359 (8-9-13)

11 DEPARTMENT OF TRANSPORTATION

Subtitles 11—22 (MVA)

- 11.11.05.02 • 39:22 Md. R. 1454 (11-2-12)
- 11.11.05.04 • 40:21 Md. R. 1835 (10-18-13)
- 11.15.09.04 • 40:17 Md. R. 1435 (8-23-13)
- 11.17.21.01—.05 • 40:21 Md. R. 1837 (10-18-13)

12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

- 12.02.16.01—.08 • 40:18 Md. R. 1498 (9-6-13)
- 12.04.01 • 40:18 Md. R. 1519 (9-6-13) (err)
- 12.04.01.01,.18 • 40:18 Md. R. 1503 (9-6-13)
- 12.04.01.02,.03,.05,.08—.14 • 40:17 Md. R. 1436 (8-23-13)
- 12.04.02.02 • 40:17 Md. R. 1436 (8-23-13)
- 12.04.05.02 • 40:17 Md. R. 1436 (8-23-13)
- 12.10.01.01,.02,.04,.05,.08,.11,.13—.18,.20 • 40:14 Md. R. 1196 (7-12-13)
- 12.10.05.02 • 40:14 Md. R. 1196 (7-12-13)
- 12.11.06.01—.08 • 40:20 Md. R. 1677 (10-4-13)
- 12.11.09.02—.05 • 40:19 Md. R. 1564 (9-20-13)
- 12.11.11.01—.15 • 40:18 Md. R. 1498 (9-6-13)
- 12.12.18.01—.08 • 40:18 Md. R. 1498 (9-6-13)
- 12.15.01.02—.20 • 40:16 Md. R. 1364 (8-9-13)
- 12.15.02.01—.13 • 40:16 Md. R. 1364 (8-9-13)
- 12.15.03.01—.11 • 40:16 Md. R. 1364 (8-9-13)
- 12.15.04.01,.03—.06,.08.09 • 40:16 Md. R. 1364 (8-9-13)
- 12.15.05.02—.09 • 40:16 Md. R. 1364 (8-9-13)

13A STATE BOARD OF EDUCATION

- 13A.02.02.02—.05 • 40:15 Md. R. 1252 (7-26-13) (ibr)
- 13A.08.01.11 • 40:21 Md. R. 1845 (10-18-13) (err)
- 13A.08.01.11,.12,.15,.21 • 40:20 Md. R. 1680 (10-4-13)

14 INDEPENDENT AGENCIES

- 14.30.07.04 • 39:6 Md. R. 448 (3-23-12)
- 14.30.11.12 • 39:6 Md. R. 448 (3-23-12)
- 14.32.09.01—.16 • 40:19 Md. R. 1566 (9-20-13)
- 14.32.10.01—.04 • 40:19 Md. R. 1568 (9-20-13)

15 DEPARTMENT OF AGRICULTURE

15.15.05.07 • 40:18 Md. R. 1504 (9-6-13)
 15.20.04.11 • 40:21 Md. R. 1840 (10-18-13)
 15.20.07.02 • 40:21 Md. R. 1840 (10-18-13) (ibr)
 15.20.08.05 • 40:21 Md. R. 1840 (10-18-13)

18 DEPARTMENT OF ASSESSMENTS AND TAXATION

18.02.02.04 • 40:20 Md. R. 1682 (10-4-13)
 18.05.01.02 • 40:20 Md. R. 1683 (10-4-13)

23 BOARD OF PUBLIC WORKS

23.03.06.01—04 • 40:11 Md. R. 1000 (5-31-13) (ibr)

24 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.06.01—13 • 40:20 Md. R. 1684 (10-4-13)

26 DEPARTMENT OF THE ENVIRONMENT

Subtitles 01—07 (Part 1)

26.03.13.01—04 • 40:18 Md. R. 1505 (9-6-13)
 26.04.06.01—75 • 40:20 Md. R. 1687 (10-4-13)

Subtitles 08—12 (Part 2)

26.09.01.02,,03 • 40:15 Md. R. 1255 (7-26-13) (ibr)
 26.09.02.02,,03,,05,,07,,11 • 40:15 Md. R. 1255 (7-26-13)
 26.09.03.01,,02,,04,,05,,09 • 40:15 Md. R. 1255 (7-26-13)
 26.09.04.06—14 • 40:15 Md. R. 1255 (7-26-13)
 26.12.01.01 • 40:21 Md. R. 1843 (10-18-13) (ibr)

27 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

27.01.09.01 • 40:13 Md. R. 1094 (6-28-13)

29 DEPARTMENT OF STATE POLICE

29.03.01.01—58 • 40:19 Md. R. 1568 (9-20-13)
 29.03.02.01—14 • 40:19 Md. R. 1583 (9-20-13)
 29.04.04.01—03 • 40:17 Md. R. 1457 (8-23-13)
 29.09.01.01—15 • 40:19 Md. R. 1586 (9-20-13)

30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

30.01.01.02 • 40:18 Md. R. 1508 (9-6-13)
 40:20 Md. R. 1727 (10-4-13)
 30.02.02.02—09 • 40:18 Md. R. 1508 (9-6-13)
 30.02.03.01 • 40:18 Md. R. 1508 (9-6-13)
 30.03.04.04 • 40:20 Md. R. 1728 (10-4-13)
 30.03.04.08 • 40:18 Md. R. 1508 (9-6-13)
 30.04.01.01 • 40:18 Md. R. 1508 (9-6-13)
 30.04.03.07—13 • 40:18 Md. R. 1508 (9-6-13)
 30.04.05.02,,04 • 40:18 Md. R. 1508 (9-6-13)
 30.08.15.02 • 40:18 Md. R. 1514 (9-6-13)
 30.09.01.02 • 40:18 Md. R. 1508 (9-6-13)
 30.09.07.02 • 40:18 Md. R. 1508 (9-6-13)
 30.09.11.02 • 40:18 Md. R. 1508 (9-6-13)
 30.09.14.04,,05 • 40:18 Md. R. 1508 (9-6-13)

31 MARYLAND INSURANCE ADMINISTRATION

31.03.12.02,,03 • 40:21 Md. R. 1844 (10-18-13)
 31.03.17.01—09 • 40:17 Md. R. 1458 (8-23-13)
 31.08.03.06 • 40:14 Md. R. 1199 (7-12-13)
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 40:9 Md. R. 810 (5-3-13)
 31.08.11.04,,05 • 40:17 Md. R. 1459 (8-23-13)
 31.08.12.02—06 • 39:20 Md. R. 1346 (10-5-12)
 40:14 Md. R. 1200 (7-12-13)
 31.08.13.01—06 • 39:26 Md. R. 1674 (12-28-12)
 31.08.14.01,,02 • 40:20 Md. R. 1729 (10-4-13)
 31.08.15.01—09 • 40:14 Md. R. 1201 (7-12-13)
 31.10.11.10 • 40:16 Md. R. 1391 (8-9-13)
 31.10.26.03 • 40:18 Md. R. 1515 (9-6-13)
 31.10.39.01—04 • 40:16 Md. R. 1391 (8-9-13)
 31.15.02.01,,06,,07,,11,,12,,15,,17,,17-1,
 18 • 40:18 Md. R. 1516 (9-6-13)
 31.15.13.01—04 • 40:20 Md. R. 1730 (10-4-13)
 31.15.14.01—06 • 40:19 Md. R. 1592 (9-20-13)

33 STATE BOARD OF ELECTIONS

33.04.01.02 • 40:20 Md. R. 1731 (10-4-13)
 33.05.02.03 • 40:20 Md. R. 1731 (10-4-13)
 33.08.05.04 • 40:19 Md. R. 1593 (9-20-13)
 33.09.01.02,,05 • 40:19 Md. R. 1594 (9-20-13)
 33.09.03.05 • 40:19 Md. R. 1594 (9-20-13)
 33.13.01.01 • 40:19 Md. R. 1594 (9-20-13)
 33.13.02.02 • 40:19 Md. R. 1594 (9-20-13)
 33.13.10.01 • 40:19 Md. R. 1594 (9-20-13)
 33.13.12.01—03 • 40:19 Md. R. 1594 (9-20-13)
 33.13.13.01—07 • 40:19 Md. R. 1594 (9-20-13)

36 MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY

36.06.01.01—03 • 40:4 Md. R. 381 (2-22-13)
 36.06.02.01,,02 • 40:4 Md. R. 381 (2-22-13)
 36.06.03.01—16 • 40:4 Md. R. 381 (2-22-13)
 36.03.01.02 • 40:20 Md. R. 1732 (10-4-13)
 36.03.02.12—14 • 40:20 Md. R. 1732 (10-4-13)
 36.03.10.36,,49 • 40:20 Md. R. 1732 (10-4-13)
 36.06.04.01—05 • 40:4 Md. R. 381 (2-22-13)
 36.06.05.01—10 • 40:4 Md. R. 381 (2-22-13)
 36.07.01.01—03 • 40:20 Md. R. 1734 (10-4-13)
 36.07.02.01—18 • 40:20 Md. R. 1734 (10-4-13)
 36.07.03.01—03 • 40:20 Md. R. 1734 (10-4-13)
 36.07.04.01—19 • 40:20 Md. R. 1734 (10-4-13)
 36.07.05.01—05 • 40:20 Md. R. 1734 (10-4-13)
 36.07.06.01—10 • 40:20 Md. R. 1734 (10-4-13)
 36.07.07.01 • 40:20 Md. R. 1734 (10-4-13)
 36.05.03.15 • 40:18 Md. R. 1517 (9-6-13)
 36.05.09.12 • 40:18 Md. R. 1517 (9-6-13)
 36.05.11.12 • 40:18 Md. R. 1517 (9-6-13)
 36.07.01.01—03 • 40:5 Md. R. 431 (3-8-13)
 36.07.02.01—18 • 40:5 Md. R. 431 (3-8-13)
 36.07.03.01—03 • 40:5 Md. R. 431 (3-8-13)
 36.07.04.01—19 • 40:5 Md. R. 431 (3-8-13)
 36.07.05.01 • 40:5 Md. R. 431 (3-8-13)

Open Meetings Compliance Board

TWENTY-FIRST ANNUAL REPORT OF THE OPEN MEETINGS COMPLIANCE BOARD

Pursuant to §10-502.4(e) of the State Government Article, the Open Meetings Compliance Board submits this annual report, covering the period July 1, 2012, through June 30, 2013.

I.

ACTIVITIES OF THE BOARD

A. *Financial and Support Activities*

No funds have ever been specifically appropriated for the Compliance Board in the Budget Bill, and none were for fiscal year 2013. The Attorney General's Office provides the Board with the services of staff and counsel, posts the Board's opinions and other Open Meetings Act materials on its website, and bears the incidental costs of copying and mailing Board-related documents. The Board could not fulfill its statutory duties without this support.

One of the Board's unfunded duties is to "develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of: public bodies; the Maryland Municipal League; and the Maryland Association of Counties." See State Government Article § 10-502.4(d) (internal numbering omitted). The Board is grateful to the Institute for Governmental Service and Research at the University of Maryland and the Attorney General's Office for maintaining, at no cost to the Board, the online class on the Open Meetings Act that those entities jointly released in May 2012. Training on the Open Meetings Act was also available for local government officials and employees through the certificate program offered by the Academy for Excellence in Local Governance, now a program of the School of Public Policy at the University of Maryland. This year, the Academy's Open Meetings class was offered at the annual conferences of the Maryland Municipal League and the Local Government Insurance Trust. By invitation, counsel also addressed the Joint Committee on Transparency and Open Government, the annual meeting of the Maryland Municipal Clerks Association, and a meeting of the department heads and mid-management employees of Carroll County.

B. *Developments during the Fiscal Year*

Neither the membership of the Board nor the staffing provided by the Office of the Attorney General changed during the year. We are fortunate to have the assistance of our Administrator, Ms. Deborah P. Spence, who manages our docket and produces our opinions, of Fritz Schantz, who posts our opinions and other information on the Attorney General's website, and of the assistant attorneys general who provide support as needed. The number of the complaints and the comprehensive nature of some of them made the second half of the year unusually busy for us and the staff.

Legislative developments are described in Part III, below.

C. *Complaint and Opinion Activities*

1. **Statistics**

- Total number of submitted complaints resolved during FY 2013: 32
- Opinions issued during FY 2013: 24
- Complaints by different complainants consolidated: 5
- Complaints dismissed as not within the Board's authority: 3
- Complaints submitted in FY 2013, pending on 7/1/13: 4
- Total number of complaints about prospective violation, resolved informally under State Government Article, § 10-502.6: 1
- Number of different complainants in resolved matters: 21 (includes 7 media complainants)

(Note: Some complaints pertained to numerous meetings over the course of a year or more; two complaints, in particular, involved multiple meetings by multiple committees of the same parent public body. The number of complaints thus does not reflect the number of meetings and public bodies complained of.)

2. **Nature of the Complaints**

(a) **Violations alleged.** As shown by the summary included as an appendix to this report, the complaints received by the Board alleged numerous types of violations, including:

- convening a quorum of the public body to discuss public business without giving any notice;
- giving notice by an obscure means and failing to retain a copy;
- giving notice of a meeting to the public body's known constituency but not to the general public;
- closing a meeting for the stated purpose of discussing "administrative" matters not subject to the Act and then discussing policy matters;
- issuing unduly vague and conclusory minutes, closing statements, or summaries of closed-session events, or not preparing those documents at all;
- failing to adopt minutes promptly;
- in closed sessions, exceeding the scope of the exception claimed as a basis for the closing;
- permitting a participant in a hearing to order an observer to stop videotaping it;
- posting as "closed" a meeting that was required to be convened openly so that the public could observe the vote to close it
- meeting at a location that was closed to the public

(b) Allegations Not Stating Violations.

Complaints received by the Board also alleged numerous acts beyond the Board's authority, including:

- using sequential e-mails or other forms of non-contemporaneous written communication to decide a matter;
- failing to produce documents requested under the Public Information Act;
- failing to permit a person to speak in a meeting;
- failing to post minutes online, or to post them promptly, or to provide copies by e-mail or mail;
- failing to hold public comment sessions on a proposed measure;
- as to a private association, failing to meet publicly

(c) Complaints Involving the Failure to Provide Notice

The Board issued 7 opinions in response to specific allegations that a public body violated §10-506 of the Act. The notice-related complaints included allegations of an alleged lack of notice, untimely notice, insufficient notice, a failure to retain written notice, and notice that stated that the meeting would be closed when, in fact, the public body had to first conduct a public vote to exclude the public. Although most of the responses submitted by the public bodies established violations, one public body produced copies of the written notice it had published, by its usual method, reasonably in advance of the meeting, with the required information. In one case, it appeared that the public body had no staff assigned to the task of posting its notices.

It appears to us that the most serious notice problems may arise from public bodies' decisions to treat their meetings as entirely excluded from the Act, and thus from the notice requirement, under the administrative function exclusion. It is difficult for us to gauge the extent to which the exclusion is misapplied, because members of the public often do not know that these so-called "administrative" meetings have occurred. Further, even a public body that discloses its closed administrative sessions might not have kept full minutes, so we are often cannot determine whether the discussion fell within the exclusion. *See, e.g.* 8 *OMCB Opinions* 89 (2012) posted at <http://www.oag.state.md.us/Opinions/Open2012/8omcb89.pdf> (describing the members' recollections of the event as related to counsel, who was not there). It thus may be that there have been more violations of the notice provisions than are reflected in our opinions.

III.**Recommendations for Improvements to the Act****A. 2013 Legislation**

The Open Meetings Act was amended in 2013 when the Governor signed House Bills 139 and 331 and Senate Bill 230. House Bill 139 requires each public body to designate at least one employee, officer, or member to receive training on the requirements of the Act. The public body must submit the designee's name to us, and the requirement may be satisfied by talking the online course or one of the Academy for Excellence in Local Governance courses. We commented on our enthusiastic support of more training and noted that we are an unfunded body. The Office of the Attorney General has posted information on the requirement at <http://www.oag.state.md.us/Opengov/Openmeetings/training.htm>.

House Bill 331 made three types of changes to the Act. First, effective October 1, 2013, circuit court judges will have the discretion to admit Compliance Board opinions into evidence in actions brought under the Act. Under current law, our opinions were inadmissible in those actions. Second, a public body that we have found to have violated the Act must summarize the opinion at its next public meeting, and the members must sign a copy of the opinion and return the copy to the Compliance Board. Third, the legislation changes the provisions for the penalty that a circuit court may impose. We supported the bill.

Senate Bill 230 amended the Act's definition of a "public body" to include entities that created by a memorandum of understanding between the State Department of Education and a majority of the county boards of education. We did not take a position on the bill. Also before the General Assembly was legislation that would have given the Office of the Attorney General and the States' Attorneys the authority to enforce the Act as to both past and prospective violations and that would have changed the penalty provisions in various ways. Although we support the idea of stronger enforcement of the Act, we urged careful study of how the enforcement mechanism should be structured and cautioned against making major changes without examining the Act as a whole. The legislation did not pass. Our position on all the legislative proposals is stated in the minutes of our January 29, 2013 meeting at <http://www.oag.state.md.us/Opengov/Openmeetings/Min012913.pdf>.

B. Board recommendations for the 2014 Legislative Session

The Board does not expect to propose legislation this year.

IV.**Suggestions from the Public**

Members of the public variously suggested that the Act be amended to:

- define the administrative function exclusion more narrowly;
- require public bodies to complete the "compliance checklist" attached to the Open Meetings Act Manual and retain it for inspection;
- prohibit public bodies from taking votes by e-mail or the circulation of documents and require that actions be taken in meetings.

**SUMMARY OF OPINIONS
ISSUED FROM JULY 1 —
SEPTEMBER 30, 2013**

9 Official Opinions of the Compliance Board 1 (2013)

University of Maryland Board of Regents

Craig O'Donnell, Complainant

July 9, 2013

Topics discussed: Requirement that advisory and quasi-legislative functions be performed in open session; limits of administrative function exclusion; closed-session procedures; timely adoption of minutes; notice

9 Official Opinions of the Compliance Board 15 (2013)

Board of Finance of Baltimore City

Stephen Janis and Melissa Roeder (Fox 45),

Luke Broadwater (Baltimore Sun), Complainants

July 25, 2013

Topics discussed: Disclosures to be made before a meeting is closed under the Open Meetings Act; limits of the "business location" and "public securities" exceptions in State Government Article § 10-508(a)(4) and (a)(6)

9 Official Opinions of the Compliance Board 29 (2013)

Town Council, Town of Hurlock

Reverend Charles T. Cephas, Complainant

August 9, 2013

Topics discussed: Applicability of administrative function exclusion to council's appointment to vacancy on the council; disclosure requirements for closed sessions; discussion in closed session of matters not within the claimed exception

9 Official Opinions of the Compliance Board 37 (2013)

Coastal and Watershed Resources Advisory Committee

Michele J. Fluss, Complainant

August 8, 2013

Topics discussed: Notice requirements

9 Official Opinions of the Compliance Board 40 (2013)

Board of County Commissioners of Frederick County

Catherine Forrence and Kimberly Melon, Complainants

August 16, 2013

Topics discussed: Definition of a "meeting" subject to the Open Meetings Act; notice requirements

9 Official Opinions of the Compliance Board 44 (2013)

Mayor and Council, City of Rockville

Joseph Jordan, Complainant

Topics discussed: Applicability of "legal advice" and "potential litigation" exceptions in State Government Article § 10-508(a) (7) and (a)(8)

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

[13-21-36]

The Judiciary

COURT OF APPEALS OF MARYLAND

DISCIPLINARY PROCEEDINGS

This is to certify that by an Opinion and Order of the Court dated September 26, 2013, **JULIA COLTON-BELL**, 300 Yokum Parkway, #1208, Alexandria, Virginia 22304, 8720 George Avenue, Suite 1000, Silver Spring, Maryland 20910, has been DISBARRED, effective immediately, from the further practice of law in the State, and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-760 (e)).

[13-21-46]

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 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 04 FISCAL

Notice of Opportunity for Public Inspection and Comment

In accordance with the Regulatory Review and Evaluation Act, State Government Article, §§10-130—10-139, Annotated Code of Maryland, the Department of Health and Mental Hygiene is reviewing and evaluating certain regulations codified within Subtitle 04 of Title 10 of the Code of Maryland Regulations, entitled Fiscal. The purpose of the review and evaluation is to determine whether existing regulations continue to accomplish the purposes for which they were adopted, clarify ambiguous or unclear language, and repeal obsolete or duplicative provisions.

The following chapter is currently being reviewed:

- 10.04.03 Standards for Audits of Grants and Contracts with Providers and Local Health Departments

Interested parties may submit comments regarding COMAR 10.04.03 to Timothy Laureska, Office of the Inspector General - External Audit Division, 55 Wade Ave, Tuerk Bldg. Rm B-1, Catonsville, MD 21228; by fax to (410) 402-8800, or by email to timothy.laureska@maryland.gov. Comments must be received by November 18, 2013.

[13-21-31]

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

08.02.23 Shellfish Aquaculture and Leasing

Authority: Maryland Natural Resources, §4-11A-23, Annotated Code of Maryland

Notice of Emergency Action

[13-375-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulation **.08** under **COMAR 08.02.23 Shellfish Aquaculture and Leasing**.

Emergency status began: September 23, 2013.

Emergency status expires: March 22, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:19 Md. R. 1549 — 1551 (September 20, 2013), referenced as [13-375-P].

JOSEPH P. GILL
Secretary, Natural Resources

Subtitle 03 WILDLIFE

08.03.01 General

Authority: Natural Resources Articles, §§10-205 and 10-408, Annotated Code of Maryland; *Ch. 427, Acts of 2013*

Notice of Emergency Action

[13-261-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation **.01** under **COMAR 08.03.01 General**.

Emergency status began: October 1, 2013.

Emergency status expires: January 31, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:18 Md. R. 1490 (September 6, 2013), referenced as [13-261-P].

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 03 WILDLIFE

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

Authority: Natural Resources Article, §10-205, Annotated Code of Maryland

Notice of Emergency Action

[13-259-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations **.01**, **.07**, and **.08** under **COMAR 08.03.03 Open Seasons, Bag Limits for Game Birds and Game Animals**.

Emergency status began: October 1, 2013.

Emergency status expires: January 31, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:18 Md. R. 1490 — 1492 (September 6, 2013), referenced as [13-259-P].

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 03 WILDLIFE

08.03.10 General Wildlife Hunting Regulations

Authority: Natural Resources Article, §§10-205 and 10-408, Annotated Code of Maryland; *Ch. 427, Acts of 2013*

Notice of Emergency Action

[13-260-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulation **.16** under **COMAR 08.03.10 General Wildlife Hunting Regulations**.

Emergency status began: October 1, 2013.

Emergency status expires: January 31, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:18 Md. R. 1492 (September 6, 2013), referenced as [13-260-P].

JOSEPH P. GILL
Secretary of Natural Resources

Title 12
DEPARTMENT OF PUBLIC
SAFETY AND
CORRECTIONAL SERVICES

Subtitle 11 OFFICE OF THE
SECRETARY

12.11.09 Inmate Welfare Fund

Authority: Correctional Services Article, §§2-109 and 10-502, Annotated Code of Maryland

Notice of Emergency Action
[13-277-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .02 — .04 and new Regulation .05 under **COMAR 12.11.09 Inmate Welfare Fund**.

Emergency status began: September 23, 2013.

Emergency status expires: January 1, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:19 Md. R. 1564 — 1565 (September 20, 2013), referenced as [13-277-P].

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

Title 29
DEPARTMENT OF STATE
POLICE

Subtitle 03 WEAPONS REGULATIONS

29.03.01 Regulated Firearms

Authority: Public Safety Article, §5-105; Criminal Law Article, Title 4, Subtitle 3; Annotated Code of Maryland

Notice of Emergency Action
[13-287-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of existing Regulations .01 — .32 and to new Regulations .01 — .58 under **COMAR 29.03.01 Regulated Firearms**.

Emergency status began: October 1, 2013.

Emergency status expires: January 31, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:19 Md. R. 1568 — 1582 (September 20, 2013), referenced as [13-287-P].

MARCUS L. BROWN
Secretary of State Police

Subtitle 03 WEAPONS REGULATIONS

29.03.02 Handgun Permit Unit

Authority: Public Safety Article, Title 5, Subtitle 3[,]; *Criminal Law Article, §4-202*; Annotated Code of Maryland

Notice of Emergency Action
[13-288-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of existing Regulations .01 — .14 and to new Regulations .01 — .14 under **COMAR 29.03.02 Handgun Permit Unit**.

Emergency status began: October 1, 2013.

Emergency status expires: January 31, 2014.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:19 Md. R. 1583 — 1586 (September 20, 2013), referenced as [13-288-P].

MARCUS L. BROWN
Secretary of State Police

Title 31
MARYLAND INSURANCE
ADMINISTRATION

Subtitle 03 INSURANCE PRODUCERS
AND OTHER INSURANCE
PROFESSIONALS

31.03.17 Consolidated Services Center — SHOP Exchange Enrollment Permits

Authority: Insurance Article, §§2-109 and 31-113.1, Annotated Code of Maryland

Notice of Emergency Action
[13-239-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulations .01—.09 under a new chapter, **COMAR 31.03.17 Consolidated Services Center — SHOP Exchange Enrollment Permits**.

Emergency status began: September 19, 2013.

Emergency status expires: November 30, 2013.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 40:17 Md. R. 1458 — 1459 (August 23, 2013), referenced as [13-239-P].

THERESE M. GOLDSMITH
Insurance Commissioner

**Subtitle 15 UNFAIR TRADE
PRACTICES**

**31.15.02 Advertisements of All Insurance
Contracts Which Include Any Accident,
Sickness, Hospital, Surgical or Medical
Coverages**

Authority: Insurance Article, §§2-109 and 27-203, Annotated Code of
Maryland

Notice of Emergency Action
[13-250-E]

The Joint Committee on Administrative, Executive, and
Legislative Review has granted emergency status to amendments to
Regulations **.01, .06, .07, .11, .12, .15, .17, and .18** and new
Regulation **.17-1** under **COMAR 31.15.02 Advertisements of All
Insurance Contracts Which Include Any Accident, Sickness,
Hospital, Surgical or Medical Coverages**.

Emergency status began: September 19, 2013.

Emergency status expires: December 2, 2013.

Editor's Note: The text of this document will not be printed here
because it appeared as a Notice of Proposed Action in 40:18 Md. R.
1516 —1517 (September 6, 2013), referenced as [13-250-P].

THERESE M. GOLDSMITH
Insurance Commissioner

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 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.19 Nuisance Species

Authority: Natural Resources Article, §4-205.1, Annotated Code of Maryland

Notice of Final Action

[13-235-F]

On October 7, 2013, the Secretary of Natural Resources adopted amendments to Regulations **.04** and **.06** under **COMAR 08.02.19 Nuisance Species**. This action, which was proposed for adoption in 40:17 Md. R. 1425—1426 (August 23, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS

08.18.13 Magothy River

Authority: Natural Resources Article, §§8-703 and 8-704, Annotated Code of Maryland

Notice of Final Action

[13-234-F]

On October 8, 2013, the Secretary of Natural Resources adopted amendments to Regulations **.01** — **.05** under **COMAR 08.18.13 Magothy River**. This action, which was proposed for adoption in 40:17 Md. R. 1426 — 1428 (August 23, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS

08.18.14 Middle River

Authority: Natural Resources Article, §§8-703 and 8-704, Annotated Code of Maryland

Notice of Final Action

[13-233-F]

On October 8, 2013, the Secretary of Natural Resources adopted amendments to Regulations **.01** — **.06** under **COMAR 08.18.14 Middle River**. This action, which was proposed for adoption in 40:17 Md. R. 1428 — 1429 (August 23, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

JOSEPH P. GILL
Secretary of Natural Resources

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 03 HEALTH STATISTICS

10.03.01 Vital Records

Authority: Health-General Article, §4-212, Annotated Code of Maryland

Notice of Final Action

[13-217-F]

On September 27, 2013, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.01** and **.14** under **COMAR 10.03.01 Vital Records**. This action, which was proposed for adoption in 40:16 Md. R. 1349 — 1350 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.02 Physicians' Services

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

Notice of Final Action

[13-225-F-I]

On October 7, 2013, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .07 under **COMAR 10.09.02 Physicians' Services**. This action, which was proposed for adoption in 40:16 Md. R. 1350 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

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

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Final Action

[13-190-F]

On September 27, 2013, the Secretary of Health and Mental Hygiene adopted amendments to:

- (1) Regulation .01 under **COMAR 10.09.62 Maryland Medicaid Managed Care Program: Definitions**;
- (2) Regulations .03 and .04 under **COMAR 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment**;
- (3) Regulations .05 and .06 under **COMAR 10.09.64 Maryland Medicaid Managed Care Program: MCO Application**;
- (4) Regulations .02 and .20 and repeal Regulation .19-3 under **COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations**;
- (5) Regulation .07 under **COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access**;
- (6) Regulations .12, .24, .27, and .28 under **COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits**; and
- (7) Regulation .10 under **COMAR 10.09.70 Maryland Medicaid Managed Care Program: Specialty Mental Health System**.

Also at this time the Secretary is withdrawing the proposed amendments to Regulation .02 under **COMAR 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment** and the proposed amendments to Regulation .06 under **COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access**, which were printed in the same Notice of Proposed Action.

This action, which was proposed for adoption in 40:14 Md. R. 1192—1195 (July 12, 2013), has been adopted as otherwise proposed.

Effective Date: October 28, 2013.

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

Subtitle 41 BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

10.41.03 Licensure and Continuing Education

Authority: Health Occupations Article, §§2-205 and 2-308, Annotated Code of Maryland

Notice of Final Action

[13-218-F]

On October 7, 2013, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .05 under **COMAR 10.41.03 Licensure and Continuing Education**. This action, which was proposed for adoption in 40:16 Md. R. 1353 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

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

Subtitle 41 BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

10.41.08 Hearing Aid Dispensers

Authority: Health Occupations Article, §§2-101(d), 2-205, and 2-308, Annotated Code of Maryland

Notice of Final Action

[13-184-F]

On September 6, 2013, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .11 under **COMAR 10.41.08 Hearing Aid Dispensers**. This action, which was proposed for adoption in 40:14 Md. R. 1195—1196 (July 12, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

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

Subtitle 47 ALCOHOL AND DRUG ABUSE ADMINISTRATION

10.47.07 Prescription Drug Monitoring Program

Authority: Health-General Article, Title 21, Subtitle 2A, Annotated Code of Maryland

Notice of Final Action

[13-228-F]

On October 7, 2013, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .04 and .08 under **COMAR 10.47.07 Prescription Drug Monitoring Program**. This action, which was proposed for adoption in 40:16 Md. R. 1353—1354 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

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

Title 11

DEPARTMENT OF TRANSPORTATION

Subtitle 01 OFFICE OF THE SECRETARY

11.01.17 Public-Private Partnership Program

Authority: State Finance and Procurement Article, §§10A-102 — 10A-105, 10A-201 — 10A-204, 10A301, 10A-401 — 10A-403, and 11-203(h), Annotated Code of Maryland; Ch. 5, Acts of 2013

Notice of Final Action

[13-194-F]

On October 18, 2013, the Secretary of the Maryland Department of Transportation adopted new Regulations **.01—10** under **COMAR 11.01.17 Public-Private Partnership Program**. This action, which was proposed for adoption in 40:15 Md. R. 1242—1248 (July 26, 2013), has been adopted with the nonsubstantive changes shown below.

Effective Date: October 28, 2013.

Attorney General's Certification

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

1. The following language added to the Regulations provides enhancements and clarification to the statutorily mandated review process and does not substantially affect the rights, duties, or obligations of a member of a regulated group or profession or a member of the public:

a. COMAR 11.01.17.06(C)(1)(a)(ix) Potential impact on the workforce, including existing State employees, if any.

b. COMAR 11.01.17.06(C)(1)(b)(vii) In the event that a public-private partnership delivery method may have a potential impact on the workforce or existing State employees, a preliminary assessment of the potential impact and potential options for mitigating that impact, including the protections allotted to State employees that are in effect at the time that the P3 agreement is approved by the Board of Public Works; and

c. COMAR 11.01.17.07(A)(3)(a)(vii) In the event that a public-private partnership delivery method may have a potential impact on existing State employees, an analysis of potential impact and potential options for mitigating the impact; and

d. COMAR 11.01.17.07(A)(4) In the event that the proposed public-private partnership delivery method may have a potential impact on existing State employees, the Department shall arrange for meetings between the Secretary and appropriate bargaining unit representatives, if any, for a preliminary discussion of potential impact and potential options for mitigating that impact.

e. COMAR 11.01.17.09(I)(3) Arrange for meetings between the Secretary and appropriate bargaining unit representatives to provide notice and discuss plans for impacted State employees, in the event that the proposed public-private partnership delivery method has an impact on existing State employees.

2. The other nonsubstantive changes include minor edits to word usage to provide clarification and consistency in COMAR, including:

a. Moving “For each private entity that responds to a public notice of solicitation, the Department shall make a responsibility determination in accordance with State Finance and Procurement

Article, §10A-202(c), Annotated Code of Maryland” from COMAR 11.01.17.08(C)(4) to COMAR 11.01.17.08(A)(2) so that it appears earlier in the process, which provides greater clarification to the reader;

- b. Adding Annotated Code of Maryland;
- c. Changing case-specific to case-by-case;
- d. Changing presolicitation to pre-solicitation; and
- e. Other minor edits that do not substantially affect the rights, duties, or obligations of a member of a regulated group or profession or a member of the public.

.01 Purpose.

The purpose of this chapter is to:

A. Establish a Maryland Department of Transportation Public-Private Partnership Program (“Program”) to enhance the State’s transportation systems, assets, [[services]] functions and infrastructure; and

B. (proposed text unchanged)

.03 Definitions.

A. (proposed text unchanged)

B. *Terms Defined.*

(1) — (2) (proposed text unchanged)

(3) “Industry forum” means a [[presolicitation]] pre-solicitation information gathering event that may include public and private sector participants.

(4) — (17) (proposed text unchanged)

.05 Identification Process.

A. *Public-private partnership concepts and opportunities identified within the Department and its Modal Administrations and through other state, regional, local, and municipal processes.*

(1) *Potential public-private partnership concepts and opportunities may be identified through periodic transportation planning, communication, and evaluation processes that are carried out within the Department and its Modal Administrations and through other state, regional, local, and municipal processes, including but not limited to:*

(a) — (c) (proposed text unchanged)

(d) *County priority [[project lists]] letters.*

(2) *Public-Private Partnership Candidate Concept Application.*

(a) — (b) (proposed text unchanged)

(c) *Relevant supporting information or documentation shall be included in the submission of the Public-Private Partnership Candidate Concept Application, and to the extent such information is available, including but not limited to:*

(i) — (iv) (proposed text unchanged)

(v) *Additional information, as necessary, to support a high-level screening process, as outlined in [[COMAR 11.01.17.06C(1)]] Regulation .06C(1) of this chapter.*

(d) (proposed text unchanged)

B. *Unsolicited Proposals.*

(1) — (3) (proposed text unchanged)

(4) *An unsolicited proposal shall:*

(a) *Be sealed and delivered to the Secretary’s Office to the attention of the Steering Committee chair[.];*

(b) *Consist of five hard copies and one electronic copy; and*

(c) *Be sealed in a mailing envelope or package]] bearing the private entity’s name, address, and the words “Public-Private Partnership Unsolicited Proposal” clearly on the outside[.]; and*

(b) Consist of 15 hardcopies and 1 electronic copy.

(5) — (6) (proposed text unchanged)

(7) *An unsolicited proposal shall include, at a minimum, the following:*

(a) — (b) (proposed text unchanged)

(c) A summary narrative that describes:

(i) — (ii) (proposed text unchanged)

(iii) Preliminary qualitative evaluation of relevant benefits and costs;

(iv) — (vi) (proposed text unchanged)

(d) A high-level description of financial feasibility that includes:

(i) [[Identifying amounts]] Amounts and sources of any public funding that may be required;

(ii) [[Showing how]] How estimated funding from all relevant sources would be sufficient to support all asset delivery activities, including design, property and equipment acquisition, construction, long term capital replacement activities, financing, operations, and maintenance; and

(iii) [[Showing how]] How estimated funding from all relevant sources would be sufficient to provide for contingencies to meet the terms and conditions under which the public infrastructure asset [[handback requirements at the end]] shall be handed back to the Department at the expiration or termination of the public-private partnership agreement.

(e) — (f) (proposed text unchanged)

(g) Additional information, as necessary, to support a high-level screening process, as outlined in [[COMAR 11.01.17.06C (1)]] Regulation .06C(1) of this chapter.

(8) Unsolicited Proposal Fee.

(a) Each unsolicited proposal that addresses a project already in the Consolidated Transportation [[Plan]] Program, shall be accompanied by a check in the amount of \$10,000 made payable to the Maryland Department of Transportation.

(b) Each unsolicited proposal that does not address a project already in the Consolidated Transportation [[Plan]] Program shall be accompanied by a check in the amount of \$25,000 made payable to the Maryland Department of Transportation.

(c) — (d) (proposed text unchanged)

.06 Screening Process.

A. — B. (proposed text unchanged)

C. The screening process shall be organized in two phases.

(1) High-Level Screening Phase.

(a) Factors to be considered during the high-level screening may include, but are not limited to:

(i) — (vi) (proposed text unchanged)

(vii) Public affordability considerations; [[and]]

(viii) Potential for increased revenue generation and revenue sharing with the Department~~[[.]]; and~~

[[ix]] Potential impact on the workforce, including existing State employees, if any.

(b) — (f) (proposed text unchanged)

(2) Detailed-Level Screening Phase.

(a) (proposed text unchanged)

(b) In addition to the findings of the high-level screening phase, analyses and documentation during the detailed-level screening phase may include some or all of the following categories:

(i) — (v) (proposed text unchanged)

(vi) Risk assessment of key asset delivery elements;

[[and]]

(vii) In the event that a public-private partnership delivery method may have a potential impact on the workforce or existing State employees, a preliminary assessment of the potential impact and potential options for mitigating that impact, including the protections allotted to State employees that are in effect at the time that the P3 agreement is approved by the Board of Public Works; and

(viii) Other analyses determined to be necessary to determine the appropriateness, viability, and effectiveness of a public-private partnership delivery method.

(c) The types of analyses and resources committed to a detailed-level screening phase will be determined by the Steering Committee and the Secretary, on a [[case-specific]] case-by-case basis.

(d) Based on the findings of the detailed-level screening, the Steering Committee shall make recommendations to the Secretary as to which public-private partnership concepts should be advanced and which should not be advanced to submission of a [[presolicitation]] pre-solicitation report.

(e) The Secretary's written approval shall be required to advance or not advance a public-private partnership concept to submission of a [[presolicitation]] pre-solicitation report.

(f) Within 45 days after advancement of a public-private partnership concept to the detailed-level screening analysis phase, the Steering Committee shall:

(i) Notify the internal sponsor or private entity that the concept is or is not under development for possible submission of a [[presolicitation]] pre-solicitation report; or

(ii) (proposed text unchanged)

.07 [[Presolicitation]] Pre-solicitation.

A. [[Presolicitation]] Pre-solicitation Report Development.

(1) The development of a [[presolicitation]] pre-solicitation report for submission involves a broad range of activities that may run concurrent to the high-level and detailed-level screening phases.

(2) In consultation with the Steering Committee, the Secretary shall determine:

(a) The tasks required for the development of a [[presolicitation]] pre-solicitation report; and

(b) (proposed text unchanged)

(3) The development of a [[presolicitation]] pre-solicitation report containing all elements required in State Finance and Procurement Article, §10A-201(b)(1), Annotated Code of Maryland may entail a variety of tasks, including but not limited to:

(a) Analyses and documentation, including some or all of the following categories:

(i) — (v) (proposed text unchanged)

(vi) Risk assessment of key asset delivery elements;

[[and]]

(vii) In the event that a public-private partnership delivery method may have a potential impact on existing State employees, an analysis of potential impact and potential options for mitigating the impact; and

(viii) Other analyses determined to be necessary to determine the appropriateness, viability, and effectiveness of a public-private partnership delivery method;

(b) — (c) (proposed text unchanged)

(4) In the event that the proposed public-private partnership delivery method may have a potential impact on existing State employees, the Department shall arrange for meetings between the Secretary and appropriate bargaining unit representatives, if any, for a preliminary discussion of potential impact and potential options for mitigating that impact.

B. The Department may not issue a public notice of solicitation for a public-private partnership until:

(1) A [[presolicitation]] pre-solicitation report concerning the proposed public-private partnership is submitted to the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services in accordance with State Finance and Procurement Article, §10A-201(a), Annotated Code of Maryland that contains the information required by State Finance and Procurement Article, §10A-201(b)(1), Annotated Code of Maryland; and

(2) (proposed text unchanged)

.08 Solicitation Process.

A. General.

(1) *The solicitation process for public-private partnerships shall be competitive, regardless of whether the public-private partnership concept originated internally within the Department or from an unsolicited proposal.*

(2) *For each private entity that responds to a public notice of solicitation, the Department shall make a responsibility determination in accordance with State Finance and Procurement Article, §10A-202(c), Annotated Code of Maryland.*

B. (proposed text unchanged)

C. Multi-Step Solicitation Process.

(1) (proposed text unchanged)

(2) *The determination to utilize some or all of the solicitation steps shall be case-by-case.*

(3) *The Department may include additional solicitation steps on a case-by-case basis as set forth in the public notice of solicitation.*

(4) *For each private entity that responds to a public notice of solicitation, the Department shall make a responsibility determination in accordance with State Finance and Procurement Article, §10A-202(c), Annotated Code of Maryland.*

(5) (4) Request for Qualifications.

(a) *The purpose of a request for qualifications is to:*

(i) *Identify private entities that qualify as participants in the solicitation process and*

(ii) *Identify a shortlist of the highest qualified candidates for continuing in the solicitation process, which are the shortlisted private entities.*

(b) *Based on the responses to the request for qualifications, the Department may:*

(i) (proposed text unchanged)

(ii) *Develop a shortlist of one or more of the highest qualified candidates for continuing in the solicitation process, which are the shortlisted private entities.*

(c) (proposed text unchanged)

(6) (5) (proposed text unchanged)

(7) (6) Draft Request for Proposals.

(a) *As part of a multi-step solicitation process, the Department may issue one or more draft requests for proposals to qualified candidates selected to continue in the solicitation process as shortlisted private entities.*

(b) — (d) (proposed text unchanged)

(8) (7) — (9) (8) (proposed text unchanged)

(10) (9) Information Availability During Solicitation.

(a) — (b) (proposed text unchanged)

(c) *Information or site access provided to individual private entities pursuant to an additional information request must also be made available to all other interested private entities if a shortlist of qualified private entities has not yet been established.*

(d) *Information or site access provided to individual private entities pursuant to an additional information request must also be made available to all other shortlisted private entities if a shortlist of qualified private entities has been established.*

(e) (proposed text unchanged)

D. Reimbursement.

(1) — (4) (proposed text unchanged)

(5) Maximum Reimbursement Amount.

(a) (proposed text unchanged)

(b) *The Department may establish a reimbursement less than the maximum prescribed herein on a case-by-case basis.*

(6) *Except as set forth in the solicitation documents, should the solicitation process or negotiations be suspended, discontinued, or terminated, the private entity shall have no rights of recourse,*

including reimbursement of the private entity's unsolicited proposal review fees or costs associated, directly or indirectly, with the solicited or unsolicited proposal developments.

E. Reservation of Rights.

(1) *The Department reserves all rights available by law and in equity in its public-private partnership solicitation process, including without limitation, the right to:*

(a) (1) — (e) (5) (proposed text unchanged)

(f) (6) *Disqualify any private entity at any point during a solicitation process for violating any rules or requirements of the solicitation set forth in the public notice of solicitation, in any communication from the Department, or as otherwise set forth in applicable law;*

(g) (7) — (j) (10) (proposed text unchanged)

F. *Additional reservations of Department rights may be included in the solicitation documents for a public-private partnership.*

.09 Evaluation, Negotiation, and Award.

A. *The Department shall conduct evaluations of submitted responses to the following: requests for qualifications and evaluations of submitted proposals to requests for proposals using the information submitted by the private entity.*

(1) *Submitted information shall be evaluated against the requirements of the solicitation and the evaluation criteria that the Department specified specifies in the solicitation for the particular public-private partnership opportunity.*

(2) (proposed text unchanged)

(3) *The Department's evaluation criteria shall be clearly set forth in each request for solicitation issued with a ranking of such criteria from more important to less important.*

(4) (proposed text unchanged)

B. *The processes for evaluating submitted responses to request for qualifications and for evaluating submitted proposals to requests for proposals shall be described and submitted to the Board of Public Works as part of the presolicitation pre-solicitation process the Board of Public Works shall approve.*

C. *The Secretary shall establish one or more evaluation committees on a case-specific case-by-case basis that may:*

(1) — (4) (proposed text unchanged)

D. — E. (proposed text unchanged)

F. *The Secretary may determine that negotiations be completed by a negotiations committee either comprised of members of the case-specific evaluation committees or established separately from the evaluation committee that may:*

(1) — (4) (proposed text unchanged)

G. — H. (proposed text unchanged)

I. *After the Secretary provides written approval of the best value private entity, the Department shall:*

(1) *Finalize and prepare the public-private partnership agreement for execution, in coordination with the best value private entity; and*

(2) *Commence the final agreement review process in accordance with State Finance and Procurement Article, §10A-203, Annotated Code of Maryland and*

(3) *Arrange for meetings between the Secretary and appropriate bargaining unit representatives to provide notice and discuss plans for impacted State employees, in the event that the proposed public-private partnership delivery method has an impact on existing State employees.*

J. (proposed text unchanged)

JAMES T. SMITH, JR.
Secretary of Transportation

**Subtitle 07 MARYLAND
TRANSPORTATION AUTHORITY**

**11.07.07 Electronic Toll Collection and Toll
Violation Enforcement**

Authority: Transportation Article, §§ 4-205, 4-312, 21-1414, 21-1415, 26-401, and 27-110; *Courts and Judicial Proceedings Article, §§7-301[.] and 7-302*; Annotated Code of Maryland

Notice of Final Action

[13-195-F]

On September 19, 2013, the Maryland Transportation Authority adopted the repeal of existing Regulations .01 — .06 and new Regulations .01 — .09 under **COMAR 11.07.07 Electronic Toll Collection and Toll Violation Enforcement**. This action, which was proposed for adoption in 40:15 Md. R.1248 — 1252 (July 26, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

HAROLD BARTLETT
Executive Secretary

**Subtitle 15 MOTOR VEHICLE
ADMINISTRATION — VEHICLE
REGISTRATION**

**11.15.28 Vehicle Registration Suspension and
Nonrenewal for Failure to Pay Toll**

Authority: Transportation Article, §§12-104(b), 21-1414, and 27-110, Annotated Code of Maryland

Notice of Final Action

[13-220-F]

On September 24, 2013, the Administrator of the Motor Vehicle Administration adopted amendments to Regulations .01 — .05 and the repeal of Regulation .06 under **COMAR 11.15.28 Vehicle Registration Suspension and Nonrenewal for Failure to Pay Toll**. This action, which was proposed for adoption in 40:16 Md. R. 1363—1364 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

JOHN T. KUO
Administrator
Motor Vehicle Administration

**Title 13A
STATE BOARD OF
EDUCATION**

Subtitle 04 SPECIFIC SUBJECTS

13A.04.15 Digital Learning

Authority: Education Article, §§2-205 and 7-1002, Annotated Code of Maryland

Notice of Final Action

[13-199-F-I]

On September 24, 2013, the Maryland State Board of Education adopted amendments to Regulation .02, new Regulation .03, amendments to and the recodification of existing Regulations .03 and .06 to be Regulations .04 and .07, and the recodification of existing Regulations .04 and .05 to be Regulations .05 and .06 under **COMAR 13A.04.15 Digital Learning**. This action, which was proposed for adoption in 40:15 Md. R. 1253—1254 (July 26, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

LILLIAN M. LOWERY, Ed.D.
State Superintendent of Schools

**Title 13B
MARYLAND HIGHER
EDUCATION COMMISSION**

Subtitle 01 NONPUBLIC SCHOOLS

**13B.01.01 Minimum Requirements for Private
Career Schools**

Authority: Education Article, §§11-105(u) and 11-402, Annotated Code of Maryland

Notice of Final Action

[13-215-F]

On September 25, 2013, the Maryland Higher Education Commission adopted amendments to Regulation .02 and the repeal of Regulation .19 under **COMAR 13B.01.01 Minimum Requirements for Private Career Schools**. This action, which was proposed for adoption in 40:16 Md. R. 1386 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

DANETTE GERALD HOWARD, Ph.D.
Secretary of Higher Education

Subtitle 02 ACADEMIC REGULATIONS

Notice of Final Action

[13-212-F]

On September 25, 2013, the Maryland Higher Education Commission adopted amendments to:

- (1) Regulation .16 under **COMAR 13B.02.02 Minimum Requirements for In-State Degree-Granting Institutions**; and
- (2) Regulation .24 under **COMAR 13B.02.03 Academic Programs — Degree-Granting Institutions**.

This action, which was proposed for adoption in 40:16 Md. R. 1386 — 1388 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

DANETTE GERALD HOWARD, Ph.D.
Secretary of Higher Education

Subtitle 02 ACADEMIC REGULATIONS

13B.02.04 Exemption Procedures for Religious Educational Institutions

Authority: Education Article, §§11-105(o) and (u) and 11-202.1, Annotated Code of Maryland.

Notice of Final Action

[13-214-F]

On September 25, 2013, the Maryland Higher Education Commission adopted amendments to Regulations .01—.03, the recodification of existing Regulation .04 to be Regulation .05, amendments to and the recodification of existing Regulation .05 to be Regulation .04, and new Regulation .06 under **COMAR 13B.02.04 Exemption Procedures for Religious Educational Institutions**. This action, which was proposed for adoption in 40:16 Md. R. 1389—1390 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

DANETTE GERALD HOWARD, Ph.D.
Secretary of Higher Education

Subtitle 05 FULLY ONLINE PROGRAMS

13B.05.01 Registration

Authority: Education Article, §§11-105(u), 11-202, and 11-202.2, Annotated Code of Maryland

Notice of Final Action

[13-213-F]

On September 25, 2013, the Maryland Higher Education Commission adopted amendments to Regulations .02, .04, .05, and .07 under **COMAR 13B.05.01 Registration**. This action, which was proposed for adoption in 40:16 Md. R. 1390 (August 9, 2013), has been adopted as proposed.

Effective Date: October 28, 2013.

DANETTE GERALD HOWARD, Ph.D.
Secretary of Higher Education

Title 14 INDEPENDENT AGENCIES

Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

Notice of Final Action

[13-243-F]

On October 8, 2013, the Maryland State Commission on Criminal Sentencing Policy adopted amendments to:

- (1) Regulations .01 — .03 under **COMAR 14.22.01 General Regulations**; and
- (2) Regulations .01 and .02 under **COMAR Criminal Offenses and Seriousness Categories**.

This action, which was proposed for adoption in 40:17 Md. R. 1439—1457 (August 23, 2013), has been adopted as proposed.

Effective Date: November 1, 2013.

DAVID SOULE
Executive Director
Maryland State Commission on
Criminal Sentencing Policy

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

Notice of Final Action

[13-019-F-1]

On September 30, 2013, the Secretary of Agriculture adopted:

- (1) Amendments to Regulations .01, .02, .04, and .05 and the repeal of Regulation .07 under **COMAR 15.20.06 Nutrient and Commercial Fertilizer Application Requirements for Agricultural Land**; and

- (2) New Regulations .01 — .03, .05, and .07 — .17 under **COMAR 15.20.10 Fertilizer Application Requirements for Land Not Used for Agricultural Purposes**.

New Regulations .04 and .06 under **COMAR 15.20.10 Fertilizer Application Requirements for Land Not Used for Agricultural Purposes** were adopted separately in 40:9 Md. R. 798 (May 3, 2013).

This action, which was proposed for adoption in 40:2 Md. R. 157 — 162 (January 25, 2013), has been adopted as otherwise proposed.

Effective Date: October 28, 2013.

EARL F. HANCE
Secretary of Agriculture

Withdrawal of Regulations

Title 13A STATE BOARD OF EDUCATION

Subtitle 12 CERTIFICATION

13A.12.01 General Provision

Authority: Education Article, §§2-205, 2-303(g), 6-202, and 6-701—6-705;
Family Law Article, §10-119.3, Annotated Code of Maryland

Notice of Withdrawal

[12-299-W]

The Maryland State Board of Education withdraws amendments to Regulations **.02**, **.06**, and **.11** under **COMAR 13A.12.01 General Provisions**, as published in 39:22 Md. R. 1458 — 1459 (November 2, 2012).

The Joint Committee on Administrative, Executive, and Legislative Review voted to oppose the adoption of these regulations therefore the agency is withdrawing the proposed action.

LILLIAN M. LOWRY, Ed.D.
State Superintendent of Schools

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 03 MOTOR FUEL TAX

03.03.05 Motor Fuel Inspection

Authority: Tax-General Article, §2-103; Business Regulation Article, §§10-202 and 10-323.1; Annotated Code of Maryland

Notice of Proposed Action

[13-332-P]

The Comptroller of the Treasury proposes to amend Regulation .01 under **COMAR 03.03.05 Motor Fuel Inspection**.

Statement of Purpose

The purpose of this action is to provide a definition for Ethanol Flex Fuel for consumers and suppliers of the product.

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 Sukanya Mukherjee, Staff Attorney, Comptroller of the Treasury — Field Enforcement Division, 80 Calvert St., Annapolis, MD 21401, or call 410-260-7494, or email to smukherjee@comp.state.md.us, or fax to 410-974-5564. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(7) (text unchanged)

(8) “Ethanol flex fuel” means automotive fuel blend of gasoline and 51 to 83 percent volume ethanol, commercially known as “E85,” for use in ground vehicles equipped with flexible-fuel spark ignition engines.

[(8)] (9) — [(30)] (31) (text unchanged)

PETER FRANCHOT
Comptroller of the Treasury

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 13 NEIGHBORHOOD BUSINESS DEVELOPMENT

Notice of Proposed Action

[13-327-P]

The Secretary of Housing and Community Development proposes to amend:

(1) Regulations .03, .06, and .11 and repeal Regulation .09 under **COMAR 05.13.01 Business Development Program**; and

(2) Regulation .02 under **COMAR 05.13.02 Main Street Improvement Program**.

Statement of Purpose

The purpose of this action is to update regulations by removing the term “designated neighborhoods” and the repealing process for designating neighborhoods, and to replace the term “designated

neighborhoods” with the applicable statutory term “sustainable communities”.

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 Papagni, Program Officer, Division of Neighborhood Revitalization, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-209-5807, or email to papagni@mdhousing.org, or fax to 410-685-8270. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

05.13.01 Business Development Program

Authority: Housing and Community Development Article, §§2-201 and 2-111, Title 4, Subtitle 5, and Title 6, Subtitle 3, Annotated Code of Maryland

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (3) (text unchanged)

(4) ["Designated neighborhood" means a geographically defined area of a local jurisdiction which is designated as an eligible neighborhood as set forth in Regulation .09 of this chapter.] *Repealed.*

(5) — (19) (text unchanged)

(20) "*Sustainable community*" means the part of a priority funding area that:

(a) *Has been designated as a sustainable community in accordance with COMAR 05.17.02;*

(b) *Has been designated as a BRAC Revitalization and Incentive Zone under Economic Development Article, Title 5, Subtitle 13, Annotated Code of Maryland; or*

(c) *Has been designated as a transit-oriented development under Transportation Article, §7-101, Annotated Code of Maryland.*

.06 Eligible Projects.

A. In order to be eligible for financial assistance, a project shall satisfy the following requirements:

(1) (text unchanged)

(2) The project is located in a [designated neighborhood as defined in Regulation .09 of this chapter] *sustainable community*;

(3) — (10) (text unchanged)

B. (text unchanged)

.11 Applications and Processing.

A. An application for financial assistance shall be submitted to the Department and shall be made upon standard forms prescribed by the Department. Each application shall:

(1) — (4) (text unchanged)

(5) Contain sufficient information to determine that the:

(a) Project is located in a [designated neighborhood] *sustainable community*,

(b) — (d) (text unchanged)

(6) (text unchanged)

B. Application Evaluation.

(1) — (2) (text unchanged)

(3) The Program may take the information set forth in an application and the following factors into consideration in recommending an award of financial assistance:

(a) — (c) (text unchanged)

(d) The potential of the business to serve the needs of the [designated neighborhood] *sustainable community* in which it is situated; and

(e) Other factors which the Program determines are desirable in fostering commercial and economic revitalization within a local jurisdiction including the [designated neighborhood] *sustainable community*.

(4) (text unchanged)

C. — G. (text unchanged)

05.13.02 Main Street Improvement Program

Authority: Housing and Community Development Article, §6-102, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Business district" means a geographically specified area, located within a [designated neighborhood] *sustainable community* of a local jurisdiction, in which the predominant activity carried on is the operation of trades and businesses.

(3) — (5) (text unchanged)

(6) ["Designated neighborhood" means a geographically defined area of a local jurisdiction, which is designated as an eligible neighborhood under COMAR 05.13.01.09.] *Repealed.*

(7) — (15) (text unchanged)

(16) "*Sustainable community*" means the part of a priority funding area that:

(a) *Has been designated as a sustainable community in accordance with COMAR 05.17.02;*

(b) *Has been designated as a BRAC Revitalization and Incentive Zone under Economic Development Article, Title 5, Subtitle 13, Annotated Code of Maryland; or*

(c) *Has been designated as a transit-oriented development under Transportation Article, §7-101, Annotated Code of Maryland.*

RAYMOND A. SKINNER

Secretary of Housing and Community Development

Subtitle 17 COMMUNITY LEGACY

05.17.01 Community Legacy Program

Authority: Housing and Community Development Article, Title 6, Subtitle 2, Annotated Code of Maryland

Notice of Proposed Action

[13-328-P]

The Secretary of Housing and Community Development proposes to amend Regulation .05 under **COMAR 05.17.01 Community Legacy Program**.

Statement of Purpose

The purpose of this action is to amend regulations to implement Ch. 13, Acts of 2013, to allow a political subdivision to approve an application to the Department of Housing and Community Development for a sustainable community plan or community legacy project by letter, delivered to the Department by the political

subdivision's authorized designee, that expresses support for the plan or project.

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 Papagni, Program Officer, Division of Neighborhood Revitalization, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-209-5807, or email to papagni@mdhousing.org, or fax to 410-685-8270. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.05 Application Requirements.

A. An application submitted to the Department shall:

(1) — (12) (text unchanged)

(13) Contain [a resolution of support] *written approval* for the proposed project from the local government in whose jurisdiction the project is located, as follows:

(a) *Either:*

(i) *A resolution of support for the proposed project from the local government in whose jurisdiction the project is located; or*

(ii) *A letter of support for the proposed project delivered to the Department by the authorized designee of the local government in whose jurisdiction the project is located;*

[(a)] (b) If the project affects a sustainable community located entirely within a municipal corporation, the resolution *or the authorized designee's letter of support* shall come from the municipal corporation rather than the surrounding county; and

[(b)] (c) If the project affects a sustainable community located within the territory of more than one local government, the Sponsor shall obtain a resolution *or a letter of support from the authorized designee* from each local government in which the community legacy project is located or will be operated; and

(14) (text unchanged)

B. — D. (text unchanged)

RAYMOND A. SKINNER
Secretary of Housing and Community Development

Title 08
DEPARTMENT OF NATURAL
RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.03 Crabs

Authority: Natural Resources Article, §§4-215, 4-803, 4-809, and 4-810, Annotated Code of Maryland

Notice of Proposed Action

[13-321-P]

The Secretary of Natural Resources proposes to amend Regulations **.03**, **.06**, **.07**, **.09**, **.10**, **.11**, and **.14** under **COMAR 08.02.03 Crabs**.

Statement of Purpose

The purpose of this action is to amend Chesapeake Bay recreational crab regulations to improve the sustainability of blue crab and Diamondback terrapin (Maryland State reptile) resources. The proposed action is specific to Chesapeake Bay and its tidal tributaries, and does not apply to Maryland coastal bays.

Currently, the Maryland recreational crab harvest is estimated using a phone survey that calls a random group of individuals among Maryland's population to ask if they went recreationally crabbing. This survey technique requires a high and costly amount of phone calls to obtain accurate and precise harvest estimates. The current recreational license structure makes it difficult and expensive to gather harvest data that is needed for blue crab management because of license exemptions. The proposed action reduces the number of exemptions by requiring individuals that set crab pots from private shoreline property to obtain a free registration and decreases harvest impacts of unlicensed crabbers. The proposed action maintains license exemptions for individuals who want to handline or dipnet for crabs, but now requires a license for the use of collapsible traps, net rings or a seine.

The proposed action requires individuals that set crab pots from private shoreline property to obtain a free registration. Requiring a free registration for waterfront property owners will provide an improved sampling platform for determining the harvest of crabs from this sector of Maryland's recreational crabbers. Registering waterfront crab pots would also be of substantial benefit to the conservation of Diamondback terrapin by improving education on the importance of the required turtle saver devices and other regulations. The proposed action clarifies that guests may use a crab pot registered to a private shoreline property. The proposed action also clarifies where crab pots may be used recreationally by removing a prohibition for setting crab pots in some tributaries because some tributaries were inadvertently excluded due to float free channels.

The proposed action also standardizes the catch limit for an unlicensed recreational crabber whether crabbing from a boat or the shore. The objective of this action is to simplify recreational crabbing rules by making them more intuitive and consistent. This will facilitate public understanding and enforcement.

The proposed action clarifies the complimentary crabbing license. The action does not change the boat license or what is currently allowed, it clarifies the limits. An individual receives a complimentary crabbing license when they purchase a recreational crabbing boat license or a Chesapeake Bay sport fishing boat license.

The rules have been confusing as to what is allowed under each license. The proposed action clarifies the rules and removes references to the Chesapeake Bay sport fishing boat license. The complimentary crabbing license issued to an individual with the Chesapeake Bay sport fishing boat license allows the individual to recreationally crab, it does not license the boat for crabbing activities. The complimentary crabbing license issued to an individual with the recreational crabbing boat license allows the individual to recreationally crab; it does not allow the individual an extra limit of crabs or gear while aboard the boat with the decal.

Finally, the proposed action clarifies setting and marking gear, commercial harvest with recreational gear, and regulation citations. The action clarifies that gear may not be set within 100 feet of another person's set gear. The current regulation is inconsistent and causes problems with enforcement. It clarifies that a commercial crabber may harvest crabs using recreational gear following the recreational limits.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may economically impact the Department and its stakeholders.

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

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

A. The action creates a waterfront property crab pot registration. This registration will be offered for free, so it will have no economic impact. The action removes a license exemption for individuals using a seine, 10 collapsible traps or net rings. It is unknown how many people used this gear without a license previously. If these individuals want to continue to use this gear they will need to buy a license, but that license will also allow them up to 30 collapsible traps or net rings and an increased catch limit of up to a bushel. It is assumed that some of these people may buy the license (\$5 resident/\$10 nonresident) to continue using this gear and there will be a positive revenue impact to the Department. But some of these individuals may also choose to continue to crab for free with different gear and their current catch limit. It is unknown how many people were using this gear under the exemption and unknown how many of them will choose to buy a license.

F. The action creates a waterfront property crab pot registration. This registration will be offered for free, so it will have no economic impact. The action removes a license exemption for individuals using a seine, 10 collapsible traps or net rings. It is unknown how many people used this gear without a license previously. If these individuals want to continue to use this gear they will need to buy a license, but that license will also allow them up to 30 collapsible traps or net rings and an increased catch limit of up to a bushel. It is assumed that some of these people may buy the license (\$5 resident/\$10 nonresident) to continue using this gear, but some of these individuals may also choose to continue to crab for free with different gear and their current catch limit. It is unknown how many people were using this gear under the exemption and unknown how many of them will choose to buy a license.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Recreational Crab Regulations, Regulatory Staff, Department of Natural Resources 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 November 18, 2013. A public hearing will be held at 6 p.m. on November 5, 2013, in the C-1 Conference Room, Tawes State Office Building, 580 Taylor Avenue, Annapolis, MD.

.03 Trotlines.

A. An individual may not set or fish a trotline[, crab net ring, or collapsible crab trap] within 100 feet of another individual's [trotline] set gear.

B.—C. (text unchanged)

D. In the Chesapeake Bay and its tidal tributaries:

(1) Trotline gear may only be used to catch or attempt to catch crabs:

(a) (text unchanged)

(b) For recreational purposes by an individual licensed in accordance with Regulation .09 of this chapter[, or an individual on a boat licensed as a Chesapeake Bay sport fishing boat license];

(2) (text unchanged)

(3) The trotline gear used from the boat may not exceed 1,200 feet in length for the baited portion:

(a) Regardless of the number of individuals licensed to catch crabs for recreational purposes on a boat; or

(b) If the boat is licensed as a recreational crabbing boat; or

(c) If the boat is licensed as a Chesapeake Bay sport fishing boat].

[E. An individual licensed to catch crabs for commercial purposes may catch crabs for recreational purposes by trotline in accordance with the provisions of this regulation without paying the fee for recreational crabbing set forth in Regulation .09 of this chapter.]

[F.] E. Float Requirements.

(1)—(3) (text unchanged)

(4) Floats shall be marked with a buoy bearing the owner's DNRid number.

.06 Collapsible Crab Traps and Crab Net Rings.

A. An individual may not set or fish a [trotline,] crab net ring[, or collapsible crab trap within 100 feet of [a trotline] another individual's set gear.

B. (text unchanged)

C. In the Chesapeake Bay and its tidal tributaries:

(1) An individual may not catch or attempt to catch crabs for recreational purposes with [any combination of more than ten] collapsible traps [and] *or* net rings unless the individual is:

(a) (text unchanged)

(b) On a boat licensed as a recreational crabbing boat [or a boat licensed as a Chesapeake Bay sport fishing boat];

(2) If an individual is licensed to catch crabs for recreational purposes, not more than 30 collapsible traps or net rings or not more than 30 of a combination of collapsible traps and net rings may be set; *and*

(3) Not more than 30 collapsible traps or net rings or not more than 30 of a combination of collapsible traps and net rings may be set per boat:

(a) Regardless of the number of individuals licensed to catch crabs for recreational purposes on a boat; *or*

(b) If the boat is licensed as a recreational crabbing boat; *or*

(c) If the boat is licensed as a Chesapeake Bay sport fishing boat; *and*

(4) Regardless of the number of unlicensed individuals on a boat that is not licensed, not more than 20 collapsible traps or net rings or not more than 20 of a combination of collapsible traps and net rings may be set per boat].

D. A collapsible crab trap or crab net ring which is not attached to a pier, wharf, or boat shall be marked with a buoy bearing the [name of the owner] *owner's DNRid number*.

.07 Crab Pots.

A.—C. (text unchanged)

D. General Requirements.

[(1) A person who owns or leases private property along the shore may set not more than two crab pots to catch crabs for recreational purposes. However, not more than two crab pots may be set attached to a pier or a parcel of property, regardless of the number of owners or lessees of that pier or parcel of property.]

(1) *A person may use crab pots to catch crabs for recreational purposes only:*

(a) *If the person is:*

(i) *An owner, lessee, or tenant of a private property along the shore; or*

(ii) *A guest of an owner, lessee, or tenant of a private property along the shore;*

(b) *If using the crab pot in accordance with §§B, C, D, and H of this regulation; and*

(c) *If crabbing from a property located on the Chesapeake Bay or its tidal tributaries, only if the crab pots have been properly registered with the Department.*

(2) *Not more than two crab pots set for recreational purposes may be attached to a property or privately owned pier, regardless of the number of owners or lessees of that property.*

[(2)] (3) [The crab pots] *Notwithstanding §§E and G of this regulation, a crab pot set for recreational purposes shall be:*

(a) (text unchanged)

(b) Marked with the owner's [name and address] *DNRid number*.

[(3)] (4) (text unchanged)

[(4)] (5) *Buoys for Commercially Set Crab Pots.*

(a)—(d) (text unchanged)

[(5)] (6) — [(7)] (8) (text unchanged)

E.—H. (text unchanged)

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

A. Recreational Crabbing License.

(1) An individual who catches or attempts to catch crabs for recreational purposes in the waters of the Chesapeake Bay and its tidal tributaries shall pay the fee and obtain a recreational crabbing license in order to use the following gear to catch crabs:

(a) (text unchanged)

(b) [More than ten but not more than 30 collapsible] *Collapsible* traps or net rings[, or a combination of 30 collapsible traps and net rings]; [and]

(c) Up to ten eel pots for catching the individual's own bait, which are:

(i) (text unchanged)

(ii) Not placed in a buoy free channel as listed in Regulations .07H and .08E of this chapter[.]; *and*

(d) *Seines*.

(2) (text unchanged)

(3) An individual who has purchased a recreational crabbing license shall have the license in possession when:

(a) (text unchanged)

(b) In possession of more crabs than provided for in the daily catch limits set forth in [Regulation .10C(1) and D] *Regulation .10A(2)(a), A(3)(a) and (b), and A(4)(a)* of this chapter and not on a boat that has been licensed as a recreational crab boat.

B. Recreational Crabbing Boat License.

(1) [An individual shall pay the fee and obtain a recreational crabbing boat license in order] *A recreational crabbing boat license authorizes an individual to use the following gear to catch or attempt to catch crabs in the licensed boat in the Chesapeake Bay and its tidal tributaries:*

(a) (text unchanged)

(b) [More than ten but not more than 30 collapsible] *Collapsible* traps or net rings[, or combination of 30 collapsible traps and net rings].

(2)—(4) (text unchanged)

C. Complimentary Recreational Crabbing License.

[(1) An individual who has received a complimentary recreational crabbing license shall have the complimentary license in possession when:

(a) Engaged in crabbing for recreational purposes with the gear listed under §A(1) of this regulation from a location other than the boat of the licensee; *or*

(b) In possession of more crabs than provided for in the daily catch limits set forth in Regulation .10C(1) and D of this chapter and not on a boat that has been licensed as a recreational crab boat.

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

(a) Catch crabs for recreational purposes in the Chesapeake Bay and its tidal tributaries; *and*

(b) Use up to ten eel pots for catching bait for use by the licensee.]

(1) *The Department shall issue a complimentary recreational crabbing license to an individual who purchases a:*

(a) *Recreational crabbing boat license; or*

(b) *Chesapeake Bay and coastal sport fishing boat license in accordance with Natural Resources Article, §4-745(d)(2), Annotated Code of Maryland.*

(2) *The individual issued the complimentary recreational crabbing license has the same restrictions as an individual with a recreational crabbing license.*

(3) *The recreational crabbing boat license and the complimentary recreational crabbing license count as a single*

license for the individual who purchases the recreational crabbing boat license.

D. Private Waterfront Property Crab Pot Registration.

(1) Only a person who owns or leases private property along the shore of the Chesapeake Bay and its tidal tributaries may obtain a private waterfront property crab pot registration.

(2) A person who owns or leases private property along the shore of the Chesapeake Bay and its tidal tributaries shall obtain a private waterfront property crab pot registration in order to use a crab pot from the person's property.

(3) There is no fee for a private waterfront property crab pot registration.

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

(1) Uses any of the following gear:

(a)—(b) (text unchanged)

[(c) Up to ten collapsible traps or net rings, or combination of ten collapsible traps and net rings; or

(d) A seine which does not exceed 50 feet in length];

(2)—(4) (text unchanged)

(5) Is aboard a boat [with] assisting an individual who has a recreational crabbing license; or

(6) Is crabbing for recreational purposes from a boat that has been licensed[;

(a) By] by the Department as a recreational crabbing boat[; or

(b) Under Natural Resources Article, §4-745(d)(2), Annotated Code of Maryland].

[E.] F. General.

(1) A recreational crabbing license, [or] recreational crabbing boat license, or private waterfront property crab pot registration is valid for not more than 1 year and expires December 31 following the date of issuance.

(2) A recreational crabbing license, [or] recreational crabbing boat license, or private waterfront property crab pot registration may be obtained from any authorized agent of the Department.

(3) The Department may designate a person engaged in a commercial enterprise as an agent to sell recreational crabbing licenses, [or] recreational crabbing boat licenses, or issue private waterfront property crab pot registrations.

(4) (text unchanged)

.10 Recreational Crabbing Catch and Possession Limits — Chesapeake Bay and its Tidal Tributaries.

[A. A daily catch limit of a maximum of 2 bushels of male hard crabs, and 2 dozen soft crabs or male peeler crabs or a combination of 2 dozen soft crabs and male peeler crabs, may be caught and possessed if:

(1) Two or more individuals licensed to catch crabs for recreational purposes are on a boat, regardless of whether the boat is licensed by the Department as a recreational crabbing boat; or

(2) Two or more individuals are on a boat and one individual is licensed to catch crabs for recreational purposes and in addition the boat is licensed by the Department as a recreational crabbing boat.

B. A daily catch limit of a maximum of 1 bushel of male hard crabs, and 2 dozen soft crabs or male peeler crabs or a combination of 2 dozen soft crabs and male peeler crabs, may be caught and possessed if:

(1) An individual on shore is licensed to catch crabs for recreational purposes;

(2) An individual is licensed to catch crabs for recreational purposes with either an individual crab license or a recreational

crabbing boat decal which authorizes one individual to crab from the boat to which the decal is affixed;

(3) There is no individual licensed to catch crabs for recreational purposes aboard a boat licensed by the Department as a recreational crabbing boat; or

(4) A commercially licensed individual is recreationally crabbing as described in Regulation .03E of this chapter.

C. A daily catch limit of a maximum of 2 dozen male hard crabs, and 1 dozen soft crabs or male peeler crabs or a combination of 1 dozen soft crabs and male peeler crabs, may be caught and possessed if:

(1) An individual is not licensed to catch crabs for recreational purposes;

(2) An individual is exempted or registered with the Department to crab recreationally as described in Regulation .09 of this chapter; or

(3) A seine is used, regardless of the number of licensed or unlicensed individuals.

D. If there is no individual licensed to catch crabs for recreational purposes aboard a boat not licensed by the Department as a recreational crabbing boat or one or more individuals exempted or registered with the Department to crab recreationally as described in Regulation .09 of this chapter aboard a boat:

(1) The daily catch limit is 4 dozen male hard crabs per boat; and

(2) The maximum number of soft crabs and male peeler crabs per boat is 1 dozen soft crabs or male peeler crabs or a combination of 1 dozen soft crabs and male peeler crabs per day.]

A. Daily Catch and Possession Limits.

(1) An individual exempt from the licensing requirements of Regulation .09 of this chapter is considered an unlicensed individual and may not exceed the catch and possession limits for an unlicensed individual.

(2) Daily catch and possession limits for individuals harvesting crabs from shore or from crab pots.

(a) Unlicensed individual	2 dozen male hard crabs	1 dozen soft crabs, 1 dozen male peeler crabs, or a combination of 1 dozen soft crabs and male peeler crabs
(b) Licensed individual	1 bushel male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs

(3) Daily catch and possession boat limits for a vessel without a recreational crabbing boat license.

(a) One unlicensed individual on board an unlicensed vessel	2 dozen male hard crabs	1 dozen soft crabs, 1 dozen male peeler crabs, or a combination of 1 dozen soft crabs and male peeler crabs
(b) Two or more unlicensed individuals on board an unlicensed vessel	4 dozen male hard crabs	1 dozen soft crabs, 1 dozen male peeler crabs, or a combination of 1 dozen soft crabs and male peeler crabs

(c) One licensed individual or one licensed individual accompanied by any number of unlicensed individuals on board an unlicensed vessel	1 bushel male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs
(d) Two or more licensed individuals or two or more licensed individuals accompanied by any number of unlicensed individuals on board an unlicensed vessel	2 bushels male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs

(4) Daily catch and possession boat limits for a vessel with a recreational crabbing boat license.

(a) One or more unlicensed individuals on board a licensed vessel	1 bushel male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs
(b) One licensed individual on board a licensed vessel	1 bushel male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs
(c) An individual who purchased a recreational crabbing boat license accompanied by any number of unlicensed individuals on board a licensed vessel	1 bushel male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs
(d) Two or more licensed individuals accompanied by any number of unlicensed individuals on board a licensed vessel	2 bushels male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs
(e) One licensed individual, who is not the owner of the licensed vessel, accompanied by any number of unlicensed individuals on board a licensed vessel	2 bushels male hard crabs	2 dozen soft crabs, 2 dozen male peeler crabs, or a combination of 2 dozen soft crabs and male peeler crabs

[E.] B. Female Hard Crabs and Female Peelers.

- (1) (text unchanged)
- (2) Exceptions.

[(a) An individual licensed to harvest crabs for commercial purposes, except those with a frozen or male only crab harvester license as described in Regulation .14F of this chapter, may catch or possess female hard crabs and female peelers.]

[(b)] (a) — [(c)] (b) (text unchanged)

[F]. C. (text unchanged)

.11 Season and Time for Catching Crabs.

A. Commercial.

- (1)—(2) (text unchanged)

(3) Crab pots already on board a boat at the end of the 8-hour period specified in [§A(1)(b)] §A(1)(c) of this regulation may be set during a period of 1 hour immediately following that 8-hour period.

(4)—(5) (text unchanged)

B.—C. (text unchanged)

.14 General Prohibitions.

A. Recreational.

(1) Except for crab pots from private [piers] *property*, dipnets, or handlines, a person may not set any crabbing gear or catch crabs for recreational purposes on Wednesdays in the Chesapeake Bay and its tidal tributaries.

(2)—(5) (text unchanged)

(6) An individual licensed to catch crabs for commercial purposes:

(a) May catch crabs for recreational purposes with recreational crabbing gear without paying the fee for recreational crabbing set forth in Regulation .09 of this chapter; and

(b) Has the same restrictions as an individual with a recreational crabbing license when engaged in recreational crabbing activities.

B. — G. (text unchanged)

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

Notice of Proposed Action

[13-322-P]

The Secretary of Natural Resources proposes to amend:

- (1) Regulation .04 under COMAR 08.02.04 Oysters; and
- (2) Regulation .04 under COMAR 08.02.23 Shellfish

Aquaculture and Leasing.

Statement of Purpose

The purpose of this action is to increase tagging flexibility. Beginning in 2011, the Department responded to new requirements from the Food and Drug Administration/National Shellfish Sanitation Program’s shellstock identification and traceability mandate by implementing regulations requiring that bushels of oysters be tagged. By allowing some flexibility in tagging the Department is trying to prevent a tag shortage, conserve resources, prevent inconveniences to the watermen, and ensure that oystermen have an opportunity to fish. The proposed action is currently in place by emergency regulation; however, this action will remove the tagging and container requirements for shellfish aquaculture from the oyster chapter and place them into the more appropriate shellfish aquaculture and leasing chapter. This will clarify the chapters since the requirements are slightly different.

The proposed action allows all harvesters that are also certified by the Maryland Department of Health and Mental Hygiene to utilize a dealer tag that meets the requirements stipulated in the National Shellfish Sanitation Program Model Ordinance in lieu of a Department-issued harvester tag. The proposed action also makes it clear that an individual must use a wild oyster tag to tag a container of wild oysters and a farm-raised tag to tag a container of farm-raised oysters. This was implied because the regulation only allows one type of tag on board, but the added statements make it clear.

For the wild oyster fishery, the proposed action allows harvesters to utilize a tag that meets the requirements stipulated in the National Shellfish Sanitation Program Model Ordinance in lieu of a Department issued harvester tag. The specifications for the information that must be included on the tag are specified in the proposal. Watermen may make their own tags with the specified information rather than obtaining tags from the Department. If a

waterman prefers to get tags from the Department (license service center) there will be a charge (fee) for the tags and possibly a delay in receiving the tags due to unavailability of stock.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have an economic impact on stakeholders and the Department.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
<hr/>		
A. On issuing agency:		
Tags	(E-)	Approximately \$8,050/year
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
<hr/>		
D. On regulated industries or trade groups:		
(1) Harvesters —		
Tags	(-)	Indeterminable
(2) Dealers — Tags	(+)	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. On average, over the last 5 seasons the oyster harvest is 161,000 bushels per year. The tags cost approximately 5 cents each. The amount will vary due to the unknown number of individuals that will participate in the fishery, the unknown number that will use their own tag, and the unpredictable harvest.

D(1). Individuals harvesting wild oysters will have to purchase tags from the Department, from a private company or print their own. There have been an average of 682 individuals who paid the oyster surcharge over the last 5 oyster seasons. It is unknown where these harvesters will purchase their tags or what the materials will cost if they print their own.

D(2). Being able to use a dealer tag instead of a harvester tag will give individuals some business flexibility. They may benefit economically since they will not have to purchase both types of tags. The actual amount is undeterminable due to the unknown number of individuals that will participate.

Economic Impact on Small Businesses

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

Please see the explanations in Types of Economic Impact.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Oyster Regulations, Regulatory Staff, Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8260, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

08.02.04 Oysters

Authority: Natural Resources Article, §§4-215, 4-701, and 4-1018, Annotated Code of Maryland

.04 Oyster Container and Tagging Requirements.

A. Containers.

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

(a)—(d) (text unchanged)

(2)—(3) (text unchanged)

(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)] §B(4)(d) 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)] (a)—[(ii)] (b) (text unchanged)

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

B. Tagging.

(1) [An] *Except as provided in §B(3) of this regulation, 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] *Except as provided in §B(3) of this regulation, an individual storing oysters in accordance with [§A(5)(b)] §A(5) 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) *An individual storing oysters in accordance with §A(1)—(3) or (5) of this regulation may use a tag not supplied by the Department if:*

(a) *The individual:*

(i) *Is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.04 and 10.15.07; and*

(ii) *Follows 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; or*

(b) *Each tag the individual uses contains the statement “Wild Shellfish”, the state in which the harvest occurred, and, in the order specified, the following information:*

(i) *The harvester’s license number as assigned by the Department;*

(ii) *The date of harvest, including the year;*

(iii) *The bar name;*

(iv) *The name of the region or the National Oceanic and Atmospheric Administration code for the area in which the harvest occurred;*

(v) *The type and quantity of shellfish; and*

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

[(3)] (4) Tags:

(a) *Shall be durable and waterproof;*

(b) *Shall be at least 5-1/2 x 2-3/4 inches in size;*

[(a)] (c) (text unchanged)

[(b)] (d) *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 10.15.04 and 10.15.07; and*

[(c)] (e) *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)] (5) *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 10.15.04 and 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)] (6) *An individual shall only possess one type of [Department-issued] tag, wild shellfish or [farm raised] 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.]*

(7) *An individual may not use a farm-raised shellfish tag to tag wild shellfish.*

(8) *An individual may not use a wild shellfish tag to tag farm-raised shellfish.*

(9) *If a tidal fish licensee obtains tags from the Department, the licensee shall be assessed an annual surcharge for the costs incurred by the Department for the tags.*

C. Exemptions.

(1) *Oysters harvested for recreational purposes and not for sale are exempt from the requirements of §§A and B of this regulation.*

(2) *Oysters harvested from a lease and stored and tagged in accordance with COMAR 08.02.23 are exempt from the requirements of §§A and B of this regulation.*

08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §§4-215 and 4-11A-02, Annotated Code of Maryland

.04 Shellfish Aquaculture Harvester Permit.

A.—E. (text unchanged)

F. A shellfish aquaculture harvester permittee or permit registrant:

(1)—(5) (text unchanged)

(6) *May only sell oysters in accordance with COMAR 08.02.08.02; [and]*

(7) *Shall implement vibrio parahaemolyticus control measures in accordance with COMAR 10.15.07.06[.];*

(8) *Shall store oysters in accordance with §H of this regulation; and*

(9) *Shall tag oysters in accordance with §I of this regulation.*

G. (text unchanged)

H. Containers.

(1) *Oysters harvested from a lease shall be placed in a container of any size prior to leaving the lease from which they were harvested.*

(2) *Oysters shall remain in the original container until a tag is no longer required on the container in accordance with §I(4)(d) of this regulation.*

I. Tagging.

(1) *Except as provided in §I(2) of this regulation, an individual storing oysters in accordance with §H of this regulation shall complete and affix a Department-issued tag to each container of oysters prior to leaving the lease from which the oysters were harvested.*

(2) *An individual storing oysters in accordance with §H of this regulation may use a tag not supplied by the Department if:*

(a) *The individual:*

(i) *Is licensed and certified to sell shellfish by the Department of Health and Mental Hygiene in accordance with COMAR 10.15.04 and 10.15.07; and*

(ii) *Follows 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; and*

(b) *Each tag contains:*

(i) *The statement "Farm-Raised Shellfish"; and*

(ii) *The lease number.*

(3) *Department-issued tags shall only be used by the individual to whom the tags were originally issued.*

(4) Tags:

(a) *Shall be durable and waterproof;*

(b) *Shall be at least 5-1/2 x 2-3/4 inches in size;*

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

(d) *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 10.15.04 and 10.15.07; and*

(e) *May not be reused.*

(5) *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 10.15.04 and 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.*

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

(7) *An individual may not use a farm-raised shellfish tag to tag wild shellfish.*

(8) *An individual may not use a wild shellfish tag to tag farm-raised shellfish.*

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

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

Notice of Proposed Action

[13-320-P]

The Secretary of Natural Resources proposes to amend Regulation .15 under **COMAR 08.02.04 Oysters**.

Statement of Purpose

The purpose of this action is to add criteria for leasing in the St. Mary's Sanctuary. Revisions to the lease law allowed leasing in sanctuaries that is compatible with oyster restoration. Specific rules put in place to ensure restoration compatibility included that leases shall not occur on or within 150 feet of historic Yates oyster bars and that the total acreage of leased area shall not exceed 10% of the total sanctuary area.

The St. Mary's sanctuary is unique in that substantial areas outside the Yates bars have a high density of oysters. For this reason, the Department is seeking to establish criteria by regulation to ensure that leasing is compatible with oyster restoration in the St. Mary's River sanctuary.

The action establishes an oyster density criteria based on the Chesapeake Bay Program Sustainable Fisheries Goal Implementation Team guidelines for a restored area of 15 oysters / m². This is the minimum density considered to be a restored oyster bar. The oyster density would be calculated as the average density within a prospective lease based on multiple samples within the prospective lease area. If the average oyster density in the applied area is at or above 15 oysters / m² the lease application will not be approved. This criterion would be in addition to existing regulations including no more than 10 percent of a total sanctuary area may be leased and leases may not be on Yates bars. The combined criteria will ensure that areas that are not considered restored may have their oyster densities increased through aquaculture. The action will also cap the maximum leasable area of restorable bottom at 25%. A side scan sonar survey was completed of the sanctuary by the Maryland Geological Survey in 2012. The survey was used to determine whether the bottom substrate conditions were suitable for oyster restoration and/or natural recolonization. This action also corrects a statutory reference.

Eleven complete submerged land lease applications totaling approximately 90 acres were filed between August and December 2011 for the St. Mary's River sanctuary.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action may have an economic impact on the regulated industry.

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

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

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

A. Existing staff and agents of the Department will conduct the surveys of oyster bottom.

D. This regulation change may prevent the Department from issuing a portion of the commercial shellfish aquaculture leases that have been applied for in the St. Mary's River based on the oyster density in that area. However, applicants may choose to lease in other areas open to leasing. Therefore, the actual amount of impact cannot be calculated. There are currently 11 applicants that may be affected by the proposed 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 Regulatory Staff, St. Mary's River Sanctuary Leasing, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.15 Oyster Sanctuaries.

A. — B. (text unchanged)

C. Aquaculture in Sanctuaries.

(1) (text unchanged)

(2) Until termination in accordance with Natural Resources Article, [§4-11A-09(f)] §4-11A-10, Annotated Code of Maryland or surrender in accordance with COMAR 08.02.23.03K, leased areas and all areas within 150 feet of the leased areas existing at the time of the enactment of Ch. 173, Acts of 2009 shall not be considered part of the sanctuaries as established in §A of this regulation.

(3) — (4) (text unchanged)

(5) *St. Mary's River Oyster Sanctuary.*

(a) *The Department shall, based on the results of the Maryland Geological Survey's 2012 sonar survey, post on its website a map of the areas of restorable bottom in the St. Mary's River Oyster Sanctuary.*

(b) *A lease may only be issued in the St. Mary's River Oyster Sanctuary if the results of a biological survey approved by the Department indicate the average oyster density is less than 15 oysters per square meter in:*

(i) *The restorable bottom portion of the proposed lease area; and*

(ii) *The remaining bottom in the proposed lease area.*

(c) No more than 25 percent of the total restorable bottom in the St. Mary's River Oyster Sanctuary shall be leased for shellfish aquaculture purposes.

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

Notice of Proposed Action

[13-331-P]

The Secretary of Natural Resources proposes to:

- (1) Amend Regulations .01 and .02 under **COMAR 08.02.05 Fish;**
- (2) Amend Regulation .04 under **COMAR 08.02.11 Fishing in Nontidal Waters;** and
- (3) Adopt new Regulations .01 and .02 under a new chapter, **COMAR 08.02.25 Gear.**

Statement of Purpose

The purpose of this action is to clarify and consolidate rules pertaining to recreational fishing gear into one chapter of regulation. In 2011, the General Assembly passed House Bill 111, which required the Department to consult with the Tidal Fisheries Advisory Commission (TFAC) and Sport Fisheries Advisory Commission (SFAC) to create regulations pertaining to recreational fishing gear and four commercial fishing gears. As required under this law, the Department considered relevant biological, ecological, and socioeconomic factors in creating the proposed action. The Department met with the TFAC and SFAC Gear Workgroup in May 2012 and scoped the proposed regulations in May 2013. The Department will be further discussing the commercial gears with the TFAC before proposing a commercial gear regulation to address fish pots, bank traps, fyke nets and hoop nets.

The proposed action creates a new chapter of regulation that defines fishing gears and restrictions pertaining to each classification of recreational fishing gear. The regulation creates five categories of gear: traps, non-active line fishing gear, active line fishing gear, nets, projectile gear, and hand gear. Gears are listed under each of these categories and restrictions are based on existing restrictions and/or biological, ecological or socioeconomic factors.

The proposed action creates new definitions for the following items: Bank pole, Bow and arrow, Bush-bob, Cast net, Crossbow, Gig, Hand, Handline, Jug, Landing net, Lure, Net, Noodling, Rod, Rod and reel, Snagging, Spear, Spear gun, and Trap. The following is a list of new rules relating to recreational fishing gear:

- May only use the recreational gear allowed in the gear chapter and in the Maryland Code.
- Now allow traps for recreational anglers to catch bait, so long as the trap is in front of the individual's property, within 100 yards of the shore or attached to an un-docked boat. The trap must also be marked with the individual's DNRid number.
- Creates category of non-active line fishing gear. Jugs are now explicitly approved for recreational use, and the allowable use of recreational finfish trotlines has been expanded.
- Seines may now be used by all recreational anglers, not just resident anglers.
- New projectile gear rules:
 - Crossbows are now allowed.
 - Season on spears/spear guns has been removed.

- Added the following species to the explicit "no shoot" list (although they had all been prohibited from being shot in their respective species regulations):
 - American lobster.
 - Snapping turtle.
 - Sharks.
 - Species listed as threatened or endangered.
- Removed the restriction that gigs may only be used by residents in nontidal waters.
- Added "Hand" and "Noodling" as explicitly allowed means of catching fish.

Additionally, changes are made in order to align regulations with proposed changes to the striped bass chapter. Commercial fishermen participating in the Chesapeake Bay individual transferrable quota fishery will no longer have crew limitations on vessels engaged in hook-and-line fishing. Previously, and still in the common pool fishery, such vessels were limited to two crew members and a maximum of four individuals on a vessel. By eliminating these restrictions, ITQ fishery participants will be able to maximize efficiency while engaged in the fishery by increasing the number of people on their boat, thereby lowering the length of time and the number of days they require to catch their allocation.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action has an economic impact on the affected industries.

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

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

D(1). The regulations will have an overall positive economic impact on the regulated industry. Recreational users will now be legally able to use a small trap for bait purposes. They will also be able to use crossbows for fishing. There is also a negative economic impact because the lines per person are limited to three person for active line fishing gear and nonactive line fishing gear is limited to 25 hooks per line and no more than 25 lines per person. The Department

is not aware of persons using more nonactive line fishing gear than is purposed. The recreational and charter boat community may see some slight indeterminable positive impact from the proposed regulations.

D(2). By allowing new gears, bait shops and gear manufacturers may see a slight increase in their revenues as they are now able to sell more types of gear for use in the recreational fishery in Maryland. The amount of the impact is indeterminable and will depend on user demand.

D(3). Commercial fishermen participating in the Chesapeake Bay individual transferrable quota fishery will no longer have crew limitations on vessels engaged in hook-and-line fishing. Previously, and still in the common pool fishery, such vessels were limited to two crew members and a maximum of four individuals on a vessel. By eliminating these restrictions, ITQ fishery participants will be able to maximize efficiency while engaged in the fishery by increasing the number of people on their boat, thereby lowering the length of time and the number of days they require to catch their allocation.

Economic Impact on Small Businesses

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

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Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Gear Regulations, ATTN: Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave, B-2, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

08.02.05 Fish

Authority: Natural Resources Article, §4-221, Annotated Code of Maryland

.01 Methods of Fishing in Tidal Waters.

[A.] — [C.] (proposed for repeal)

[D.] A. Registration of Pound Net Sites.

(1) An individual may not set a pound net in State waters unless:

(a)—(c) (text unchanged)

(d) The individual has notified the Department of the setting of the net in compliance with [§F] §C of this regulation.

(2) — (9) (text unchanged)

[E.] B. — [G.] D. (text unchanged)

[H. Upstream of a line drawn from the northernmost point of the mouth of Deer Creek in Harford County in a northeasterly direction to the intersection of US Route 222 and Canal Road in Cecil County, a person may not:

(1) Take a fish by snagging;

(2) Fish with a dip net; or

(3) Harass, harm, pursue, hunt, shoot, wound, or attempt to catch striped bass except during an open striped bass season as designated in COMAR 08.02.15.]

[I.] E. (text unchanged)

.02 [Definitions and] General Fishing Prohibitions.

[A.] (proposed for repeal)

[B. Prohibitions and Limitations on Fishing in General.]

[(1)] A. Except as provided in §B[(2)] of this regulation, a person may not set or fish gill nets, including but not limited to anchor gill nets, staked gill nets, and drift gill nets, in the Chesapeake Bay and its tidal tributaries.

[(2)] B. A person may set and fish:

[(a)] (1) — [(c)] (3) (text unchanged)

[(3)] C Within 1,200 feet of any pier that supports either span of the William Preston Lane Jr. Memorial Bay Bridge, a person may not:

[(a)] (1) — [(b)] (2) (text unchanged)

[(4)] D. (text unchanged)

[(5)] E. During the period March 1 through May 31, a person may not catch, harass, harm, pursue, hunt, shoot, wound, or attempt to catch striped bass or striped bass hybrids in the striped bass spawning rivers and areas listed in COMAR 08.02.15.03B. However, during the period March 1 through May 3, inclusive, a person authorized in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland, to recreationally angle for finfish may hook striped bass and shall immediately release the striped bass unharmed to the water from which the striped bass was taken in the following areas:

[(a)] (1) — [(b)] (2) (text unchanged)

[(6)] F. When using fish, crabs, or worms as bait, or processed bait, a person recreationally angling in the Susquehanna Flats and Northeast River during the period set forth in §B(5) of this regulation shall use:

[(a)] (1) — [(b)] (2) (text unchanged)

[(7)] G. (text unchanged)

[(8)] H. During the period March 1 through June 30, a person may not set or fish any type of gill net:

[(a)] (1) — [(d)] (4) (text unchanged)

[(9)] I. — [(10)] J. (text unchanged)

[(11)] K. Except as provided in [§B(12)] §L of this regulation, a commercial tidal fish licensee may not catch or possess fish of the species listed in Natural Resources Article, §4-215, Annotated Code of Maryland, except crabs or shellfish, for commercial purposes and have more than:

[(a)] (1)— [(b)] (2) (text unchanged)

[(12)] L. *Hook and Line Fishing Exceptions.*

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

(2) *Tidal fish licensees registered in and engaged in the Chesapeake Bay individual transferrable quota striped bass fishery are not subject to the crew member limit or boat limit on individuals as described in §K of this regulation..*

[(13)] M. — [(14)] N. (text unchanged)

[(15)] O. General Provisions.

[(a)] (1) — [(c)] (3) (text unchanged)

08.02.11 Fishing in Nontidal Waters

Authority: Natural Resources Article, §4-221, Annotated Code of Maryland

.04 Statewide General Regulations.

[A.] (proposed for repeal)

[B.] A. Use of [Bow and Arrow.] *Projectile Gear*.

(1) Subject to the provisions of this section, a person may [shoot fish with a bow and arrow,] *use projectile gear to take fish in nontidal waters* except for all trout species, walleye, striped bass, striped bass hybrid, northern pike, muskellunge, muskellunge hybrids including tiger musky, and largemouth and smallmouth bass.

(2) A person may not [shoot] *take* or attempt to [shoot] *take* any fish with a [bow and arrow] *projectile gear* in a Put-and-Take Trout Fishing Area or Special Fisheries Management Area for trout at any time.

(3) A person may not [shoot] *take* or attempt to [shoot] *take* any fish with a [bow and arrow] *projectile gear* in State-controlled community ponds or lakes. However, the Department may permit the taking of carp in community ponds and lakes when it deems advisable.

[C.] B. (text unchanged)

[D.] — [E.] (proposed for repeal)

[F.] C. *Swimming*. *Swimming* is prohibited in any area controlled by the [Freshwater] *Inland Fisheries Division* except in designated areas.

[G.] D. — [J.] G. (text unchanged)

[K.] H. *Vehicles on [Freshwater] Inland Fisheries Division Owned or Controlled Lands*.

(1) (text unchanged)

(2) A person may not operate any vehicle on any lands owned or controlled by the [Freshwater] *Inland Fisheries Division* without written permission of the Division except on those roads, lanes, or areas which are open to automobile traffic or which are specifically marked by the Division.

[L.] I. *Camping on [Freshwater] Inland Fisheries Division Owned or Controlled Lands*.

(1) (text unchanged)

(2) A person may not camp on lands owned or controlled by the [Freshwater] *Inland Fisheries Division* except on designated sites or by written permit, or both.

(3) It is unlawful to fish in a lake or pond owned or controlled by the [Freshwater] *Inland Fisheries Division* before 5:30 a.m. and after 10 p.m.

[M.] J. *Bait*.

(1) (text unchanged)

(2) *Crayfish*.

(a) (text unchanged)

(b) In addition to [§M(2)(a)] §J(2)(a) of this regulation, regulations relating to the importation, transport, purchase, possession, propagation, sale, or release of specific nuisance species of crayfish appear in COMAR 08.02.19.04.

[N.] K. *Possession of Fish Whose Physical Condition has been Altered*.

(1) — (2) (text unchanged)

(3) This provision does not apply to the capture of snakehead fish, under [§S] §P of this regulation.

[O.] L. (text unchanged)

[P.] M. *Use of Dip Nets, Cast Nets, and Seines in Nontidal Waters*.

[(1) Cast nets may not be used in nontidal waters.]

[(2)] (1) — [(6)] (5) (text unchanged)

[(7)] (6) Subject to the provisions of [§P] §M of this regulation, a seine not more than 6 feet in length nor more than 4 feet in depth or a dip net may be used by residents to catch bait fish.

[Q.] N. — [R.] O. (text unchanged)

[S.] P. *Snakehead Harvest*.

(1) [Notwithstanding Natural Resources Article, §4-710(g), Annotated Code of Maryland, an] *An individual may capture and possess a snakehead fish using any legal method if, upon capture, the:*

(a) — (d) (text unchanged)

(2) — (3) (text unchanged)

[T.] Q. — [U.] R. (text unchanged)

S. *In addition to any requirements in this chapter, gear may only be used in accordance with the requirements in COMAR 08.02.24.*

08.02.25 Gear

Authority: Natural Resources Article, §4-221, Annotated Code of Maryland

.01 Gear Definitions.

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

B. *Terms Defined.*

(1) "*Bank pole*" means a line and hook dangling into a river, stream, or lake that has the other end attached to a pole which is stuck into the ground.

(2) "*Bow and arrow*" means a projectile with a thin straight shaft that is intended to be shot from a weapon operated by hand which is composed of a curved piece of material with a taut cord to propel the arrow.

(3) "*Bush-bob*" means a line and hook dangling into a river, stream, or lake that has the other end attached to an overhead tree or bush limb.

(4) "*Cast net*" means a circular monofilament or multi-ply net with weights distributed around its edge that is cast or thrown by hand in such a manner that it spreads out on the water and sinks.

(5) "*Circle hook*" means a non-offset hook with the point turned perpendicularly back to the shank.

(6) "*Crossbow*" means a weapon for shooting a projectile with a thin straight shaft with an attached line that consists of a short bow mounted crosswise by the end opposite the stock.

(7) "*Dip net*" means a mesh bag of netting which is suspended from a circular, oval, or a rectangular frame attached to a handle or rope which is fished by hand.

(8) "*Eel pot*" means an enclosure constructed of wire having:

(a) A square mesh size not less than 1/2 inch; or

(b) If the mesh is smaller than 1/2 inch by 1/2 inch, an escape panel installed in an exterior wall of the retention chamber made of 1/2 inch by 1/2 inch mesh measuring at least 16 square inches.

(9) "*Finfish trotline*" means a single line from which hang, at intervals, multiple short lines which terminate with single baited hooks.

(10) "*Fish pot*" means a single, finfish entrapment net device, without associated wings or leads, consisting of:

(a) An enclosure of various shapes covered with mesh webbing of not less than 1-1/2 inch mesh size;

(b) One or more conical entrance funnels; and

(c) One or more unobstructed escape vents, in the holding chamber, of at least 2-1/2 inches in diameter, if circular, or 2-1/2 inches mesh size if square.

(11) "*Fyke net*" means a fixed finfish entrapment net device, without a pound or crib, consisting of:

(a) A series of hoops covered by mesh webbing of #12, or larger, twine of not less than 1-1/2 inch mesh size;

(b) No more than one set of wings;

(c) A leader or hedging not longer than 250 feet consisting of #12, or larger, twine and with a minimum mesh size of 3 inches;

(d) In nets with a mesh size less than 2-1/2 inches, a cull panel at least 1 foot by 1 foot with unobstructed escape meshes when set with a minimum mesh size of 2-1/2 inches;

(e) A single entrance funnel; and

(f) One or more internal funnel shaped throats.

(12) "Gig" means a hand-thrown implement with a shaft and three-pronged barbed point used for catching fish.

(13) "Gill net" means a net which:

(a) Is maintained in a vertical position in the water with sinkers, floats, or stakes, or a combination of sinkers, floats, and stakes; and

(b) Captures fish by means of a mesh too small to permit passage of the body of the fish or withdrawal of the head once the posterior margin of the gill covers has passed through the mesh.

(14) "Gill net, anchored" means a gill net that is stationary in the water and secured to the bottom by conventional anchors or heavy weights on either end or along the bottom line which prevent the gill net from drifting freely with the tide or current.

(15) "Gill net, attended" means the licensee remains in the boat within 2 miles of the gill net while it is in waters of the Chesapeake Bay, or within 1 mile when the gill net is in waters of the Atlantic Ocean, its coastal bays and their tributaries, or a tributary of the Chesapeake Bay.

(16) "Gill net, drift" means a gill net not secured to or anchored to the bottom, designed to drift with the natural or prevailing tidal current, including a gill net rigged with up to 20 pounds of weight at each end, in addition to that weight required to achieve negative buoyancy.

(17) "Gill net, stake" means a gill net hung from or supported by stakes which are set in a row and driven into the bottom.

(18) "Hand" means a method of fishing whereby an individual uses their own hand to physically capture the fish.

(19) "Handline" means a fishing line attended primarily by hand.

(20) "Haul seine" means an encircling type of net with wings, brail lines and poles, and a bunt or pocket, and with the following characteristics:

(a) Made of at least #12 twine;

(b) Wings not greater than 15 feet in width at the attachment with the brail poles or brail line;

(c) A width or depth not exceeding 22 feet at the bunt or back; and

(d) A width of the bunt or back not greater than 100 feet.

(21) "Hook and line" means a line free of mechanical devices except for reels attached to a pole or rod or held in hand and attended in a manner that the fish is caught by the hook.

(22) "Hoop net" means a single finfish entrapment net device consisting of:

(a) An enclosure formed by a series of hoops covered by mesh webbing of #12, or larger, twine, of not less than 1-1/2 inch mesh size;

(b) One or more internal funnel-shaped throats;

(c) A single entrance funnel;

(d) No wings and leader; and

(e) In nets with a mesh size less than 2-1/2 inches, a cull panel at least 1 foot by 1 foot with unobstructed escape meshes when set having a minimum mesh size of 2-1/2 inches.

(23) "J hook" means a hook having a point parallel to the hook shank.

(24) "Jug" means a method of fishing, where the fish take the bait voluntarily, that uses lines suspended from floating plastic containers or devices.

(25) "Landing net" means a mesh bag which is suspended from a circular, oval, or rectangular frame attached to a handle which is operated by hand to capture a fish attached to a line.

(26) "Lure" means an artificial bait used for catching fish.

(27) "Net" means a mesh webbing panel or multiple panels, whether continuous or discontinuous, which may be joined in various configurations for the capture of fish.

(28) "Noodling" means a method of catching fish using one's hand or foot while in the water.

(29) "Number 12 twine" means tightly twisted or braided nylon fibers, which are between 0.043 and 0.048 inches in diameter when compressed.

(30) "Offset hook" means a hook with the point and barb not in the same plane with the shank.

(31) "Pound net" means a fixed finfish entrapment net device consisting of:

(a) One or more pounds or cribs each measuring at least 16 feet long by 16 feet wide at the surface of the water with a netting floor and open top;

(b) Mesh webbing with a twine size of #12 or larger;

(c) At least one heart leading into the crib;

(d) A leader or hedging consisting of #12 twine or larger and with a minimum mesh size of 3 inches; and

(e) No other type of fishing device, netting, or wire within the pound or crib.

(32) "Rod" means a pole, cane, or stick to which a line can be attached directly.

(33) "Rod and reel" means a pole with a line and usually a mechanism, attached at the bottom of the pole, and is turned by a crank so that the line is wound around a barrel

(34) "Seine" means an encircling type of net with mesh.

(35) "Slat basket" means a wooden box that funnels fish down into a holding area that is usually baited.

(36) "Snagging" means actively fishing with a hook that intentionally foul-hooks the fish outside the mouth.

(37) "Spear" means a shaft with a sharp point and/or barbs for capturing a fish by piercing its body which may also be known as a gig.

(38) "Spear gun" means any type of device used for propelling a spear under water by any means other than manual in order to catch fish.

(39) "Stinger hook" means any hook which trails another hook, either by direct physical attachment to the lead hook or by a connective device such as a swivel or chain, and is part of the same bait or lure.

(40) "Trap" means a single, bait finfish entrapment device, without associated wings or leads, and consisting of:

(a) An enclosure of various shapes covered with mesh webbing of not greater than 1/2-inch square mesh size for tidal waters and 1/4-inch square mesh for nontidal waters;

(b) One or more entrances with an opening not more than 2 inches in diameter in tidal waters or not more than 1 inch in diameter in nontidal waters; and

(c) No dimension greater than 24 inches in any direction.

(41) "Trip" means the duration which begins with departure of the fishing vessel from a shore-based location and which terminates with return to a shore-based location.

(42) "Trolling" means the method of angling during which fish are attracted to a lure or bait being trailed from a boat which is moving forward or backward by mechanical, manual, or wind power.

.02 Recreational Gear.

A. Recreational Gear.

(1) An individual may only use finfish gear in accordance with this chapter except as described in Natural Resources Article, §§4-714 — 4-730 and 4-735, Annotated Code of Maryland.

(2) An individual using finfish gear in accordance with this chapter shall comply with all seasons, creel limits, size limits, and

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other species-specific regulations as specified under this subtitle and Natural Resources Article, Title 4, Annotated Code of Maryland.

B. Traps.

(1) An individual harvesting finfish for recreational purposes may use one trap in State waters except as provided in §B(4) of this regulation and in accordance with this subsection.

(2) A trap shall be marked with the individual's name, address, and fishing registration or license number.

(3) A trap shall be set in front of the individual's property, within 100 yards of the shore, and:

(a) Attached by a line to the property or a privately owned pier or dock;

(b) Marked by a buoy or pole and sign; or

(c) Attached to a boat that is not docked.

(4) An individual may not harvest fish with a trap in all Special Trout Management Waters as described in COMAR 08.02.11.01C, D, G, and H.

(5) A trap shall be set:

(a) In front of the individual's property, within 100 yards of the shore, and:

(i) Attached by a line to the property or a privately owned pier or dock; and

(ii) Marked by a buoy or pole and sign; or

(b) By attaching to a boat that is not docked.

C. Active Line Fishing Gear.

(1) The following gear is considered active line fishing gear:

(a) Hook and line;

(b) Rod and reel; and

(c) Handline.

(2) A maximum of three or a combination of three of the gear listed under §C(1) of this regulation may be used by an individual fishing in State waters.

(3) The gear listed in §C(1) of this regulation shall be used in a manner in which the individual is handling the gear or actively in control of the gear.

(4) No more than two hook units per line may be used on the gear listed under §C(1) of this regulation.

(5) Snagging is not legal in State waters.

(6) Additional restrictions on active line fishing gear used to catch striped bass may be found at COMAR 08.02.15.03.

D. Nonactive Line Fishing Gear.

(1) The following gear is considered nonactive line fishing gear:

(a) Jug;

(b) Bank pole;

(c) Bush-bob; and

(d) Finfish trotline.

(2) Non-active line fishing gear must be marked with the individual's DNRid number.

(3) No more than 25 non-active line fishing gear as listed in §D(1)(a)–(c) of this regulation may be used by an individual in State waters.

(4) An individual may use no more than two finfish trotlines.

(5) Bush-bobs and bank poles may not be used in tidal waters.

(6) Bush-bobs and bank poles may only be used in accordance with Natural Resources Article, §4-617, Annotated Code of Maryland.

(7) Finfish Trotlines:

(i) Shall have no more than 25 hooks;

(ii) Be no more than 100 feet in length;

(iii) May not be made of metal; and

(iv) May not be baited with scaled fish bait.

(8) A jug shall have no more than 2 hooks per line and no more than one line per jug.

E. Nets.

(1) The following gears are considered recreational fishing nets:

(a) Cast nets;

(b) Seines;

(c) Dip nets; and

(d) Landing nets.

(2) Cast net:

(a) May only be used in tidal waters; and

(b) Must have a radius not exceeding 10 feet.

(3) Seine.

(a) In tidal waters seines:

(i) Shall have mesh no greater than 1/4 inch;

(ii) May not exceed 50 feet in width and 5 feet in height;

(iii) Shall only be used to catch minnows and other bait fish; and

(iv) Shall only be emptied from shore.

(b) In nontidal waters seines:

(i) Shall have mesh no greater than 1/4 inch;

(ii) May not exceed 6 feet in width and 4 feet in height;

(iii) Shall only be used to catch minnows and other bait fish;

(iv) May not be used within 50 yards of the base of any dam or the mouth of any river or tributary; and

(v) Shall only be emptied from shore.

(4) Dip Net.

(a) A dip net may only be used in accordance with COMAR 08.02.11.04 and Natural Resources Article, §4-617, Annotated Code of Maryland.

(b) A dip net may not be used in tidal waters of the State.

(5) In nontidal waters, landing nets may only be used in accordance with COMAR 08.02.11.04.

F. Projectile Gear.

(1) The following gear is considered projectile gear:

(a) Bow and arrow;

(b) Crossbow;

(c) Gig;

(d) Spear; and

(e) Spear gun.

(2) A person may not kill, try to kill, or otherwise injure fish by the use of projectile gear except as provided in this regulation.

(3) In nontidal waters, an individual may only use projectile gear in accordance with COMAR 08.02.11.04 and 08.02.19.06.

(4) A person may use projectile gear to take any fish except for the following species:

(a) American lobster (*Homarus americanus*);

(b) Sharks

(c) Snapping turtle (*Chelydra serpentina*);

(c) Striped bass (*Morone saxatilis*);

(d) Any species listed as threatened or endangered under COMAR 08.03.08; and

(e) Any species prohibited in COMAR 08.02.11.04.

(5) A person may not shoot projectile gear without specific advance permission within 100 yards of any:

(a) Human being;

(b) Private or public swimming area;

(c) International diving flag;

(d) Occupied duck blind; or

(e) Vessel other than that occupied by the individual projectile gear.

(6) Projectile gear shall have a retrieval line attached to it.

(7) Gigs or other hand-thrown implements with a shaft and barbed point may be used to catch fish in accordance with this chapter.

G. Hand Gear. The following gear is considered legal hand gear that may be used in all open State waters:

- (1) Hand; and
- (2) Noodling.

H. Recreational Gear — General.

(1) *An individual harvesting with any legal gear as described in this chapter shall be licensed, registered, or otherwise authorized to recreationally harvest fish in Maryland in accordance with Natural Resources Article, Title 4, Annotated Code of Maryland.*

(2) *Individuals harvesting finfish for recreational purposes may only use gear as defined in COMAR 08.02.25.01.*

JOSEPH P. GILL
Secretary, Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.11 Fishing in Nontidal Waters

Authority: Natural Resources Article, §4-602, Annotated Code of Maryland

Notice of Proposed Action

[13-319-P]

The Secretary of Natural Resources proposes to amend Regulation **.01** under **COMAR 08.02.11 Fishing in Nontidal Waters**.

Statement of Purpose

The purpose of this action is to update and clarify certain trout fishing and management areas. The proposed action changes the upper boundary of the Put-and-Take/Catch-and-Return area on Owens Creek from Raven Rock Road to Buck Lantz Road. The change is necessary because stocking on Owens Creek extends to Buck Lantz Road.

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 Nontidal Regulations, Fisheries Regulatory Staff, Department of Natural Resources, 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 November 18, 2013. A public hearing has not been scheduled.

.01 Trout Fishing and Management Areas.

- A. (text unchanged)
- B. Put-and-Take Trout Fishing Areas.
 - (1)—(5) (text unchanged)
 - (6) Except as provided in §C(1) of this regulation the following areas are subject to the provisions in §B(1)—(4) of this regulation:

	Closure Periods
(a)—(g) (text unchanged)	
(h) Frederick County:	
(i) (text unchanged)	

(ii) Owens Creek mainstem from [Raven Rock] <i>Buck Lantz</i> Road downstream to Roddy Road	1, 4
(iii)—(xiii) (text unchanged)	
(i)—(n) (text unchanged)	

C. Catch-and-Return Trout Fishing Areas.

- (1) Owens Creek.
 - (a) (text unchanged)
 - (b) The area subject to the provisions of §C(1)(a) of this regulation is Owens Creek mainstem from [Raven Rock] *Buck Lantz* Road downstream to Roddy Road.
- (2)—(4) (text unchanged)
- D.—H. (text unchanged)

JOSEPH P. GILL
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.15 Striped Bass

Authority: Natural Resources Article, §§4-215 and 4-701, Annotated Code of Maryland

Notice of Proposed Action

[13-330-P]

The Secretary of Natural Resources proposes to amend Regulations **.02**, **.04**, **.05**, **.07**, and **.12** under **COMAR 08.02.15 Striped Bass**.

Statement of Purpose

The purpose of this action is to establish the fishing rules for the Chesapeake Bay’s Commercial Striped Bass Individual Transferable Quota (ITQ) and Common Pool (CP) fisheries. Each Chesapeake Bay commercial striped bass permit holder was required to select either the ITQ or CP fishery during the 2014 declaration period in August 2013. Based on the difference in the management approach of these fisheries, permit holders will be required to follow different rules depending on their selection of the ITQ or CP. There are, however, some rules that will apply to both fisheries that all permit holders (ITQ and CP) must follow.

Common Pool and ITQ

New rules and changes to rules that will affect all Chesapeake Bay commercial striped bass fisheries include flag requirements, new tagging requirements, new season dates, and a clarification on tagging.

A flag provided by the Department will be required to be displayed while actively participating in either Chesapeake Bay commercial striped bass fishery. A flag identifies boats fishing commercially. The flags in this case will also identify the fishery (ITQ or CP) the permit holder has selected for 2014 which will aid the Natural Resource Police with enforcement efforts. Only one flag (either CP or ITQ) may be on board a vessel engaged in commercial fishing activity. This will reduce confusion with enforcement efforts of the different fishing rules between the ITQ and CP fisheries.

All striped bass will be required to be tagged with tags identifying the fishery in which the fish was harvested. Tags will be identified as either ITQ or CP and must be on board the vessel engaging in commercial fishing activity. Tags on board the vessel must match the flag being displayed which identifies the fishery in which the permittee is participating.

The new season dates will be January 1—February 28 and June 1—December 31. Currently there is a staggering of the start date between the pound net (June 1) and hook and line and haul seine (June 7) fisheries. This staggering is based on gear competition and marketing at the beginning of the fishing season in June. The

flexibility of the new ITQ eliminates the derby style fishing and competition between gears making this staggering unnecessary.

The action also clarifies that dealers may not be in possession of untagged striped bass.

ITQ Only

There will also be a number of new rules, or variations on the current rules, specific only to the ITQ fishery. Those permit holders who select the ITQ fishery will be fishing on an individual allocation and will not be competing with other permit holders for a shared resource. This is an important element of the ITQ fishery and is the reason why fishing rules differ from the CP. The different rules include different tagging requirements, extended fishing and check-in hours, the removal of certain vessel restrictions, a soft cap on the total allocation any individual permittee may possess, and a new set of penalties.

ITQ fishery participants will be required to tag their fish prior to landing, in contrast with current rules that require some fishermen to tag their fish immediately. This provision allows ITQ participants to maximize the time they spend fishing and limits disruption in fishing activity.

ITQ fishery participants will be permitted to fish using hook-and-line gear until sunset and check their fish in at a check station by 9 a.m. the following day regardless of gear type used to harvest the fish. These flexibilities are intended to maximize the economic benefit to the ITQ participant.

There will be no limit to the number of striped bass permit holders on board a vessel participating in the ITQ fishery, or the number of mates or other individuals allowed on a vessel. As previously stated, an ITQ eliminates the competition for a shared resource.

Allocation transfers are allowed in the ITQ fishery. A soft allocation cap of 1 percent per individual permit holder will be established in order to limit the potential monopolization of the resource by any one person. The soft cap will prevent an individual from obtaining an allocation transfer if they already have 1 percent or more of the total commercial allocation. A soft cap allows an individual to acquire more than 1 percent of the overall quota so long as the individual had less than 1 percent prior to the transaction. However, the transfer transaction that exceeds the 1 percent ceiling will be the last transaction of the year for that particular permit holder.

Because of the nature of the ITQ fishery—namely, that a participant can catch their entire allocation on any one day of the open season—the current penalty system is not effective for the ITQ fishery. On the advice of the Striped Bass Workgroup, working in conjunction with the Tidal Fisheries Advisory Commission, a participant in the ITQ fishery who accumulates 10 points, as determined by the schedule found at COMAR 08.02.15.03, for striped bass-specific offenses will be suspended for a full quota year.

Common Pool Only

There will also be rule changes specific to the CP fishery. The CP fishery will operate similarly to the current derby style fishing practices in the gill net and hook and line fisheries. Participants in the CP fishery will compete with one another for a shared resource. In order to manage the CP quota, it will be necessary for the Department to establish catch limits and open and close the CP fishery based on quota availability by month. Changes to the CP fishery from current practices include individual catch limits (rather than catch limits per permit), the elimination of the 50-pound tolerance per permit, and a change to the temporary transfer process.

Catch limits will be set based on the allowable catch per individual participant or vessel in the CP fishery. Currently, limits are set per permit and allow fishermen to hold multiple permits and catch multiple limits. This provision will aid in the Department’s ability to estimate fishing effort, project daily landings and more confidently manage the CP quota.

There will no longer be a 50 pound tolerance per permit over the daily catch limit in the CP fishery in addition to catch limits no longer being set per permit. Removing the overage tolerance will aid in the Department’s ability to estimate fishing effort, project daily landings and more confidently manage the CP quota.

An expiration date will be included for CP permits that are transferred prior to and during the fishing season. Transfers of CP permits are only allowed during March of each year. This provision allows the permit to be used by more than one individual during the year and allows the owner of the permit to better manage their needs.

Quota Management

There will also be a new method of dealing with overages in the commercial striped bass fishery. In the ITQ, if an individual exceeds their allocation, that overage will be subtracted from a future year’s allocation on a pound-for-pound basis. In the CP fishery, any overage by the group of participants will be aggregated and divided equally among all registered participants who actually reported catch in the fishery. In the next practicable year, each of the participants will receive a deduction in their allocation by that amount.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action has an economic impact, although the impact is indeterminable.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
Flags	(E+)	\$1,897.50
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	
	Magnitude	
D. On regulated industries or trade groups:		
(1) Season Change (Hook and Line and Haul Seine)	(+)	Indeterminable
(2) Season Change (Pound Nets)	(-)	Indeterminable
(3) Tagging Distance (ITQ)	(+)	Indeterminable
(4) Hook and Line Hours (ITQ)	(+)	Indeterminable
(5) Check Times	(+)	Indeterminable
(6) Crew Limitations (ITQ)	(+)	Indeterminable
(7) Allocation Cap (ITQ)	(-)	Indeterminable
(8) Catch Limits (CP—Multiple Permit Holders)	(-)	Indeterminable
(9) Catch Limits (CP—Single Permit Holders)	(+)	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. All commercial licensees participating in a Chesapeake Bay commercial striped bass fishery will have to fly a flag identifying which fishery they are participating in. Previously, only those commercial licensees participating in the commercial hook-and-line fishery had to fly a flag. The Department provides these flags to the licensees. The Department will have to purchase additional flags in order to outfit each licensee with a flag at a total cost of \$1,897.50 per year.

D(1). Seasons for hook-and-line and haul seine will be extended from June 7 to June 1. This will allow an additional week of fishing for licensees using these gears, which will provide an indeterminable positive economic benefit, depending on how many licensees take advantage of the new available times and the market price they receive for their catch.

D(2). Seasons for hook-and-line and haul seine will be extended from June 7 to June 1. This will result in an indeterminable negative economic effect to pound net fishermen, who previously had the time from June 1 to June 7 to themselves. By allowing hook-and-line and haul seine fishermen to fish this extra week, the pound net fishermen will face increased competition, possibly resulting in lower market prices.

D(3). The action allows ITQ participants to tag their fish prior to landing, rather than immediately (for hook and line fishermen) or within 200 yards of their net (for pound net fishermen). This will allow fishermen to spend more time fishing, rather than tagging their fish. They will also be able to tag their fish on the way back in, thereby saving time spent on the water.

D(4). The action provides for an extra hour of fishing time for licensees using commercial hook-and-line gear. This extra time will hopefully allow licensees more time to fish on the days they choose to fish, thereby being more efficient in their use of their time on the water.

D(5). All participants in the commercial striped bass fisheries will now be allowed to check their fish in to a check station by 9 a.m. the day following catch. Previously, only fish caught by commercial hook-and-line were allowed to be checked in the next day; all other fish were required to be checked in by 9 p.m. the day of catch. By allowing fish to be checked in the next morning, licensees will be able to fish in areas further from check stations without worrying about where they will check the fish in.

D(6). ITQ fishery participants will no longer have crew limitations on vessels engaged in hook-and-line fishing. Previously, and still in the common pool fishery, such vessels were limited to two crew members and a maximum of four individuals on a vessel. By eliminating these restrictions, ITQ fishery participants will be able to maximize efficiency while engaged in the fishery by increasing the number of people on their boat, thereby lowering the length of time and the number of days they require to catch their allocation.

D(7). (7) The ITQ fishery will have a soft cap on the percentage of the fishery a participant can accumulate through temporary transfers at 1 percent. Previously, the regulations did not have a cap on the amount of the fishery a person could accumulate. In theory, this will limit economic opportunities for the ITQ fishery participants.

D(8). The catch limits in the common pool will now be per person, rather than per permit. Those licensees with multiple permits

registered in the common pool will no longer see the benefit of registering multiple permits. Because it is not possible to determine how much a permittee will harvest, it is not possible to determine the total economic impact.

D(9). The catch limits in the common pool will now be per person, rather than per permit. Those licensees with only one permit registered in the common pool will likely see a small increase in the daily catch limits for individual permits, as a result of the total allocation being divided by the number of individuals, rather than the number of permits.

Economic Impact on Small Businesses

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

Please see economic impacts to the regulated industry in the Impact Statement Part A.II.D

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Commercial Striped Bass Regulations, Regulatory Staff, Department of Natural Resources, 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 November 18, 2013. A public hearing will be held at Annapolis Friends Meeting, 351 Dubois Rd., Annapolis, MD, October 24, 2013, 6—8 p.m.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(13) (text unchanged)

(14) "Whole fish" means the complete animal, including head, tail, gills, [and viscera] *and viscera*, not dismembered in any fashion.

(15) (text unchanged)

.04 Tidal Fish Licensee Intent to Fish.

A.—E. (text unchanged)

F. Temporary Transfers.

(1)—(4) (text unchanged)

(5) Chesapeake Bay Individual [Transferrable] *Transferable* Quota Fishery.

(a)—(c) (text unchanged)

(d) *Beginning January 1, 2014, a tidal fish licensee may not receive an allocation transfer when the licensee possesses 1 percent or more of the total commercial quota for the state.*

(6)—(10) (text unchanged)

G. (text unchanged)

.05 Disposition of Catch.

A. Permits and Tags.

(1)—(2) (text unchanged)

(3) A commercial tidal fish licensee who catches striped bass for sale shall:

(a) (text unchanged)

(b) *In the Chesapeake Bay common pool and Atlantic fisheries, [Securely] securely* affix a tag, as provided in §A(1) of this regulation, through the mouth and one gill opening:

(i)—(ii) (text unchanged)

(iii) Before removing a striped bass from a boat or removing a boat from the water, to a striped bass harvested by any other gear; [and]

(c) *In the Chesapeake Bay individual transferable quota fishery, securely affix a tag, as provided in §A(1) of this regulation*

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through the mouth and one gill opening before removing a striped bass from a boat or removing a boat from the water; and

[(c)] (d) (text unchanged)

(4) Striped bass tags:

(a) May not be [transferred,] reused, defaced, modified, or counterfeited;

(b) Shall reflect the [gear used to harvest] commercial fishery in which the striped bass were harvested;

(c) Shall be securely affixed to a whole striped bass or accompany fillets until sale to the final consumer; [and]

(d) Shall only be used by the commercial tidal fish licensee to whom they were assigned[.], except as described in §A(4)(e) of this regulation; and

(e) Shall be transferred to the recipient of any allocation or shares in a transfer as described in COMAR 08.02.15.04.

(5) (text unchanged)

(6) A commercial tidal fish licensee registered [with pound net, Atlantic otter and beam trawl, or Atlantic gill net] in the Chesapeake Bay individual transferable quota or Atlantic fisheries shall receive a fixed number of tags.

(7) (text unchanged)

(8) A striped bass permit and striped bass tags for only one [fishing-gear type] commercial fishery may be on board a vessel at any one time.

(9) A packer or dealer may only be in possession of striped bass tagged in accordance with §A(4) of this regulation.

B.—C. (text unchanged)

D. Check-In.

(1) Time Requirements—Chesapeake Bay Common Pool and Atlantic Fisheries.

(a) Except as provided in §D(1)(b) of this regulation, within 3 hours of completing a fishing trip and returning to dock and not later than 9 p.m. on the day of harvest, a commercial tidal fish licensee registered in the Chesapeake Bay common pool fishery or the Atlantic fishery shall have his striped bass harvest counted and weighed by a Department representative at a check station.

(b) Not later than 9 p.m. on the day of harvest or 9 a.m. on the day immediately following harvest, a commercial tidal fish licensee registered in the Chesapeake Bay common pool fishery and harvesting striped bass with a hook and line [striped bass permit] shall have his striped bass harvest counted and weighed by a Department representative at a check station.

(2) Time Requirements—Chesapeake Bay Individual Transferable Quota Fishery. A commercial tidal fish licensee registered in the Chesapeake Bay individual transferable quota fishery shall have their striped bass counted and weighed by a Department representative at a check station not later than 9 a.m. on the day immediately following harvest.

[(2)] (3) (text unchanged)

[(3)] (4) At check-in, the Department representative shall:

(a) (text unchanged)

(b) Complete a daily logsheet issued by the Department, mail a copy to the Department by Tuesday of the following week, and maintain a copy; and

[(c)] Notify a Natural Resources Police Officer of a harvest which exceeds a licensee’s catch limit plus 50 pounds; and]

[(d)] (c) (text unchanged)

.07 Commercial Fishery.

A. Chesapeake Bay and its Tidal Tributaries.

(1)—(2) (text unchanged)

(3) Seasons. The commercial seasons for taking striped bass are as follows:

(a) The pound net, haul seine, and hook and line [season is] seasons are June 1 through November 30; and

[(b)] The haul seine season is June 7 through November 30;

(c) The hook and line season is June 7 through November 30; and]

[(d)] (b) (text unchanged)

(4)—(6) (text unchanged)

(7) The Secretary may:

(a) (text unchanged)

(b) Modify the allocation of all commercial tidal fish licensees during the season; [and]

(c) Consider an appeal of the initial calculation of shares in the fisheries of the Chesapeake Bay and its tidal tributaries under §A(6) of this regulation[.]; and

(d) Modify the shares of all commercial tidal fish licensees in an equal manner prior to the beginning of the quota year.

(8) A flag specified by the Department shall be displayed on the vessel at least 3 feet above the surface on which it is mounted and clearly visible to approaching vessels if the individuals on board are engaged in commercial striped bass fishing to denote whether the individuals on board are participating in the common pool or the individual quota fisheries.

B. (text unchanged)

C. Drift Gill Net Fishery Limitations.

(1) (text unchanged)

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

(a) Only attended drift gill nets, as defined in COMAR [08.02.05.02A(6)] 08.02.25.01B(15), with a stretched mesh size[, as defined in COMAR 08.02.05.02A(23),] of not less than 5 inches or greater than 7 inches are permitted for the taking of striped bass;

(b) (text unchanged)

(c) The amount of striped bass on board a vessel participating in the Chesapeake Bay common pool fishery may not exceed 2,000 pounds on any day, regardless of the number of licensees with a striped bass permit for gill net on board the vessel; and

(d) (text unchanged)

(3)—(6) (text unchanged)

(7) Flag Marker—Tributaries. A drift gill net set in tributaries of the Chesapeake Bay or Atlantic coastal bays and their tributaries shall be marked by the licensee at each end with a floating marker with a volume of at least 460 cubic inches, each bearing the licensee’s commercial tidal fish license number, or a flag according to [§D] §A(9) of this regulation.

(8) (text unchanged)

D. Commercial Hook and Line Fishery Limitations.

(1) Except as provided in §D(5) of this regulation, a total of two crew members may assist a commercial tidal fish licensee registered in the Chesapeake Bay common pool fishery [with the appropriate commercial striped bass permit] to catch striped bass with hook and line.

(2) Except as provided in §D(5) of this regulation, a maximum of 4 individuals, including crew members, may be present on a vessel which is engaged in commercial hook and line fishing in the Chesapeake Bay common pool fishery.

[(3)] A flag specified by the Department shall be displayed on the vessel at least 3 feet above the surface on which it is mounted and clearly visible to approaching vessels if the individuals on board are engaged in commercial hook and line fishing.]

(3) A person may not catch or attempt to catch striped bass while using commercial hook and line on a Friday, Saturday, or Sunday.

(4) While using commercial hook and line, a [A] person may not catch or attempt to catch striped bass:

(a) In the Chesapeake Bay common pool fishery between 1 hour before sunset and 1 hour before sunrise[while using commercial hook and line]; or

(b) In the Chesapeake Bay individual transferable quota fishery between sunset and 1 hour before sunrise.

(5) (text unchanged)

E. (text unchanged)

F. General.

(1) A commercial tidal fish licensee may not catch striped bass between 6 p.m. Friday and 5 a.m. Monday, except as provided in §§C[, D,] and E of this regulation.

(2) A commercial tidal fish licensee may not catch more than the licensee's catch limit assigned to the striped bass permit except as provided by the tolerance allowance in pounds as follows:

(a) For a daily catch limit, there is a 50-pound tolerance allowance;

(b) For a weekly catch limit, there is a 50-pound tolerance allowance; and

(c) For a seasonal catch limit, there is a 50-pound tolerance allowance.]

(2) A commercial tidal fish licensee registered in the Chesapeake Bay individual transferable quota fishery who exceeds their allocation 50 pounds or less is not in violation of this chapter.

(3) Overage Deductions.

(a) If a commercial tidal fish licensee registered in the Chesapeake Bay individual transferable quota fishery exceeds the licensee's allocation, that overage shall be deducted from the allocation the licensee receives in the next practicable quota year.

(b) If the participants in the Chesapeake Bay common pool fishery exceed the common pool allocation in a quota year, the total overage shall be averaged among the licensees who reported catch in the Chesapeake Bay common pool fishery and deducted from those licensees in the next practicable quota year.

(4) If a commercial tidal fish licensee registered in the individual transferable quota fishery accumulates 10 or more points for offenses specific to the striped bass fishery as described in COMAR 08.02.15.02 and .03, that licensee shall be suspended for one quota year.

[(3)] (5) (text unchanged)

.12 General Restrictions.

A.—B. (text unchanged)

C. Filleting Striped Bass.

(1) (text unchanged)

(2) A licensed [charterboat] charter boat captain or mate may fillet striped bass taken on a vessel displaying a current commercial [charterboat] charter boat decal under the following conditions:

(a)—(c) (text unchanged)

D.—H. (text unchanged)

JOSEPH P. GILL
Secretary of Natural Resources

Title 09

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

**Subtitle 12 DIVISION OF LABOR AND
INDUSTRY**

09.12.41 Wage and Hour Law

Authority: Labor and Employment Article, [§2-106(c)(1)] §2-106(c),
Annotated Code of Maryland

Notice of Proposed Action

[13-316-P]

The Commissioner of Labor and Industry proposes to amend Regulation .19 under **COMAR 09.12.41 Wage and Hour Law**.

Statement of Purpose

The purpose of this action is to amend Maryland's wage and hour regulations to provide that a tipped employee may spend up to 20 percent of their time performing non-tip producing duties related to their tipped occupation and be paid at a tipped employee rate. The regulation provides that a tipped employee who spends more than 20 percent of their time on non-tip producing duties is required to be paid at least the minimum wage rate for that time. These amendments will make Maryland's tipped employee regulation consistent with federal wage and hour regulations related to tipped employees.

Comparison to Federal Standards

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

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action does have an economic impact, but the economic impact is a positive one. This proposal will give employers the flexibility to allow their employees to spend up to 20 percent of their time performing non-tip producing duties related to their tipped occupation and be paid at a tipped employee rate.

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:	(+)	Indeterminable
E. On other industries or trade groups:	NONE	

F. Direct and indirect effects on public: NONE

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

D. Regulated industries will be impacted because the regulation will allow employers to pay employees who spend up to 20 percent of their time performing non-tip producing duties related to their tipped occupation and be paid at a tipped employee rate.

Economic Impact on Small Businesses

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

The economic impact on small businesses will be positive as small businesses will have the flexibility to pay the tipped employee wage rate to employees who spend up to 20 percent of their work time performing non-tip producing duties related to their tipped occupation.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Debbie Stone, Regulations Coordinator, Department of Labor, Licensing, and Regulation, Division of Labor and Industry, 1100 N. Eutaw Street, Room 606, Baltimore, Maryland 21201, or call 410-767-2225, or email to dstone@dllr.state.md.us, or fax to 410-767-2986. Comments will be accepted through November 18, 2013. A public hearing will be held on November 5, 2013, at 10 a.m., 1100 N. Eutaw Street, Room 606, Baltimore, Maryland 21201, for the purpose of affording interested persons the opportunity to submit data or comments in writing or orally. Any interested person desiring to participate in this hearing should give written notification of intention to appear not later than October 29, 2013, to Commissioner of Labor and Industry, Attention: Debbie Stone, Regulations Coordinator, Division of Labor and Industry, 1100 North Eutaw Street, Room 606, Baltimore, Maryland 21201, or call (410) 767-2225, or fax to (410) 767-2986, or email dstone@dllr.state.md.us.

The notice must state the name and address of the person to appear, the capacity in which the person will appear, and the approximate amount of time required for the person's participation.

.19 Regular Hourly Rate.

A.—C. (text unchanged)

D. Gratuities and Tips.

(1)—(2) (text unchanged)

(3) *A tipped employee's wages must equal at least the minimum wage when direct wages and tips are combined.*

(4) *A tipped employee who spends more than 20 percent of the employee's work time performing non-tip producing duties directly related to their tipped occupation shall be paid by the employer at least the minimum wage for that time.*

E. (text unchanged)

J. RONALD DEJULIIS
Commissioner of Labor and Industry

**Title 10
DEPARTMENT OF HEALTH
AND MENTAL HYGIENE**

Subtitle 01 PROCEDURES

10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program

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

Notice of Proposed Action

[13-313-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—, .05, .08, and .10, and adopt new Regulation .12 under COMAR 10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program.

Statement of Purpose

The purpose of this action is to amend current fair hearing regulations to reflect administrative and substantive changes related to the provisions of the Maryland Health Progress Act of 2013 and of the federal Affordable Care Act, effective January 1, 2014, and to comport with federal appeal regulations implementing the ACA.

Comparison to Federal Standards

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

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Action by an MCO" means:

(a) Denial or limited authorization of a requested service, including the type or level of service;

(b) Reduction, suspension, or termination of a previously authorized service;

(c) Denial, in whole or part, of payment for a service;

(d) Failure to provide services in a timely manner; or

(e) Failure to act within the required time frames.

(3) "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub.L. 111-152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub.L. 112-56).

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

[(3)] (5) "Authorized representative" [means:] has the same meaning as in Regulation .12.

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

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

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

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

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

(f) An attorney retained by the appellant;

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

(h) Any person the appellant has named in writing where:

(i) The appointment details the specific issue the appellant wishes to appeal;

(ii) The appointment details that the person only has the authority to pursue the appellant's appeal rights regarding this specific issue;

(iii) The appointment details that the authority does not extend to any other representation on behalf of the appellant in any other matter;

(iv) The appointment details that the authority shall remain in effect for all levels of the appeal process but shall automatically terminate thereafter; and

(v) A copy of the appointment of the person signed by the appellant is provided to the Department along with the request for a fair hearing under Regulation .04 of this chapter;

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

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

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

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

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

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

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

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

(6) "Consolidated Services Center" means a call center operated by the Maryland Health Benefit Exchange to assist consumers who apply for, or participate in, Insurance Affordability Programs offered through the Maryland Health Connection.

[(4)] (7) "Delegate agency" means the:

(a) Department of Human Resources and its affiliated local departments which, under contractual agreements with the Department, determine initial and continuing eligibility in the Program; and

(b) Maryland Health Benefit Exchange and its designated affiliates.

[(5)] (8) (text unchanged)

(9) "Insurance affordability program" means a program that is one of the following:

(a) The Maryland State Medicaid program;

(b) The Maryland Children's Health Insurance Program (CHIP), including the program known as Maryland Children's Health Program (MCHP) Premium;

(c) A State basic health program established under §1331 of the Affordable Care Act;

(d) A program that makes available to eligible individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with advance payments of the premium tax credit established under §36B of the Internal Revenue Code; and

(e) A program that makes available to eligible individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with cost-sharing reductions established under §1402 of the Affordable Care Act.

(10) "MAGI" means modified adjusted gross income, as calculated for purposes of determining eligibility for insurance affordability programs under the Affordable Care Act.

(11) "Maryland Health Benefit Exchange" means the unit of State government that determines initial and continuing eligibility for the MAGI-based insurance affordability programs, including, by delegation, certain eligibility in the Program.

(12) "Maryland Health Connection" means the electronic eligibility system maintained by the Maryland Health Benefit Exchange.

[(6)] (13)—[(7)] (14) (text unchanged)

.02 Opportunity for a Fair Hearing.

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

(1) (text unchanged)

(2) A Program applicant claims that the determination of eligibility received through Maryland Health Connection is incorrect;

[(2)] (3)—[(6)] (7) (text unchanged)

[(7)] (8) A Program recipient in an MCO [asserts that the MCO has:

(a) Denied coverage of or payment for Program benefits; or

(b) Reduced, suspended, or terminated coverage of previously authorized Program benefits] is appealing an action by an MCO and the appeal has been filed within 90 days from the date specified in the notice from the MCO as required by COMAR 10.09.71.05.

B. *Alternative Processes for Program Recipient Enrolled in an MCO.*

(1) A Program recipient in an MCO [shall first pursue all of the] *may exercise appeal rights as specified in [10.09.72.05 or 10.09.72.01 before filing an appeal under this chapter unless the appeal meets the Program's criteria of expedited review] Regulation .04 of this chapter and COMAR 10.09.71.05 without first exhausting the MCO complaint and appeal procedures specified in COMAR 10.09.71.*

(2) *A Program recipient in an MCO who receives an adverse decision following the MCO appeals process set forth in COMAR 10.09.71.05 may request a fair hearing within 10 days of the date of the adverse decision according to COMAR 10.09.71.05 and Regulation .04 of this chapter.*

C. (text unchanged)

.03 Notification of Right to Request a Fair Hearing.

A. The Program or delegate agency shall notify an individual and his or her authorized representative, if previously designated by the individual or recognized as valid by the Program, in writing:

(1)—(3) (text unchanged)

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

(1)—(5) (text unchanged)

(6) Include information about fair hearings [a summary of the regulations relating to fair hearing procedures];

(7) (text unchanged)

(8) Identify who may act as an authorized representative of the appellant in the fair hearing process, *explain how an applicant or recipient may designate an authorized representative, and provide information about designation procedures under 10.09.04.12;*

(9)—(10) (text unchanged)

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

(1)—(7) (text unchanged)

(8) The date of action will occur in less than 10 days and the action involves a long-term care facility's resident transfer or discharge, in which case the notification shall be made as soon as practicable before transfer or discharge in accordance with 42 CFR §438.12; [or]

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

(10) *The action is an eligibility determination, in which case notice shall be given at the same time as the determination.*

.04 Request for Fair Hearing.

A. Statement of Request.

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

(a) [The] *Contacting the Program's Office of Health Services in writing, by telephone or by fax, if the appeal concerns a recipient's services being denied, suspended, terminated, or reduced;*

(b) *Contacting the Maryland Health Benefits Exchange in writing, by telephone, by email, or by fax, if the appeal concerns an applicant's eligibility for insurance affordability programs;*

(c) *Contacting the Consolidated Services Center maintained by the Maryland Health Benefit Exchange in writing, by telephone, by email, or by fax, if the appeal concerns eligibility for insurance affordability programs; or*

[(b) The] (d) *Contacting the Office of Administrative Hearings [or the delegate agency] in person, by mail, or by fax, if the appeal concerns the appellant's eligibility for insurance affordability programs.*

(2) The Program's Office of Health Services, *the Consolidated Services Center*, or the delegate agency that receives the request for a hearing shall assist the appellant or the appellant's authorized representative in preparing the request.

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

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

(b) *Indicate whether the appeal is for a determination of eligibility under an insurance affordability program or for conventional Medicaid; and*

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

(i) Concerns the medical necessity of a denied benefit or service to an MCO enrollee *or an application for eligibility insurance affordability programs;*

(ii)—(iii) (text unchanged)

(4) *Appeals of eligibility determinations for insurance affordability programs requested through the Maryland Health Connection shall automatically be transmitted to the Office of Administrative Hearings.*

(5) *If a request for a hearing is made by someone other than the applicant or recipient, the Office of Administrative Hearings shall:*

(a) *Treat the appeal as timely noted if it complies with §D of this regulation unless no documentation is provided on or before the hearing date;*

(b) *Accept appropriate documentation, up to and including the date of the fair hearing, demonstrating that the representative is authorized; and*

(c) *Accept the representation of any member of the bar of Maryland that the individual appellant is his or her client without further documentation.*

B.—C. (text unchanged)

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

(1) (text unchanged)

(2) Postmarked, delivered in person, or sent by facsimile to the Office of Administrative Hearings; *or emailed to Maryland Health Benefit Exchange; telephoned or faxed to the Consolidated Services Center or postmarked, telephoned, faxed, or delivered in person to the delegate agency within 90 days of the receipt of the notification specified in Regulation .03A, if the appeal concerns the appellant's eligibility.*

E. Dismissal.

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

(a) Withdrawn in writing *addressed to the Office of Administrative Hearings, or in writing, by telephone, or by fax to the Office of Health Services, or in writing, by telephone, or electronically to the Maryland Health Benefit Exchange or other delegate agency, by the appellant or his authorized representative; or*

(b) (text unchanged)

(2) (text unchanged)

F. (text unchanged)

.05 Pre-Hearing Procedures.

A. [The delegate agency shall prepare a] *A hearing summary shall be prepared containing pertinent information detailing the specific*

action that is the basis for the appeal. [If the delegate agency prepares a hearing summary, the] *The summary shall be forwarded to the appellant or the appellant's authorized representative and to the Office of Administrative Hearings at least 6 days before the hearing date.*

B. (text unchanged)

.08 Findings, Timing of Decision, and Effect of Decision.

A. Findings.

(1)—(2) (text unchanged)

B. Timing of Hearing Decision.

(1) If the appellant is not [a waiver-eligible individual] *enrolled in an MCO*, the administrative law judge shall forward to the appellant a copy of the findings, conclusions, and decision within 90 days from the earlier of the following:

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

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

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

(d) *The date the appellant emailed, postmarked or delivered in person to the Maryland Health Benefit Exchange a request for a fair hearing pursuant to Regulation .04D(2) of this chapter; or*

(e) *The date the appellant called or sent by facsimile to the Consolidated Services Center a request for a fair hearing pursuant to Regulation .04D(2) of this chapter.*

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

(a)—(b) (text unchanged)

(3) (text unchanged)

C. Appeal Rights.

(1) Any party may seek administrative review of the administrative law judge's decision as provided in Health-General Article, §§2-206 and 2-207, Annotated Code of Maryland, and subsequent judicial review as provided in State Government Article, §10-215, Annotated Code of Maryland, *except if the appeal is solely of a decision of the Maryland Health Benefit Exchange, in which case any party may seek judicial review as provided in State Government Article, §10-215, Annotated Code of Maryland.*

(2) (text unchanged)

(3) *To the extent an administrative law judge's decision upholds the determination of the Maryland Health Benefit Exchange with respect to an applicant for an insurance affordability program described in Regulation .01B(9)(a)—(e), the applicant may appeal to the United States Department of Health and Human Services.*

D. (text unchanged)

.10 Benefits During Appeals Process.

A. Benefits Pending Outcome of the Hearing.

(1) (text unchanged)

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

(a) (text unchanged)

(b) The appellant requests a hearing before the date [of the action] *specified in the notice.*

(3) (text unchanged)

B. Reinstating Benefits.

(1) If the Program terminates or reduces services pursuant to §A of this regulation, the Program may reinstate services if a Program recipient requests a hearing not more than 10 days after the date [of action] *specified in the notice.*

(2) (text unchanged)

(3) The Program shall reinstate and continue services until a decision is rendered after a hearing if:

(a) (text unchanged)

(b) The recipient requests a hearing within 10 days of the mailing of the notice [of action]; and

(c) (text unchanged)

(4)—(5) (text unchanged)

.12 Authorized Representatives.

A. Definitions.

(1) *"Authorized representative" means an individual or organization acting responsibly on behalf of the applicant or recipient in accordance with §§B, C, D, and E of this regulation, in assisting with an applicant or recipient's application, renewal of eligibility, appeals, and other ongoing communications with the agency.*

(2) *"Signature" includes electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmissions.*

B. Designating an Authorized Representative.

(1) An applicant or recipient may designate any individual or organization to serve as an authorized representative.

(2) An authorized representative may be designated either:

(a) In writing, including the applicant or recipient's signature; or

(b) By providing proof of legal authority to act on behalf of an applicant or recipient.

(3) Legal authority includes, but is not limited to those who are the:

(a) Applicant or, if applicant or recipient is a minor, recipient's parent;

(b) Applicant or recipient's legal guardian, if one has been appointed, or a person who has in good faith filed an application to be appointed the applicant or recipient's legal guardian but who has not yet been appointed the applicant or recipient's legal guardian;

(c) Applicant or recipient's healthcare surrogate as defined in Health General Article, §5-605, Annotated Code of Maryland;

(d) Personal representative of the applicant or recipient's estate, or a person who has in good faith filed an application to be appointed the personal representative of the applicant or recipient's estate but who has not yet been appointed the personal representative of the applicant or recipient's estate;

(e) Individual appointed to make legal or medical decisions on behalf of the applicant or recipient pursuant to a validly executed power of attorney; or

(f) Attorney or paralegal retained by the individual.

(4) For individuals who lack the capacity to designate an authorized representative and for whom no other individual or organization has the legal authority to act under §B(2) of this regulation, an authorized representative can be any individual or organization acting responsibly on behalf of the applicant or recipient who:

(a) In good faith, is acting in the best interest of the applicant or recipient; and

(b) Declares the applicant or recipient lacks legal capacity, and for organizations, declares that its directors, employees, officers or employers, if any, do not have a direct financial interest in the outcome of the fair hearing.

(5) For individuals who lack the capacity to designate an authorized representative, for whom no other individual or organization has the legal authority to act under §B(2) of this regulation, and on behalf of whom no individual or organization covered by §B(4) of this regulation is willing and able to act, an authorized representative can be any individual or organization with a direct financial interest in the outcome of the hearing or whose employer has a direct financial interest in the outcome of the hearing who:

(a) In good faith is acting in the best interest of the applicant or recipient;

(b) Declares that the applicant or recipient lacks legal capacity; and

(c) Declares that to the best of his or her belief, no other individual or organization is willing and able to act on the applicant or recipient's behalf.

C. *Time for Authorization.* Designation of an authorized representative or the declarations by an individual or organization required under §B(4) and (5) of this regulation to become an authorized representative can take place at any time, including, but not limited to, the time of application, upon redetermination, upon filing an appeal, and at the appeal hearing.

D. *Validity of Representation.* The power to act as an authorized representative is valid until the applicant or recipient modifies the authorization or notifies the agency that the representative is no longer authorized to act on his or her behalf, or the authorized representative informs the agency that the authorized representative is no longer acting in such capacity, or there is a change in the legal authority upon which the individual or organization's authority was based. This notice shall be in writing and shall include the applicant or recipient's signature or the authorized representative's signature as appropriate.

E. *Powers of Authorized Representative.* Authorized representatives may be authorized to:

(1) Sign an application on the applicant's behalf;

(2) Complete and submit an update, a renewal form, or respond to a request for redetermination;

(3) Receive copies of the applicant or recipient's notice and other communications from the agency; and

(4) Act on behalf of the applicant or recipient in all matters with the agency including appeals.

F. *Obligations of the Authorized Representative.* An authorized representative:

(1) Is responsible for fulfilling all the responsibilities encompassed within the scope of the authorized representation as described in §E of this regulation to the same extent as the individuals the authorized representative represents; and

(2) Shall agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or recipient provided by the agency.

G. *Authorized Representatives Through an Organization.* A provider, staff member or volunteer of an organization shall sign an agreement that he or she will adhere to the federal regulations governing authorized representatives as laid out in 42 CFR §435.923 or 45 CFR §155.227, or both, as well as relevant State and federal laws concerning conflicts of interest and confidentiality of information.

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

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Proposed Action

[13-311-P]

The Secretary of Health and Mental Hygiene proposes to:

(1) Amend Regulations .01—.07 and .10—.14 and repeal existing Regulations .08 and .09 under **COMAR 10.09.11 Maryland Children's Health Program**;

(2) Amend Regulations .01—.03-1, .03-3—.04, .05—.05-1, .05-3—.06, .07—.09, .12—.15 and adopt new Regulations .02-1, .04-1, and .06-1 under **COMAR 10.09.24 Medical Assistance Eligibility**; and

(3) Amend Regulations .01—.06, .09, and .12—.16 and repeal existing Regulations .07 and .08 under **COMAR 10.09.43 Maryland Children's Health Program (MCHP) Premium**.

Statement of Purpose

The purpose of this action is to amend current regulations to expand and clarify Medicaid eligibility for Medicaid enrollees such as parents, children, childless adults, and pregnant women, so that regulations are consistent with provisions of the Maryland Health Progress Act of 2013 and of the federal Affordable Care Act, effective January 1, 2014.

Comparison to Federal Standards

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

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

10.09.11 Maryland Children's Health Program

Authority: Health-General Article, §§2-104(b), 15-101(f), 15-103, 15-105, and 15-301 et seq., Annotated Code of Maryland, Ch. 202, Acts of 2003

.01 Purpose and Scope.

A. This chapter governs the determination of eligibility for the Maryland Children's Health Program with an income standard based on the modified adjusted gross income methodology specified in the Affordable Care Act of 2010, effective January 1, 2014.

B. Eligibility for the Maryland Children's Health Program may be established for [:

(1) Women of any age during pregnancy and during the postpartum period whose income is equal to or less than 250 percent of the federal poverty level; and

(2) Children] children younger than 19 years old whose family income is equal to or less than 200 percent of the federal poverty level.

.02 Definitions.

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

(1) "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub.L.111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub.L.111-152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub.L.112-56).

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

[(2)] (3) "Application" means the filing of a written [and] , telephonic, or electronic signed application for [the Maryland Children's Health Program at the local health department or the local department of social services] health coverage in an Insurance Affordability Program to the Department or its designee.

[(3)] (4) "Application date" means the date on which a written, telephonic, or electronic signed application [form] is received by the [local health department or the local department of social services] Department or its designee.

[(4)] "Application form" means the form designated by the Department to be completed, signed, and submitted to the local health department or the local department of social services as an official application for the Maryland Children's Health Program].

(5) "Authorized Representative" has the meaning stated in COMAR 10.01.04.12.

[(5)] (6)—[(6)] (7) (text unchanged)

(8) "Children's Health Insurance Program" means the program for uninsured targeted low-income children established under Title XXI of the Social Security Act.

[(7)] (9) (text unchanged)

(10) "Designee" means any entity designated to act on behalf of the Department such as:

- (a) Baltimore City or a county social services department under the supervision of the Department of Human Resources;
- (b) Baltimore City Health Department and its subgrantees, or a county health department; and
- (c) The Maryland Health Benefit Exchange.

[(8)] (11) (text unchanged)

[(9)] "Disregard" means the amount of money specified by regulation that can be subtracted from countable income.

(10) Earned Income.

(a) "Earned income" means payment received by an individual in cash as a result of employment, including self-employment.

(b) "Earned income" includes, but is not limited to:

- (i) Wages;
- (ii) Salaries;
- (iii) Commissions;
- (iv) Tips; and
- (v) Profit from self-employment.]

[(11)] (12)—[(12)] (13) (text unchanged)

[(13)] "Excludable income" means income which is exempt from consideration as countable income.]

(14) "Family members" means those individuals living with the applicant whose income is counted, or would be counted if there were any, as [family] household income under Regulation .07B of this chapter.

(15)—(17) (text unchanged)

(18) "Insurance Affordability Program" means a program that is one of the following:

- (i) The Maryland State Medicaid program;
- (ii) The Maryland Children's Health Insurance Program (CHIP), including the program known as Maryland Children's Health Program (MCHP) Premium;
- (iii) An optional state basic health program established under §1331 of the Affordable Care Act;

(iv) A program that makes available to qualified individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with advance payments of the premium tax credit established under §36B of the Internal Revenue Code; or

(v) A program that makes available coverage in a qualified health plan through the Maryland Health Benefit Exchange with cost-sharing reductions established under §1402 of the Affordable Care Act.

[(18)] (19) (text unchanged)

[(19)] "Local department of social services (LDSS)" means the Baltimore City or a county social services department under the supervision of the Department of Human Resources.]

(20) "Local health department (LHD)" means the Baltimore City Health Department and its subgrantees, or a county health department.

(21) "MAGI" means modified adjusted gross income, as calculated for purposes of determining eligibility for insurance affordability programs under the Affordable Care Act.

(22) "MAGI Exempt Coverage Group" means coverage groups such as Aged, Blind, Disabled; Categorically Needy; and Medically Needy as defined under COMAR 10.09.24.02, whose eligibility is not determined by MAGI.

[(21)] (23) "Maryland Children's Health Program (Program)" means the program established in Health-General Article, §15-301 et seq., Annotated Code of Maryland, to provide comprehensive medical care and other health care services to certain children [and pregnant women].

(24) "Maryland Health Benefit Exchange" means the unit of State government that determines initial and continuing eligibility for the MAGI based insurance affordability programs, including, by delegation, certain eligibility in the program.

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

[(23)] (26) "Medical Assistance (Medicaid)" means the program administered by the State under Title XIX of the Social Security Act which provides comprehensive medical and other health-related care for eligible individuals.

[(24)] (27) (text unchanged)

[(25)] "Postpartum period" means the period of time which begins on the date the pregnancy ends and ends on the last day of the second month which follows.]

[(26)] (28)—[(32)] (34) (text unchanged)

[(33)] "Unearned income" means all income which does not meet the definition of earned income.]

.03 Coverage Groups.

[The following individuals may be determined eligible] Eligibility may be established for the Maryland Children's Health Program [:

A. Pregnant and postpartum women of any age whose family income is equal to or less than 250 percent of the federal poverty level; and

B. Children] for children younger than 19 years old whose [family] household income is equal to or less than 200 percent of the federal poverty level.

.04 Application.

A. The [local health department or the local department of social services] Department or its designee shall determine eligibility for [pregnant women and] children.

[B. The local health department or the local department of social services shall give oral or written information about the eligibility requirements, coverage, scope, and related services of the Maryland Children's Health Program, and an individual's rights and obligations under the Program, to any individual requesting this information.

C. The local health department or the local department of social services shall make the application form available without delay to an individual requesting one.

D. A resident temporarily absent from the State but intending to return may apply for assistance by mail to the local health department or the local department of social services in the jurisdiction in which the resident's home is located. The individual shall demonstrate the individual's continued residency in the State and shall meet all technical and financial requirements in order to be determined eligible.]

B. *The Department or its designee shall give oral, written, or electronic information about the Maryland Children's Health Program such as:*

- (1) *Requirements for eligibility;*
- (2) *Available services;*
- (3) *An individual's rights and responsibilities;*
- (4) *Information in plain English, supported by translation services; and*
- (5) *Information accessible to disabled individuals requesting an application.*

C. *An individual requesting health coverage from an Insurance Affordability Program shall be given an opportunity to apply.*

D. *The Department or its designee shall make the application available to the individual without delay, by telephone, mail, in-person, internet, other available electronic means, and in a manner accessible to disabled individuals requesting an application.*

E. *A resident temporarily absent from the State but intending to return may apply for health coverage from an Insurance Affordability Program by telephone, mail, in-person, internet, and other available electronic means to the Department or its designee in any jurisdiction. The individual shall:*

- (1) *Demonstrate continued residency in the State; and*
- (2) *Meet all nonfinancial and financial requirements in order to be determined eligible.*

[E.] F. *Application Filing and Signature Requirements.*

(1) An individual who wishes to apply for [the Maryland Children's Health Program under this chapter] *health coverage under an Insurance Affordability Program shall submit a written, [and signed] telephonic, or electronic application [form] signed under penalty of perjury to the [local health department or the local department of social services] Department or its designee in [the] any jurisdiction [in which the individual's residence is located]. An applicant is responsible for completing the application but may be assisted in the completion by an individual of the applicant's choice.*

[(2) For the purpose of establishing only the date of application, the applicant, or a person acting on behalf of the applicant, shall sign the application form.

(3) For the purpose of establishing eligibility of a pregnant or postpartum woman of any age, the applicant shall sign the application form.]

[(4)] (2) For the purpose of establishing eligibility of a child applicant who is neither pregnant nor postpartum, a parent or stepparent living with the child shall complete and sign the *written, telephonic, or electronic application [form]*. If the child does not live with a parent, an authorized representative who is 21 years old or older shall complete and sign the application [form].

[F.] G. The date of application shall be the date on which a written, *telephonic, or electronic*, signed application is received by the [local health department or the local department of social services] *Department or its designee*. The application may be mailed or [hand delivered] *submitted electronically* to the [local health department or it may be hand delivered to the local department of social services] *Department or its designee*.

[G.] H. An individual who has filed [an] *a written, telephonic, or electronic application may voluntarily withdraw that application but the application [form] remains the property of the [local health department of the local department or social services] Department or*

its designee and the withdrawal does not affect the periods under consideration specified under [§H] §I of this regulation.

[H.] I. *Period Under Consideration.* The [local health department or the local department of social services] *Department or its designee* shall establish a *current* period under consideration based on the date of application established under [§F] §G of this regulation. For [both a pregnant or postpartum woman and] a child, the period under consideration is the 12-month period beginning with the month of application.

[I.] J. *Processing Applications—Time Limitations.*

(1) When [an] *a written, telephonic or electronic application is filed [at the local health department], a decision shall be made promptly but not later than:*

(a) 10 days from the date of [the] application [When an application is] *when filed at the local health department; or*

(b) 30 days from the date of application when filed at the [local department of social services, a decision shall be made promptly, but not later than 30 days from the date of application] *Department or its designee, but not the local health department.*

(2) The time standards specified in [§I(1)] §J(1) of this regulation cover the period from the date of application to the date the [local health department or the local department of social services mails] *Department or its designee sends a written or electronic notice of its decision to the applicant.*

(3) The [local health department or the local department of social services] *Department or its designee* shall inform the applicant [in writing] *by written or electronic notice* of the missing information needed to determine eligibility, and the applicable time limit of 10 or 30 days.

(4) When an applicant fails to complete the application [form] or to provide the required information needed to determine eligibility within the 10 or 30 day limit provided under [§I(1)] §J(1) of this regulation, the applicant shall be determined ineligible.

(5) If an applicant is determined ineligible for the current period under consideration due to a [technical] *nonfinancial* factor, the application shall be disposed of and the application date may not be retained. If the applicant reapplies, a new period under consideration shall be established based on the date the new application is filed.

[(6) *Reactivation of an Application Following a Decision of Ineligibility.*

(a) A request for current eligibility following the rejection of an application for failure to provide required information or verifications is considered a reactivation of the appropriate earlier application if the request is filed within 6 months of the earlier application.

(b) The reactivation period applies to the earliest rejected application for which the period under consideration has not expired.

(c) The applicant may establish eligibility at any time during the reactivation period.]

[J.] K. *Required Information.*

[(1) The] *All information needed to determine eligibility for the Maryland Children's Health Program [, including an applicant's earned and unearned income,] shall be [accepted, without written documentation, by the local health department or the local department of social services] reported. When there is evidence of inconsistency with attested information given by the applicant and reported by the state and federal databases, the applicant shall be required to offer an explanation and appropriate verification to reconcile the inconsistency.*

[(2) Written verification of the income of a parent or spouse whose income is considered in determining the eligibility of the applicant shall be required if the parent or spouse does not submit a social security number.

(3) Written verification of any factor of eligibility shall be required if the eligibility worker determines that the applicant's statements are inconsistent with other available information.]

.05 Application: Additional Requirements.

A. Social Security Number.

(1) As a condition of eligibility, an applicant shall furnish to the [local health department or the local department of social services] *Department or its designee* a Social Security number for the applicant. If the applicant cannot furnish a Social Security number, the applicant shall apply for a number. Assistance may not be denied, delayed, or discontinued pending the issuance or verification of the number if the applicant complies with this subsection.

(2)—(3) (text unchanged)

(4) If an applicant lacks the resources to meet the requirements of this regulation, the [local health department or the local department of social] *Department or its designee* services shall assist the applicant in obtaining the necessary documents, and any costs incurred [by the local department] shall be paid for out of administrative funds.

(5) If the application indicates that a Social Security number was issued previously, the [local health department or the local department of social services] *Department or its designee* shall request validation of the number by the Social Security Administration.

(6) Individuals described under [Regulation .06A (2) of this chapter] *COMAR 10.09.24.05D(4)(b)* who are applying for limited benefits to treat an emergency medical condition are not subject to the requirements in §A(1)—(4) of this regulation.

[(7) The requirements described under §A(1)—(5) of this regulation are not applicable to members of the applicant's family.]

B. Third-Party Liability.

(1) A recipient shall notify the [local health department or the local department of social services] *Department or its designee* within 10 working days when medical treatment has been provided as a result of a motor vehicle accident or other occurrence in which a third party might be liable for the recipient's medical expenses.

(2) A recipient shall cooperate with the [local health department or the local department of social services] *Department or its designee* in completing a form designated by the Department to report all pertinent information and in collecting available health insurance benefits and other third-party payments.

(3) In accident situations, a recipient shall notify the [local health department or the local department of social services] *Department or its designee* of the:

(a)—(d) (text unchanged)

C. The [local health department or the local department of social services] *Department or its designee* shall:

(1) Maintain a [case] *written or electronic* record including documentation of any required elements of eligibility; *and*

(2) Restrict disclosure of information concerning a recipient to purposes directly connected with the administration of the *Medical Assistance* Program, including:

(a) (text unchanged)

(b) Determining the extent of coverage under [the Program] *Medical Assistance*;

(c) (text unchanged)

(d) Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the *Medical Assistance* Program [; and].

[(3) Conduct a wage-screening inquiry to determine wages, benefits, and claimant history for each unemployed individual in the applicant's family unit who is 18 years old or older, but younger than 65 years old, and who is neither blind nor disabled.]

D. An applicant *or recipient* shall [sign] *give* consent [forms, as needed, authorizing] *to verify information needed to establish eligibility* to the Department or its designee, [to verify from sources such as an employer, banks, and public or private agencies, information needed to establish eligibility] *by submitting a written, telephonic or electronic application.*

.06 Nonfinancial Eligibility Requirements.

A.—B. (text unchanged)

[C. Pregnancy. In order to be eligible for benefits under this chapter, a woman shall be pregnant or be within the postpartum period.]

[D.] C.—[F.] E. (text unchanged)

[G.] F. No Private Health Insurance. In order to be eligible for benefits under Title XXI of the Social Security Act, an individual *whose income is equal to 133 percent but less than 200 percent of the Federal Poverty Level*, may not be covered by an employer-sponsored health benefit plan [or have been voluntarily terminated from an employer-sponsored health benefit plan within 6 months before the application date for benefits under this chapter].

[H.] G. (text unchanged)

[I.] H. Documentation of Citizenship and Identity.

[(1) An applicant or recipient shall be required as a condition of eligibility to provide documentary evidence of identity as well as citizenship or nationality, to the Department's satisfaction, based on federal requirements, if the individual is:

(a) Declared to be a citizen or national of the United States; and

(b) Being determined for:

(i) Initial eligibility based on an application filed on or after September 1, 2006; or

(ii) Continuing eligibility based on a redetermination with an end date on or after September 30, 2006.

(2) The requirements at §I of this regulation shall be met for all Medical Assistance coverage groups except for:

(a) Supplemental Security Income beneficiaries;

(b) Newborns who are deemed eligible, for a period of 1 year, for Medical Assistance based on the mother's Medical Assistance eligibility for the newborn's date of birth;

(c) Newborns deemed eligible who are born to an otherwise eligible non-qualified alien woman meeting the requirements of Regulation .05-2 of this chapter who has filed an application and has been determined eligible for Medical Assistance for the newborn's date of birth;

(d) Pregnant women who are determined presumptively eligible for Medical Assistance through an accelerated eligibility process;

(e) Individuals who are entitled to Medicare benefits or enrolled in any part of Medicare;

(f) Individuals receiving SSDI disability insurance benefits under §223 of the Social Security Act, or monthly benefits under §202 of the Act, based on the individual's disability;

(g) Children who are receiving foster care or adoption assistance under Title IV-B or Title IV-E of the Social Security Act; and

(h) Other categories of individuals who are considered by the federal government to have previously presented satisfactory documentary evidence of identity as well as citizenship or nationality.

(3) An applicant may not be determined eligible for Maryland Children's Health Program until the requirements of this regulation are met.

(4) Continuing eligibility for a recipient may not be approved at redetermination until the requirements of §I of this regulation are met. If an applicant or recipient fails to meet the requirements of §I of this regulation within the time standards specified in Regulation

.04I(1) of this chapter, and the time standards are not extended, the Department shall:

- (a) Deny eligibility for an applicant; or
- (b) Terminate eligibility for a recipient, in accordance with the requirements for timely notice in COMAR 10.09.24.13B.

(5) If an applicant or recipient fails to meet the requirements of §I of this regulation within the time standards specified in Regulation .04I(1) of this chapter, and the time standards are not extended, the Department shall:

- (a) Deny eligibility for an applicant; or
- (b) Terminate eligibility for a recipient, in accordance with the requirements for timely notice in COMAR 10.09.24.13B.

(6) The reactivation requirements in Regulation .04I(6) of this chapter shall apply if the documentation requirements of §I of this regulation are subsequently met within the current period under consideration for the:

- (a) Applicant's denied application; or
- (b) Recipient's terminated period of continuing eligibility.]

(1) *An applicant may not be determined eligible for Maryland Children's Health Program until the requirements of this regulation are met.*

(2) *An applicant or recipient shall be required as a condition of eligibility to provide documentary evidence of identity as well as citizenship or nationality, to the Department's satisfaction, based on federal requirements, if the individual is:*

- (a) *Declared to be a citizen or national of the United States;*

and

- (b) *Being determined for:*

(i) *Initial eligibility based on an application filed on or after September 1, 2006; or*

(ii) *Continuing eligibility based on a redetermination with an end date on or after September 30, 2006.*

(3) *An applicant may be determined eligible for Maryland Children's Health Program for a period of 90 days to provide requested documents. When an applicant fails to provide documentation of citizenship within the 90 day period, the applicant shall be determined ineligible.*

(4) *If an applicant or recipient fails to meet the requirements of §H of this regulation within the time standards specified in Regulation .04J(1) of this chapter, and the time standards are not extended, the Department shall:*

- (a) *Deny eligibility for an applicant; or*
- (b) *Terminate eligibility for a recipient, in accordance with the requirements for timely notice in COMAR 10.01.04.*

(5) *The requirements at §H of this regulation shall be met for all Medical Assistance coverage groups except for:*

- (a) *Supplemental Security Income beneficiaries;*
- (b) *Newborns who are deemed eligible, for a period of 1 year, for Medical Assistance based on the mother's Medical Assistance eligibility for the newborn's date of birth;*
- (c) *Newborns deemed eligible who are born to an otherwise eligible non-qualified alien woman meeting the requirements of under COMAR 10.09.24.05-2 who has filed an application and has been determined eligible for Medical Assistance for the newborn's date of birth;*

(d) *Individuals who are entitled to Medicare benefits or enrolled in any part of Medicare;*

(e) *Individuals receiving SSDI disability insurance benefits under §223 of the Social Security Act, or monthly benefits under §202 of the Social Security Act, based on the individual's disability;*

(f) *Children who are receiving foster care or adoption assistance under Title IV-B or Title IV-E of the Social Security Act; and*

(g) *Other categories of individuals who are considered by the federal government to have previously presented satisfactory documentary evidence of identity as well as citizenship or nationality.*

(6) *Continuing eligibility for a recipient may not be approved at redetermination until the requirements of §H of this regulation are met.*

(7) If there is documentation in an applicant's or recipient's [case] *written or electronic record or a federal or state's database that demonstrates that the individual meets the requirements of [§I] §H of this regulation, the individual shall be considered to meet the requirements of [§I] §H of this regulation, unless the:*

- (a)—(b) (text unchanged)

.07 Consideration of [Family] Household Income.

A. The applicant shall report the income of [each] *any* family member [When there is evidence of regular expenditures which are inconsistent with reported income, the applicant shall offer an explanation to reconcile the inconsistency.], *except for the income of a member that does not file a federal tax return and is not claimed as a federal tax dependent.*

B. Determining Countable [Net Family] Household Income.

(1) In determining an applicant's financial eligibility for the Maryland Children's Health Program, the applicant's [family] *current household income* is considered [for the applicable period under consideration].

[(2) For the pregnant or postpartum applicant, family income shall consist of the income of the pregnant or postpartum woman and of the following family members when living with the applicant:

- (a) Spouse; and
- (b) The applicant's children younger than 21 years old.]

[(3)] (2) For the child applicant who is neither pregnant nor postpartum, [family] *household income* shall consist of the income of the child applicant and the following family members when living with the child applicant:

- (a)—(b) (text unchanged)

[(4)] (3) For the married child applicant who is neither pregnant nor postpartum, [family] *household income* shall consist of the income of the married child applicant and the married child applicant's spouse.

[C. Regularity of Income. When an applicant or family member with countable income:

(1) Has regular income, the amount to be considered is that which is available or can reasonably be expected to be available during the period under consideration; or

(2) Is self-employed or has irregular or seasonal earnings, the amount to be considered is the expected annual income based on the prior year's gross income]

C. *When an individual has regular income the amount to be considered is that which is available or can reasonably be expected to be available for a projected period of 12 months, including the month of application.*

D. Treatment of Income.

(1) Earned and unearned income which is specified under Regulation .08 of this chapter is counted to establish countable gross income.

(2) Countable gross income shall be reduced by subtracting appropriate income disregards as specified in Regulation .09 of this chapter to determine countable net income]

(1) *Countable gross income for the Maryland Children's Health Program shall be the household income calculated according to MAGI.*

(2) *MAGI income limits shall be:*

(a) *Converted from traditional income limits to account for elimination of income disregards.*

(b) Increased by 5 percentage points of the federal poverty level for the following circumstances:

(i) When an individual's income exceeds the Medicaid income standard; and

(ii) The income standard is the highest income standard under which the individual can be determined eligible.

(3) Household Composition. For purposes of determining the income standard applicable to an applicant or recipient, the following rules apply.

(a) An individual plus anyone for whom the individual claims personal exemption shall be included in the federal tax filing unit in the taxable year in which an initial determination or renewal of eligibility is being made.

(b) For an individual who does not file a federal tax return and is not claimed as a federal tax dependent in the taxable year in which an initial determination or renewal of eligibility is being made, the household size shall consist of the individual and the following individuals:

(i) Spouse; and

(ii) Natural, adopted or step children.

(c) In the taxable year in which an initial determination or renewal of eligibility is being made, the household size of a child applicant shall consist of the child and the following individuals:

(i) Natural, adopted, or step parents; and

(ii) Natural, adopted, or step siblings.

(d) In the case of a married couple living together, each spouse shall be included in the household of the other spouse, regardless of whether they expect to file a joint federal tax return in the taxable year in which an initial determination or renewal of eligibility is being made.

(4) No resources or assets test may be applied to an applicant or recipient who is subject to a MAGI-based income test.

.10 Determining Financial Eligibility.

An applicant is financially eligible for the Maryland Children's Health Program if, for the period under consideration, the applicant's countable [net family] household income as determined under Regulation .07 of this chapter does not exceed[

A.] 200 percent of the federal poverty level for a family size equal to the size of the family for child applicants younger than 19 years old[; and

B. 250 percent of the federal poverty level for a family size equal to the size of the family for pregnant and postpartum women applicants].

.11 Certification Periods.

[A. For an eligible woman, certification begins on the first day of the month of application and ends on the last day of the second month after the pregnancy ends.]

[B.] A.—[C.] B. (text unchanged)

[D. A pregnant woman eligible for health benefits under this chapter continues to be eligible for benefits without regard to any change in income of the family of which she is a member until the end of the second month after the pregnancy ends.]

[E.] C. (text unchanged)

.12 Covered Services.

[A. A woman certified for the Program, whether pregnant or within the postpartum period, is entitled to all health benefits for which federal financial participation is available, and shall receive her benefits through the Maryland Medicaid Managed Care Program.]

[B.] A. (text unchanged)

[C.] B. In the case of an alien who is eligible for benefits under [Regulation .06A(2)] COMAR 10.09.24.05D(4)(b), covered services are limited to those that are necessary for the treatment of an

emergency medical condition, as defined under Regulation .02B of this chapter.

.13 Post-Eligibility Requirements.

A. Notice of Eligibility Determination. The [local health department or the local department of social services] Department or its designee shall inform an applicant of the applicant's legal rights and obligations and give the applicant written or electronic notification of the following:

(1) For eligible [persons] individuals:

(a) [A finding of eligibility.] The basis and effective date for eligibility;

(b) [The beginning and ending dates for coverage.] Instructions for reporting changes that may affect the recipients eligibility; and

(c) (text unchanged)

(2) For ineligible [persons] individuals:

(a) [A finding of ineligibility.] A finding of ineligibility, the reason for the finding, and the regulation supporting the finding;

(b) [The reason for the finding.] Information regarding application for MAGI Exempt coverage groups; and

(c) [The regulation supporting the finding, and] The right to request a hearing.

[(d) The right to request a hearing.]

B. Recipient Responsibility. After an individual has been determined to be eligible for MCHP and is enrolled in MCHP:

(1) [A child recipient's parent, guardian, or representative shall notify the local health department or the local department of social services within 10 working days of changes affecting the child recipient's eligibility.] The Department shall periodically redetermine the recipient's eligibility for MCHP as specified under §D; and

(2) The recipient or the recipient's representative shall, within 10 days of the occurrence, notify the Department if there is a change in the recipient's, the recipient's parent's, or the recipient's guardian's:

(a) Income;

(b) Employment;

(c) Address; or

(d) Health insurance coverage status.

[(2)] (3) A recipient or the recipient's representative shall limit use of the [Program] Medical Assistance card to the [person] individual whose name appears on the card.

[(3)] (4) When written or electronic notice of cancellation is received, a recipient shall discontinue use of the [Program] Medical Assistance card on the first day of ineligibility and return the card to the Department.

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

[(5)] (6) A recipient shall cooperate with the [State's Medical Assistance] Department's quality control and audit review process, including verification of all information pertinent to the determination of eligibility.

[(6)] (7) If the recipient refuses to cooperate, the recipient's coverage shall be terminated subject to the regulation governing timely and adequate notice under COMAR [10.09.24.13B] 10.01.04.

C. Unscheduled Redetermination.

(1) The [local health department or the local department of social services] Department or its designee shall:

(a) Promptly make an unscheduled redetermination of a child recipient's eligibility when changes in circumstances or relevant facts are:

(i) (text unchanged)

(ii) Brought to the attention of the [local health department or the local department of social services] Department or its designee from other responsible sources;

(b)—(c) (text unchanged)

(2)—(3) (text unchanged)

D. Scheduled Redetermination. Except for children eligible as newborns of eligible women, the [local health department or the local department of social services] *Department or its designee* shall make a scheduled redetermination of a child recipient's eligibility at least every 12 months.

.14 Hearings.

The requirements relating to hearings under COMAR [10.09.24.13] 10.01.04 apply to this chapter.

10.09.24 Medical Assistance Eligibility

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

.01 Purpose and Scope.

A. [These regulations] *This chapter* [govern] governs the determination of eligibility for the Maryland Medical Assistance Program.

B. Eligibility may be established for [aged, blind, or disabled persons, persons younger than 21 years old and caretaker relatives] *the following coverage groups*:

(1) *The MAGI coverage groups whose income standard is based on the modified adjusted gross income methodology specified in the Affordable Care Act of 2010, effective January 1, 2014; and*

(2) *The MAGI Exempt coverage groups whose income standard is based on Title XIX of the Social Security Act.*

.02-1 MAGI Definitions.

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

B. *Terms Defined.*

(1) *"Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub.L.111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub.L.111-152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub.L.112-56).*

(2) *"Authorized Representative" has the meaning stated in COMAR 10.01.04.12.*

(3) *"Designee" means any entity designated to act on behalf of the Department such as:*

(a) *Baltimore City or a county social services department under the supervision of the Department of Human Resources;*

(b) *Baltimore City Health Department and its subgrantees, or a county health department; and*

(c) *The Maryland Health Benefit Exchange.*

(4) *"Insurance Affordability Program" means a program that is one of the following:*

(i) *The Maryland State Medicaid program;*

(ii) *The Maryland Children's Health Insurance Program (CHIP), including the program known as Maryland Children's Health Program (MCHP) Premium;*

(iii) *An optional State basic health program established under §1331 of the Affordable Care Act;*

(iv) *A program that makes available to qualified individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with advance payments of the premium tax credit established under §36B of the Internal Revenue Code; and*

(v) *A program that makes available coverage in a qualified health plan through the Maryland Health Benefit Exchange with cost-sharing reductions established under §1402 of the Affordable Care Act.*

(5) *"MAGI" means modified adjusted gross income, as calculated for purposes of determining eligibility for insurance affordability programs under the Affordable Care Act.*

(6) *"MAGI exempt coverage group" means a coverage group as described under Regulation .03 of this chapter whose eligibility is not determined by MAGI or by the Maryland Health Benefit Exchange.*

(7) *"Maryland Health Benefit Exchange" means the unit of State government that determines initial and continuing eligibility for the MAGI based insurance affordability programs, including, by delegation, certain eligibility in the program.*

.03 Coverage Groups.

A. *The following individuals, including recipients of Temporary Cash Assistance, may be determined eligible for the MAGI coverage groups:*

(1) *Parents and other caretaker relatives whose household income is equal to or less than 133 percent of the federal poverty level;*

(2) *Pregnant and postpartum women of any age whose household income is equal to or less than 250 percent of the federal poverty level;*

(3) *Childless adults 19 years old or older and younger than 65 years old whose household income is equal to or less than 133 percent of the federal poverty level;*

(4) *Children younger than 21 years old and whose household income is equal to or less than 133 percent of the federal poverty level; and*

(5) *Former Foster Care individuals who:*

(a) *Are younger than 26 years old;*

(b) *Are not eligible and enrolled for coverage under a mandatory Medicaid group other than childless adult; and*

(c) *Were in a Maryland out-of-home placement, including categorical Medicaid:*

(i) *On attaining age 18 and leaving out-of-home placement, or*

(ii) *On attaining age 19-21 during extended out-of-home placement under COMAR 07.02.11.04B.*

[A.] B. [The following persons are] *An individual receiving SSI, Mandatory State Supplement, or Optional State Supplement is eligible for the MAGI Exempt coverage groups without having to file a separate application and [are] covered as Categorically Needy[.]*

[(1) A person receiving AFDC, SSI, Mandatory State Supplement, or Optional State Supplement;

(2) A pregnant woman who has been denied AFDC solely because she is not in her last trimester of pregnancy;

(3) A family which has been denied AFDC solely because the amount of the payment would be less than \$10;

(4) A family terminated from AFDC because of increased earnings or hours of employment as described under § B of this regulation.]

[B.] C. (text unchanged)

[C.] D. The following [persons shall apply] *individuals may be determined eligible for a MAGI Exempt coverage group after filing a separate application for Medical Assistance and, if determined eligible, are covered as Categorically Needy:*

(1) [A person] *An individual* who would be eligible for [AFDC,] SSI, or Optional State Supplement benefits except for a requirement of those programs that is specifically prohibited under Title XIX.

[(2) A person who:

(a) In August, 1972, was entitled to Old Age, Survivors, and Disability Insurance, and:

(i) Was receiving AFDC, Old Age Assistance, Aid to the Permanently and Totally Disabled, or Public Assistance to the Needy Blind;

(ii) Was not receiving AFDC, Old Age Assistance, Aid to the Permanently and Totally Disabled, or Public Assistance to the Needy Blind but would have been eligible if he had applied; or

(iii) Would have been eligible for AFDC, Old Age Assistance, Aid to the Permanently and Totally Disabled, or Public Assistance to the Needy Blind if he were not in a medical institution or intermediate care facility.

(b) Would currently be eligible for AFDC or SSI except that the cost-of-living increase in Old Age, Survivors, and Disability Insurance under Public Law 92-336 raised his income over the limit allowed under AFDC or SSI. This includes a person who:

(i) Meets all current AFDC or SSI requirements except for the requirement to file an application; or

(ii) Would meet all current AFDC or SSI requirements if he were not in a medical institution or intermediate care facility.

(3) A person who becomes ineligible for SSI solely as a result of an Old Age, Survivors, and Disability Insurance cost-of-living increase received after April, 1977, if the person:

(a) Is receiving Old Age, Survivors, and Disability Insurance;

(b) Was receiving an SSI or Optional State Supplement payment but became ineligible for that payment because of a cost-of-living increase paid under § 215(i) of the Social Security Act after April, 1977; and

(c) Would still be eligible for SSI or Optional State Supplement if the amount of the Old Age, Survivors, and Disability Insurance cost-of-living increases paid after April, 1977, was deducted from income. The Old Age, Survivors, and Disability Insurance cost-of-living increase includes an increase received by the person or his financially responsible spouse.]

[(4)] (2)—[(6)] (4) (text unchanged)

[D.] E. The following [persons who apply for and meet the requirements of these regulations] *individuals may be determined eligible for a MAGI Exempt coverage group after filing a separate application, and if determined eligible, are covered as Medically Needy;*

(1)—(5) (text unchanged)

.03-1 Coverage Group for Women with Breast or Cervical Cancer—Purpose, Definitions, and Eligibility Criteria.

A. Purpose.

(1) (text unchanged)

(2) [Coverage under this regulation is subject to the availability of State and federal funds.] *Applications submitted under Regulations .03-1 and .03-2 of this chapter shall no longer be accepted after December 31, 2013.*

(3) *An individual who has submitted an application in accordance with §A(1) of this regulation and who has been determined eligible will receive benefits under Regulations .03-1 and .03-2 of this chapter after December 31, 2013.*

B.—C.(text unchanged)

.03-3 Medicare Savings Program Coverage.

A.—F. (text unchanged)

G. Qualifying Individual [1 QI-1] QI.

(1) An individual is eligible for [QI-1] QI benefits if:

(a)—(c) (text unchanged)

(2) Current eligibility for [QI-1] QI benefits shall be effective the first day of the month of application.

(3) An applicant may qualify for up to 3 calendar months before the month of application for retroactive [QI-1] QI benefits if:

(a) The individual meets the [QI-1] QI eligibility criteria for each of those prior months under consideration; and

(b) Each retroactive month is no earlier than January 1 of the calendar year in which the individual applied for [QI-1] QI benefits.

(4) Medicare savings program benefits for a [QI-1] QI eligible [person] *individual* shall consist of coverage by the Medical Assistance program of the monthly premium for Medicare Part B.

H. (text unchanged)

.03-4 Medicare Buy-In Coverage for Medical Assistance Recipients.

A. (text unchanged)

B. A qualified recipient is automatically made eligible by the Department *or its designee* for the Medicare buy-in benefits effective the first day of the:

(1)—(2) (text unchanged)

C. (text unchanged)

.04 Application—General Requirements.

A. (text unchanged)

B. The Department or its designee shall give oral, [or] written, *or electronic* information about the [eligibility requirements, coverage, scope and related services of the Medical Assistance Program and an] *Medical Assistance Program such as:*

(1) *Requirements for eligibility;*

(2) *Available services;*

(3) *An individual's rights and [obligations] responsibilities [obligations under the Medical Assistance Program, to any person requesting this information];*

(4) *Information in plain English, supported by translation services; and*

(5) *Information accessible to disabled individuals requesting an application.*

[C. An individual requesting Medical Assistance shall be given an opportunity to apply The Department or its designee shall make the application form available to the individual without delay. A resident temporarily absent from the State but intending to return may apply for assistance to the Department or its designee. The individual shall demonstrate continued residency in the State and shall meet all nonfinancial and financial requirements in order to be determined eligible.

D. A signed application is required for all persons for whom assistance is requested. If, after the completion of an eligibility determination, assistance is requested for additional family members, a signed application is required for those persons. The following exception to this requirement is that a child born to a mother eligible for and receiving Medical Assistance on the date of the child's birth shall be considered to have applied for Medical Assistance and to have been found eligible for Medical Assistance on the date of his birth and to remain eligible for Medical Assistance for a period of 1 year so long as he is a member of the mother's household and the mother remains eligible for Medical Assistance.

E. Individuals receiving SSI, Mandatory State Supplement, Optional State Supplement, AFDC, AFDC-Foster Care, or AFDC-Unemployed Parent are eligible for Medical Assistance without filing a separate application.]

C. *An individual requesting health coverage from an Insurance Affordability Program shall be given an opportunity to apply.*

D. *The Department or its designee shall make the application available to the individual without delay, by telephone, mail, in-person, internet, other available electronic means and in a manner accessible to disabled individuals requesting an application.*

E. *A resident temporarily absent from the State but intending to return may apply for health coverage from an Insurance Affordability Program by telephone, mail, in-person, internet, and other available electronic means to the Department or its designee in any jurisdiction. The individual shall:*

(1) *Demonstrate continued residency in the State; and*

(2) *Meet all nonfinancial and financial requirements in order to be determined eligible.*

F. Application Filing and Signature Requirements.

(1) An individual who wishes to apply for [Medical Assistance] health coverage under an Insurance Affordability Program shall submit a written, telephonic, or electronic [signed] application [form] signed under penalty of perjury to the Department or its designee in any jurisdiction. An applicant shall be responsible for completing the application but may be assisted in the completion by an individual of the applicant's choice.

(2) [For the purpose of establishing only the date of application, the applicant or a person acting on behalf of the applicant may sign the application form.] A signed application is required for all individuals for whom assistance is requested. If, after the completion of an eligibility determination, assistance is requested for additional family members, a signed application is required for those individuals.

(3) An exception to §F(2) of this regulation is that a child born to a mother eligible for and receiving Medical Assistance on the date of the child's birth shall be considered to have applied for Medical Assistance and to have been found eligible for Medical Assistance on the date of his birth, and to remain eligible for Medical Assistance for a period of 1 year.

(4) A deemed newborn is eligible for receiving Medical Assistance if, at the time of birth, the child's mother was covered by Medicaid in another state, as a child under CHIP, or under an 1115 waiver.

[(3)] (5) (text unchanged)

[G.] (6) The date of application shall be the date on which a written, telephonic, or electronic signed application is received by the Department or its designee.

[H.] G. An individual who has filed [an] a written, telephonic, or electronic application may voluntarily withdraw that application; however, the application [form] shall remain the property of the Department or its designee, and the withdrawal may not affect the requirements for establishing periods under consideration specified in [§I] §H of this regulation [or the penalty period associated with the transfer of a resource specified under Regulation .08J of this chapter].

[I.] H. Period under Consideration.

(1) The Department or its designee shall establish a current period under consideration based on the date of application established pursuant to [§G] §F(6) of this regulation.

(2) The period under consideration shall be [:]

[(a) For] for retroactive eligibility, the 1, 2, or 3 months immediately preceding the month of application for Medical Assistance, except as specified in [§I(2)] §H(3) and [§R] §N of this regulation[.];

[(b) For current eligibility, a 6-month period beginning with the month of application for Medical Assistance, except as specified in §I(2) of this regulation.]

[(2)] (3) For [an assistance unit composed of one] a deceased [person] individual, the retroactive and current periods under consideration shall begin as stated in [§I(1)(a) and (b)] H(1) and (2) of this regulation and may not extend beyond the month of death.

[J.] I. Processing Applications—Time Limitations.

(1) When [an] a written, telephonic, or electronic application is filed, a decision shall be made promptly but not later than:

(a) 10 days from the date of application when filed with the local health department; or

(b) 30 days from the date of application when filed with the [local department of social services; or] Department or its designee, with the exception of the local health department.

(c) 60 days from the date of application in the case of determination of disability.]

(2) The time standards specified in [§J(1)] §I(1) of this regulation cover the period from the date of application to the date

the Department or its designee [mails] sends a written or electronic notice of its decision to the applicant.

(3) Information Required.

(a) The applicant shall report all required information. When there is evidence of inconsistency with attested information given by the applicant and reported by the state and federal databases, the applicant shall be required to offer an explanation and appropriate verification to reconcile the inconsistency.

[(a)] (b) The Department or its designee shall inform the applicant [/] or authorized representative in [writing] a written or electronic notice of the required information and verifications needed to determine eligibility, and the applicable pending time limit.

[(b)] (c) The applicant [/] or authorized representative shall provide all information and requested verification for the determination of nonfinancial [, income and resource] and financial eligibility, including information relating to health insurance coverage or potential third-party payments, early enough for the Department or its designee to meet time limitations.

[(c)] (d)—[(d)] (e) (text unchanged)

(4) Extension of Time Standards.

(a) The time standards specified in [§J(1)] §I(1) of this regulation shall be extended to allow the applicant sufficient time to complete provision of information when:

[(i) The examining physician delays or fails to take a required action;]

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

(b) The Department or its designee shall document the reason for the delay in the applicant's written or electronic record. The extension of time will continue as long as the requirements of [§J(4)(a)] §I(4)(a) of this regulation are met. The Department or its designee shall deny Medical Assistance when these requirements cease to be met. When a subsequent application is made, eligibility and period under consideration shall be determined under [§J(7), (8), (9), or (10)] §I(7), (8), (9), or (10) of this regulation.

(5) The standards of promptness for acting on applications may not be used to deny assistance except as provided in [§J(4)(b)] §I(4)(b) of this regulation.

(6) (text unchanged)

(7) Disposition of Application Following a Decision of Ineligibility. If an applicant is determined ineligible for the current period under consideration:

(a) Due to a nonfinancial factor [or excess resources], the application shall be disposed of and the application date may not be retained. If the applicant reapplies, the process and the period under consideration shall be established under [§J(9)] §I(9) of this regulation.

(b) (text unchanged)

(c) Solely because of failure to complete the application requirements, including voluntary withdrawal of the application, the application shall be disposed of. If the applicant reapplies, the process and period under consideration shall be established under [§J(8), (9), or (10)] §I(8), (9), or (10) of this regulation.

(8) Reactivation of an Application Following a Decision of Ineligibility for Reasons Other than Nonfinancial Factors [, Excess Resources.] or Excess Income.

(a) A request for current eligibility following the rejection of an application for reasons other than nonfinancial factors [, excess resources.] or excess income shall be considered a reactivation of the appropriate earlier application.

(b)—(c) (text unchanged)

(9) Reapplication Following a Decision of Ineligibility Due to a Nonfinancial Factor [or Excess Resources].

(a) When an applicant reapplies following a decision of ineligibility due to a nonfinancial factor [or excess resources], a new period under consideration shall be established based on the date a

new application is [filed] *submitted*. Coverage may not be provided for any month in which the applicant has not overcome the prior factor of ineligibility.

(b) (text unchanged)

(10) (text unchanged)

[K. Interview.

(1) A face-to-face interview may be conducted at the request of the applicant or the Department or its designee.

(2) If it is determined that a face-to-face interview is necessary, the interview may be conducted with an individual other than the applicant in the following situations:

(a) When the Department or its designee determines that the applicant cannot participate in the interview because of unusual circumstances such as severely incapacitating disabilities, the interview shall be conducted with an authorized representative or individual acting responsibly on behalf of the applicant; or

(b) When the applicant is an unmarried child younger than 18 years old and is not living with a parent or other caretaker relative, the interview shall be conducted with one or more of the following persons who is 18 years old or older:

(i) The parent or other knowledgeable relative of the child,

(ii) The nonrelated person with whom the child is living,

or

(iii) Another designated responsible person who is knowledgeable about the child's circumstances.]

[L.] J. (text unchanged)

[M. Establishing Applicable Regulations.

(1) The Aged, Blind or Disabled requirements shall apply to persons specified in Regulation .06B of this chapter.

(2) The Families and Children requirements shall apply to all other persons specified in Regulation .06 of this chapter.

(3) Category Selection.

(a) A person may select any federal category for which nonfinancial eligibility may be established.

(b) The selection option is available at the time of application.

(c) The category selected prevails throughout the period under consideration.

(d) The category selected is presumed to continue at each redetermination unless the recipient requests a change.]

[N.] K. Required Application for Income Benefits.

(1) [Eligibility may not be established until applicants,] *Applicants* and recipients [furnish proof that they have applied] *shall apply* for [and taken all other necessary steps to obtain and accept] all income benefits to which there may be entitlement, except as specified in [§N(3)] §K(3) of this regulation.

(2)—(5) (text unchanged)

[O. An applicant who is 65 years old or older, or blind or disabled, is not eligible until he furnishes proof that he has applied for or is receiving Part "A" Medicare. Eligibility determination may not be delayed pending the results of the application filed for Part "A" Medicare. Periodic reviews of eligibility are necessary for those blind or disabled persons initially determined ineligible for Medicare because of the required waiting period.]

[P.] L. Social Security Number.

(1) Eligibility may not be established until the applicant or recipient furnishes or applies for a Social Security number for [each member of an assistance unit, and] any [person] *individual* whose income [and resources are] *is* considered in determining [the] financial eligibility [of an assistance unit].

(2) Assistance may not be denied, delayed, or discontinued pending the issuance or verification of the number if the applicant or recipient complies with [§P(1)] §L(1) of this regulation.

[(3) An individual may not be added to an assistance unit until an application is completed for a Social Security number.]

[(4)] (3) If an applicant or recipient is physically or mentally incapable of acting for himself or herself or lacks the resources to meet the requirements, the Department or its designee shall assist the applicant or recipient in obtaining the necessary evidentiary documents required for application for a Social Security number, and any costs incurred by the [local department] *Department or its designee* shall be paid out of administrative funds.

[Q.] M. (text unchanged)

[R.] N. Retroactive Eligibility for [Cash Assistance] Applicants or Recipients. [A Public Assistance] *An* applicant or recipient who desires Medical Assistance coverage for a past period shall apply for retroactive coverage. The date of application for retroactive coverage shall be established [as follows:] *in accordance with the requirements of Regulation .09B of this chapter.*

[(1) The Medical Assistance application date shall be the:

(a) Same as that of the Public Assistance application date if the Medical Assistance application is filed within 3 months of the date of the Public Assistance application;

(b) Date the Medical Assistance application is filed if the filing date is more than 3 months after the date of the Public Assistance application.

(2) Retroactive eligibility shall be determined in accordance with the requirements of Regulations .09B and .10C of this chapter.]

[S.] O. (text unchanged)

[T.] P. The Department or its designee shall maintain a [case] *written or electronic* record including documentation of all required elements of eligibility.

[U.] Q. (text unchanged)

[V.] R. The Department or its designee shall conduct a wage-screening inquiry to determine wages, benefits, and claimant history for each of the following applicants or recipients of Medical Assistance:

[(1) A Families and Children assistance unit member who is 21 years old or older;

(2) A Families and Children assistance unit member older than 16 years old but younger than 21 years old who is not a full-time student; and

(3) An Aged, Blind, or Disabled assistance unit member younger than 70 years old unless that member:

(a) Resides in a long term care facility, or

(b) Is chronically ill and nonambulatory.]

(1) *Childless, adults older than 19 years old and younger than 65 years old;*

(2) *Parents and other Caretaker Relatives;*

(3) *Pregnant and postpartum women;*

(4) *Children younger than 21 years old; and*

(5) *Former Foster Care Children younger than 26 years old.*

[W.] S. An applicant or recipient shall [sign] *give* consent [forms, as needed, authorizing] *to verify information needed to establish eligibility* to the Department or its designee, [to verify from sources such as an employer, banks, and public or private agencies, information needed to establish eligibility] *by submitting a written, telephonic or electronic application.*

.04-1 Specific Application Requirements for MAGI Exempt Coverage Groups.

A. *All of the requirements of Regulation .04 of this chapter shall apply with the exceptions stated in this chapter.*

B. *Application Filing and Signature Requirements.*

(1) *An individual who wishes to apply for Medical Assistance shall submit a signed application to the Department or its designee in the jurisdiction where his residence is located.*

(2) A deemed newborn is eligible for receiving Medical Assistance if at the time of birth the child's mother was covered in another state as a child under CHIP or under a 1115 waiver.

(3) An individual who has filed an application may voluntarily withdraw that application; but the withdrawal may not affect the requirements for the penalty period associated with the transfer of a resource specified under Regulation .08I of this chapter.

C. *Period Under Consideration.* Current eligibility shall have a period of consideration of a 6-month period beginning with the month of application for Medical Assistance, except as specified in Regulation .04H(3) of this chapter.

D. *Processing Applications.* When a written or electronic application is filed, a decision shall be made promptly but not later than:

(1) 30 days from the date of application in the case of determination of aged and blind individuals; or

(2) 60 days from the date of application in the case of determination of disability.

E. *Extension of Time Standards.*

(1) The time standards specified in Regulation .04I(1) of this chapter shall be extended to allow the applicant sufficient time to complete provision of information when the examining physician delays or fails to take a required action.

(2) *Reactivation of an Application Following a Decision of Ineligibility for Reasons Other than Nonfinancial Factors, Excess Resources, or Excess Income.*

(a) A request for current eligibility following the rejection of an application for reasons other than nonfinancial factors, excess resources, or excess income shall be considered a reactivation of the appropriate earlier application.

(b) The reactivation period shall:

(i) Apply to the earliest rejected application for which the period under consideration has not expired; and

(ii) Include the retroactive period associated with the current period.

(c) The applicant may establish eligibility for the current period, the retroactive period, or both, at any time during the reactivation period.

(3) *Disposition of Application Following a Decision of Ineligibility.* If an applicant is determined ineligible for the current period under consideration due to a nonfinancial factor or excess resources, the application shall be disposed of and the application date may not be retained. If the applicant reapplies, the process and the period under consideration shall be established under Regulation .04I(9) of this chapter.

F. *Interview.*

(1) A face-to-face interview may be conducted at the request of the applicant or the Department or its designee.

(2) If it is determined that a face-to-face interview is necessary, the interview may be conducted with an individual other than the applicant in the following situations:

(a) When the Department or its designee determines that the applicant cannot participate in the interview because of unusual circumstances such as severely incapacitating disabilities, the interview shall be conducted with an authorized representative or individual acting responsibly on behalf of the applicant; or

(b) When the applicant is an unmarried child younger than 18 years old and is not living with a parent or other caretaker relative, the interview shall be conducted with one or more of the following individuals who is 18 years old or older:

(i) The parent or other knowledgeable relative of the child;

(ii) The nonrelated individual with whom the child is living; or

(iii) Another designated responsible individual who is knowledgeable about the child's circumstances.

G. *Required Application for Income Benefits.*

(1) Eligibility may not be established until applicants, and recipients furnish proof that they have applied for and taken all other necessary steps to obtain and accept all income benefits to which there may be entitlement, except as specified in §N(3) of this regulation.

(2) Income benefits include, but are not limited to:

(a) Social Security;

(b) Unemployment Compensation;

(c) Railroad Retirement;

(d) Veterans' Administration;

(e) Civil Service annuities;

(f) Federal, state, or local government and private pensions;

and

(g) Workers' Compensation.

(3) Applicants and recipients determined by the Department or its designee to be unable to perform the required activity because of the applicant's or recipient's physical or mental condition and for whom there is no other individuals to perform the activity are not required to apply for income benefits.

(4) Determination of initial eligibility may not be delayed pending the results of the application filed for income benefits.

(5) At the time of redetermination or reapplication, eligibility will be determined on the basis of the applicant's or recipient's documented reasonable and continuous efforts to establish entitlement to income benefits.

H. An applicant who is 65 years old or older, or blind or disabled, is not eligible until the applicant furnishes proof that the applicant has applied for or is receiving Part A Medicare. Eligibility determination may not be delayed pending the results of the application filed for Part A Medicare. Periodic reviews of eligibility are necessary for those blind or disabled individuals initially determined ineligible for Medicare because of the required waiting period.

I. *Social Security Number.*

(1) Eligibility may not be established until the applicant or recipient furnishes or applies for a Social Security number for each member of an assistance unit and any individual whose income and resources are considered in determining the financial eligibility of an assistance unit.

(2) An individual may not be added to an assistance unit until an application is completed for a Social Security number.

J. *Retroactive Eligibility for Cash Assistance Applicants or Recipients.* A Public Assistance applicant or recipient who desires Medical Assistance coverage for a past period shall apply for retroactive coverage. The date of application for retroactive coverage shall be established as follows:

(1) The Medical Assistance application date shall be the:

(a) Same as that of the Public Assistance application date if the Medical Assistance application is filed within 3 months of the date of the Public Assistance application; or

(b) Date the Medical Assistance application is filed if the filing date is more than 3 months after the date of the Public Assistance application.

(2) Retroactive eligibility shall be determined in accordance with the requirements of Regulation .10C of this chapter.

K. The Department or its designee shall conduct a wage-screening inquiry to determine wages, benefits, and claimant history for an Aged Blind Disabled applicants or recipients that:

(a) Resides in a long term care facility; or

(b) Is chronically ill and non-ambulatory.

L. An applicant shall sign consent forms as needed authorizing the Department or its designee to verify from sources such as an

employer, banks, and public or private agencies, information needed to establish eligibility.

.05 Nonfinancial Eligibility Requirements—Citizenship.

A. Eligibility. To be eligible for federal coverage of full Medical Assistance benefits, an individual shall be:

(1)—(5) (text unchanged)

(6) An alien who is:

(a) (text unchanged)

(b) A member of a *state* or federally recognized Indian tribe, as defined in 25 U.S.C. §450b(e); or

(c) (text unchanged)

B.—D. (text unchanged)

.05-1 Documentation of Citizenship and Identity.

A. (text unchanged)

B. The requirements of this regulation shall be met for all Medical Assistance coverage groups except for:

(1)—(3) (text unchanged)

[(4) Pregnant women who are determined presumptively eligible for Medical Assistance through an accelerated eligibility process;]

[(5)] (4)—[(8)] (7) (text unchanged)

C. (text unchanged)

D. *An applicant may be determined eligible for Medical Assistance for a period of 90 days to provide requested documents. When an applicant fails to provide documentation of citizenship within the 90 day period, the applicant shall be determined ineligible.*

[D.] E. (text unchanged)

[E.] F. If an applicant or recipient fails to meet the requirements of this regulation within the time standards specified at Regulation [.04J(1)] .04I(1) of this chapter, and the time standards are not extended in accordance with Regulation [.04J(4)] .04I(4) of this chapter, the Department shall:

(1) (text unchanged)

(2) Terminate eligibility for a recipient, in accordance with the requirements for timely notice in [Regulation .13B of this chapter] COMAR 10.01.04.

[F.] G. The reactivation requirements in Regulation [.04J(8)] .04I(8) of this chapter shall apply [if the] *to applicants and recipients deemed MAGI exempt. The documentation requirements of this regulation are subsequently met within the current period under consideration for the:*

(1)—(2) (text unchanged)

[G.] H. If there is documentation in an applicant's or recipient's [case] *written or electronic record or a [state's database] state or federal data system* that demonstrates that the individual meets the requirements of this regulation, the individual shall be considered to meet the requirements of this regulation, unless the:

(1) Department *or its designee* has cause to question the documentation previously accepted; or

(2) (text unchanged)

.05-3 Nonfinancial Eligibility Requirements—Residency.

A.—H. (text unchanged)

I. Additional Residency Criteria for Noninstitutionalized Individuals.

(1)—(2) (text unchanged)

(3) The exclusion of Medical Assistance eligibility under §D of this regulation for individuals who temporarily reside in the state without the intent of remaining shall be waived for members of an assistance unit that includes a migrant worker, *in MAGI Exempt coverage groups.*

(4) (text unchanged)

J.—K. (text unchanged)

.05-4 [Nonfinancial Eligibility Requirements—Age, Blindness, and Disability.] MAGI Exempt and other Nonfinancial Criteria.

[A. Age.

(1) An age is reached on the day of the anniversary of birth.

(2) For determining an individual's age, July 1 shall be used as an arbitrary birth date if the year, but not the month, of birth is known.

(3) To be eligible for Medical Assistance as a child, an applicant or a recipient shall be younger than 21 years old for at least part of the month.

(4) To be eligible for Medical Assistance as an aged individual, an applicant or a recipient shall be 65 years old or older for at least part of the month.

(5) The local department of social services or other entity designated by the Department shall accept the Social Security Administration's determination that an individual is 65 years old or older for an individual receiving a Social Security benefit based on being 65 years old or older.]

[B.] A.—[C.] B. (text unchanged)

.05-5 Nonfinancial Eligibility Requirements—[Other] Institutions.

[A. Caretaker Relative. To be eligible for Medical Assistance as a caretaker relative, an applicant or recipient shall be a caretaker relative as defined at Regulation .02 of this chapter.]

[B.] A. Inmate of a Public Institution.

(1) (text unchanged)

[(2) Public Institution.

(a) A public institution is a publicly owned and operated nonmedical facility in which an individual lives and receives treatment or services provided by the facility.

(b) A public institution does not include a medical institution, nursing facility, or a publicly operated community residence serving no more than 16 residents.]

[(3)] (2) Inmate Status.

(a)—(c) (text unchanged)

(d) Retaining Inmate Status. Except as provided in [§B(3)(f)] §A(2)(f) of this regulation, an individual's inmate status continues until the criminal indictment against the individual is dismissed or the individual is released from the public institution.

(e)—(g) (text unchanged)

[(4)] (3) (text unchanged)

[C.] B. Institution for Mental Disease (IMD).

(1)—(2) (text unchanged)

(3) Except as provided in [§C(4)] §B(4) of this regulation, when an individual is on conditional release or convalescent leave from an IMD, the individual may not be considered institutionalized in the IMD.

(4) (text unchanged)

.06 MAGI Exempt Assistance Unit.

A. Purpose and Scope.

[(1)] This regulation establishes who shall be a member of an assistance unit, who may be excluded from an assistance unit, who will have separate eligibility determinations, and whose income and resources will be considered in determining financial eligibility for *MAGI Exempt* applicants and recipients of Medical Assistance.

[(2)] This regulation applies to:

(a) Children and their caretaker relatives;

(b) Persons younger than 21 years old; and

(c) Aged, blind, or disabled persons.

(3) This regulation sets forth the requirements for determining eligibility as aged, blind, or disabled or as families and children.]

A-1. More Than One Assistance Unit Among [Persons] *Individuals Living Together.*

[(1)] More than one assistance unit is permissible if:
 [(a)] (1) The parent or other caretaker relative chooses to have a child's eligibility determined as blind or disabled under Regulation [.04L] .04J of this chapter;

[(b)] There are unmarried persons younger than 21 years old not living with an own child, a parent, or caretaker relative other than parent;

(c) There are unmarried persons younger than 21 years old placed in public or private foster care arrangements;]

[(d)] (2) A caretaker relative chooses to have his eligibility determined as aged, blind, or disabled under Regulation [.04L] .04J of this chapter; and

[(e)] (3) There are [persons] *individuals* who would have been members of the assistance unit except for their status as automatically eligible Medical Assistance recipients under Regulation [.03A] .03B of this chapter.

[(2)] Married persons younger than 21 years old and living with parents or caretaker relatives other than parents are considered a separate unit from that of the parents or caretaker relatives other than parents.]

A-2. Separate Eligibility Determinations for Certain [Persons] *Individuals.*

(1) An individual eligibility determination shall be conducted for each [person] *individual* identified in [§A-1(1)(a)—(c)] §A-1(1) of this regulation who requests Medical Assistance.

(2) For the aged, blind, or disabled [person] *individual* identified in [§A-1(1)(d)] §A-1(2) of this regulation:

(a)—(b) (text unchanged)

B. (text unchanged)

C. [Families and Children —Children Living With Parents or Other Caretaker Relatives] *Blind and Disabled Children Living With Parents or Other Caretaker Relatives.*

(1) This section applies to [children, their parents and caretaker relatives other than parents, and other persons younger than 21 years old. This includes a] blind or disabled [child] *children* living with a caretaker relative who chooses to have the child's eligibility determined as [a person] *an individual* younger than 21 years old and an aged, blind, or disabled [person] *individual* who chooses to have his eligibility determined as a caretaker relative.

(2)—(5) (text unchanged)

(6) [Income and Resource Consideration—Families and Children] *Income and Resource Consideration.*

(a)—(b) (text unchanged)

D. (text unchanged)

.06-1 MAGI Household Unit.

A. *Purpose and Scope.*

(1) *This regulation establishes who shall be a member of the MAGI household and who will be excluded from the MAGI household.*

(2) *The regulation applies to applicants and recipients of coverage groups described under Regulation .03A of this chapter.*

B. *Household Composition.*

(1) *An individual, plus anyone for whom the individual claims a personal exemption, shall be included in the federal tax filing unit in the taxable year in which an initial determination or renewal of eligibility is being made.*

(2) *For an individual who does not file a federal tax return and is not claimed as a federal tax dependent in the taxable year in which an initial determination or renewal of eligibility is being made, the household size shall consist of the individual and the following individuals:*

(a) *Spouse; and*

(b) *Natural, adopted or step children.*

(3) *For a child applicant the household size shall consist of the child and the following individuals:*

(a) *Natural, adopted, or step parents; and*

(b) *Natural, adopted, or step siblings.*

(4) *In the case of a married couple living together, each spouse shall be included in the household of the other spouse, regardless of whether they expect to file a joint federal tax return.*

(5) *In the case of determining the household size of a pregnant woman, the pregnant woman shall be counted as herself plus the number of children she is expected to deliver.*

.07 Consideration of Income.

A. [This regulation contains the rules for considering earned and unearned income of members of the assistance unit and those persons whose income and resources are considered pursuant to Regulation .06 of this chapter in determining financial eligibility of an assistance unit for retroactive and current eligibility for the period under consideration.] *This regulation contains the rules for considering earned and unearned income of:*

(1) *Members of the MAGI household unit and those individuals whose income is considered pursuant to Regulation .06-1 of this chapter in determining financial eligibility of individuals for retroactive and current eligibility for the period under consideration;*
or

(2) *Members of the MAGI exempt assistance unit and those individuals whose income and resources are considered pursuant to Regulation .06 of this chapter in determining financial eligibility of an assistance unit for retroactive and current eligibility for the period under consideration.*

B. *Definitions.*

(1)—(3) (text unchanged)

(4) *“Modified Adjusted Gross Income (MAGI) based income” means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in 42 CFR 435.603, with the following exceptions:*

(a) *An amount received as a lump sum is counted as income only in the month received;*

(b) *Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income; and*

(c) *American Indian or Alaska Native exceptions in accordance with 42 CFR 435.603.*

C.—E. (text unchanged)

F. *Current Eligibility.* In considering income for current eligibility, the following rules apply:

(1) When [a person] *an individual* has regular income in the MAGI coverage group, the amount to be considered is that which is available or can reasonably be expected to be available for a projected period of [6] 12 months, including the month of application;

(2) *When an individual has a regular income in the MAGI Exempt coverage group, the amount to be considered is that which is available, or can reasonably be expected to be available, for a projected period of 6 months including the month of application;*

[(2)] (3) When a [person] *member of a MAGI exempt assistance unit* works for less than 12 months but receives an annual salary, is self-employed, or has irregular or seasonal earning, the amount to be considered is one-half the expected annual income based on the prior year's gross income;

[(3)] (4) For a deceased [person] *individual*, the income to be considered is that which was available up to and including the month of death. When there are other [persons] *individuals* in the assistance unit or MAGI household unit, the deceased [person's] *individual's*

income will be averaged over the unit's established period under consideration.

G. Treatment of Income.

(1) All earned and unearned income which is not designated as excludable income pursuant to §J [or §K] of this regulation shall be counted to establish countable gross income.

(2) Countable gross income for *MAGI Exempt* coverage groups shall be reduced by subtracting appropriate income disregards as specified in [§L or §M] §K of this regulation to determine countable net income.

(3) *Countable gross income for MAGI coverage groups shall be the household income calculated according to MAGI.*

(4) *MAGI income limits shall be:*

(a) *Converted from traditional income limits to account for elimination of income disregards; and*

(b) *Increased by 5 percentage points of the federal poverty level for the following circumstances:*

(i) *When an individual's income exceeds the Medicaid income standard; and*

(ii) *The income standard is the highest income standard under which the individual can be determined eligible.*

H. Earned income includes the following:

(1)—(4) (text unchanged)

(5) Profit from self-employment income of *MAGI exempt coverage groups*, as described in [§§L(3)(a) and M(2)(c)(i)] §K(3)(a) of this regulation.

(6)—(9) (text unchanged)

I.—J. (text unchanged)

[K. Excludable Income—Families and Children. Income from the following sources shall be excluded in determining countable gross income:

(1) The value of the coupon allotment under the Food Stamp Program.

(2) Payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq., excluding compensation received for the fair market value of the acquired real property.

(3) Grants or loans to an undergraduate student for educational purposes made or insured under any program administered by the Secretary, U.S. Department of Education.

(4) Work-study earnings, work-study stipends, and reimbursement for out-of-pocket expenses of a student.

(5) Benefits received under Title III C Nutrition Program for the Elderly of the Older Americans Act of 1965, as amended.

(6) Stipends, compensation, or expenses received by volunteers from a program existing or to be set up under the "Domestic Volunteer Service Act of 1973" sponsored by ACTION, such as but not limited to:

(a) (PLS) Demonstration Project Program for Local Services;

(b) VISTA (Volunteers in Service to America);

(c) UYA (University Year for Action);

(d) RSVP (Retired Senior Volunteer Program);

(e) Foster Grandparents;

(f) Older American Community Service Program;

(g) SCORE (Service Corps of Retired Executives); and

(h) ACE (Action Corps of Executives).

(7) The value of supplemental food assistance received under the Child Nutrition Act of 1966 as amended, and the special food service program for children under the National School Lunch Act, as amended.

(8) The value of livestock and home produce used for own consumption.

(9) Educational Expenses.

(a) The portion of educational grants, loans, scholarships, and fellowships that is designated and used solely for undergraduate and graduate educational pursuits such as tuitions, books, mandatory fees, transportation to and from educational institutions, and the cost of child care while in attendance.

(b) These expenses may be allowed to the extent that there are insufficient funds from those grants and loans specified under §K(3) and (4) of this regulation to cover these expenses.

(10) Payments received from providing foster care or subsidized adoption services to a child placed in the home by a public or private nonprofit child placement or child care agency.

(11) Assistance provided in cash or in-kind under the Emergency Energy Conservation Services Program, including plans for crisis intervention to prevent fuel cut-offs, and assistance provided under the Low-Income Home Energy Assistance Act.

(12) The value of rent subsidies or other assistance received by a person for his dwelling unit under:

(a) The U.S. Housing Act of 1937, 42 U.S.C. §§1400 et seq.;

(b) The National Housing Act, 12 U.S.C. §§1701 et seq.;

(c) Section 101 of the Housing and Urban Development Act of 1965, 42 U.S.C. §§1400 et seq.;

(d) Title V of the Housing Act of 1949, 12 U.S.C. §§1601 et seq., 42 U.S.C. §§1400 et seq.;

(13) Earnings of a person younger than 21 years old. This includes the following:

(a) The earned income of each person younger than 18 years old;

(b) The earned income of each person younger than 21 years old shall be disregarded if the person is a full-time student or a part-time student who is not full-time employed;

(c) A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program and other training programs under Job Training Partnership Act (JTPA).

(14) The value of earned and unearned in-kind income.

(15) Infrequent or irregular earned income if:

(a) The total gross amount does not exceed \$30 per quarter; and

(b) It is received less frequently than twice per quarter or cannot be reasonably anticipated.

(16) Infrequent or irregular unearned income if:

(a) The total amount does not exceed \$200 per 6 months; and

(b) It is received less frequently than twice per quarter or cannot be reasonably anticipated.

(17) Third-party payments for food, clothing, shelter, or other goods and services made on behalf of an assistance unit or other persons whose income and resources are considered in determining eligibility, provided the payment is not reimbursement for services rendered by a member of the assistance unit or other persons whose income and resources are considered.

(18) The Earned Income Tax Credit (EITC) a person receives through the Tax Reduction Act of 1973.

(19) Assistance, including any interest earned on the assistance, received under the Disaster Relief Act of 1974 (PL 93-288) or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States.

(20) Support and maintenance (in-kind income) provided as replacement for an excluded home because of a casualty loss or a presidentially declared major disaster, such as:

(a) If an excluded home is damaged or destroyed, and temporary housing is furnished to a person who owned an excluded

home, the temporary housing is in-kind support and maintenance intended to replace the home pending repair or replacement of the excluded home;

(b) If an excluded home is damaged or destroyed as a result of a Presidentially declared major disaster, the value of support and maintenance (in cash or in-kind) received by a person, or couple if:

(i) The person, or couple, was residing in the household as a home when a catastrophe occurred in the area in which the home was located;

(ii) The catastrophe was declared by the President to be a major disaster for purposes of the Disaster Relief Act of 1974;

(iii) The person, or couple, stopped living in the home because of the catastrophe and, within 30 days after the catastrophe, began to receive the support and maintenance; and

(iv) The person, or couple, received the support and maintenance while living in a residential facility, including a private home, maintained by another person.

(21) Income from the sale of an assistance unit member's blood or plasma.

(22) Cash, including interest earned on the cash, or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource that is lost, damaged, or stolen.

(23) Reparation payments made by the Federal Republic of Germany.

(24) Cash donations based on need from one or more charitable organizations.

(25) Interest income accrued to a:

(a) Bank account during the period under consideration, such as a checking, savings, or money market account;

(b) Dedicated bank or other financial institution account that is considered an excludable resource because it is unavailable, such as an escrow account for a security deposit; or

(c) Keogh account, individual retirement account (IRA), or other private retirement account that is countable as a resource.

(26) Refund of taxes on income, property, food, or other items already paid.

(27) Proceeds of a loan received by an individual as the borrower.

(28) Payments received from a trust, if the trust is countable as a resource.

(29) Interest payments received for a mortgage, promissory note, or other loan.

(30) All income excluded by federal statute for medical assistance programs.]

[L.] K. (text unchanged)

[M. Disregards—Families and Children.

(1) Income Disregard. Effective July 1, 2008, the difference between 116 percent of the federal poverty level and the income standard shall first be deducted from the countable income of an assistance unit consisting of children and their parents or caretaker relatives.

(2) Income Disregards. The following disregards shall be deducted, in the following order, from the countable gross income of a families and children unit:

(a) \$90 monthly for each employed member of the unit whether working full-time or part-time;

(b) For each employed parent or spouse who is not a member of the assistance unit but whose income and resources shall be considered, \$75 monthly if employed at least 100 hours per month, \$50 monthly if employed less than 100 hours per month;

(c) A disregard of one-half of the gross income amount for the following types of income:

(i) Profit from self-employment income, unless an applicant or recipient can document a cost to produce in excess of the disregard of one-half of gross income; and

(ii) Profit from rental property income and other income-producing property.

(d) A refund or advance payment of earned income tax credit; and

(e) The actual amount of child care expenses not to exceed \$200 monthly per child if employed at least 100 hours per month (\$100 monthly per child if employed less than 100 hours per month) paid to a person who is not a:

(i) Member of any assistance unit within the family, and

(ii) Legally responsible relative whose income and resources shall be considered.

(3) Disregard of Child Support Paid to a Family.

(a) The first \$50 of monthly child support payments received or expected to be received by a member or members of a family shall be deducted from the support payments received by that family.

(b) The \$50 maximum disregard shall be applied to the total amount of child support received by a family irrespective of the number of family members receiving support payments or the number of assistance units within the family.

(4) Disregard of Child Support and Alimony Paid to Dependents Not Living with the Family. The actual amount of child support and alimony paid to dependents not living with the assistance unit shall be deducted from the assistance unit's countable net income.]

[N.] L. (text unchanged)

.08 Consideration of Resources for MAGI Exempt Coverage Groups.

A. This regulation contains the rules for considering resources of members of the *MAGI exempt* assistance unit and those [persons] *individuals* whose income and resources are considered pursuant to Regulation .06 of this chapter in determining financial eligibility of an assistance unit for retroactive and current eligibility for the period under consideration.

B.—C. (text unchanged)

[D. The Department or its designee shall consider all resources in accordance with this regulation with the exception of non-disabled children and their caretaker relatives who are not being considered as medically needy.]

[E.] D.—[F.] E. (text unchanged)

[G.] F. Excludable Resources for Aged, Blind, or Disabled Noninstitutionalized Individuals and Aged, Blind, or Disabled Institutionalized Individuals Who Intend to Return Home. The following resources are excluded in determining financial eligibility for aged, blind, or disabled noninstitutionalized individuals and for an aged, blind, or disabled institutionalized individual who intends to reside living in the individual's home:

(1) (text unchanged)

(2) Income-Producing Property.

(a) Income-producing property associated with the home includes farm machinery, business equipment, vehicles, special tools, farm animals, and livestock related to self-support activities. The property shall be excluded if the total equity value of these resources does not exceed the limit set forth in [§G(2)(c)] §F(2)(c) of this regulation and the resource produces a net annual return of at least 6 percent of the equity.

(b) Income-producing property not associated with the home includes land, buildings, farm machinery, business equipment, vehicles, special tools, farm animals and livestock related to self-support activities. This property shall be excluded if the total equity value of these resources does not exceed the limit set forth in [§G(2)(c)] §F(2)(c) of this regulation and the resource produces a net annual return of at least 6 percent of the equity.

(c) \$6,000 Equity Value Exclusion. A \$6,000 equity value exclusion applies to the combined equity value of resources in [§G(2)(a) and (b)] §F(2)(a) and (b) of this regulation. The exclusion does not apply to each individual property.

(d) (text unchanged)

(3) Household Goods and Personal Effects

(a) (text unchanged)

(b) Personal Effects.

(i) (text unchanged)

(ii) Personal effects shall be excluded except as specified in [§G(3)(b)(iii)] §F(3)(b)(iii) of this regulation.

(iii) The equity value of nonessential personal effects of considerable value such as furs, and jewelry which is not excluded in [§G(3)(c)] §F(3)(c) of this regulation, shall be added to other countable resources and measured against the applicable resource standard.

(c)—(e) (text unchanged)

(4)—(6) (text unchanged)

(7) Cash and In-Kind Replacement Received for Casualty Losses of Excluded Resources.

(a) (text unchanged)

(b) The initial 9-month exclusion period specified in [§G(7)(a)] §F(7)(a) of this regulation shall be extended for a reasonable period up to an additional 9 months if circumstances beyond the control of the [person] *individual* prevent him from repairing, replacing, or contracting for the repair or replacement of the resource.

(c) (text unchanged)

(d) If an extension of the time period is made pursuant to [§G(7)(b)] §F(7)(b) of this regulation and the [person] *individual* changes his intent to repair or replace the excluded resource, cash and interest, or in-kind replacement previously excluded, shall be counted as resources effective with the month the [person] *individual* reports his change of intent.

(8) Assistance Received Because of a Major Disaster.

(a) (text unchanged)

(b) The initial 9-month period for not counting the assistance specified in [§G(8)(a)] §F(8)(a) of this regulation shall be extended for a reasonable period up to an additional 9 months if circumstances beyond the control of the [person] *individual* prevented him from repairing, replacing, or contracting for repair or replacement of damaged or destroyed property.

(9) (text unchanged)

(10) Proceeds from Sale of a Home. Proceeds from the sale of a home shall be excluded from consideration as a resource for a period not to exceed 3 months from the date the proceeds are received if the:

(a)—(b) (text unchanged)

(c) Replaced home itself was an excluded resource under the provision of [§G(1)] §F(1) of this regulation.

(11)—(12) (text unchanged)

(13) Burial Funds.

(a)—(d) (text unchanged)

(e) [§G(13)(d)] §F(13)(d) of this regulation may not apply if countable resources, when added to the total excluded burial funds, including the amount misspent, were within the applicable amount in Schedule MA-2 during the month in which the use of burial funds for some other purpose occurred.

(f) An individual's \$1,500 exclusion as described under [§G(13)(a)] §F(13)(a) of this regulation shall be reduced by:

(i) (text unchanged)

(ii) Amounts in an irrevocable burial fund as described under [§G(14)] §F(14) of this regulation.

(14) (text unchanged)

[H.] G. Excludable Resources for Aged, Blind, or Disabled Institutionalized Individuals Who Do Not Intend to Return Home. The following resources are excluded in determining financial eligibility for an aged, blind, or disabled institutionalized individual who does not intend to resume living in the individual's home:

(1)—(4) (text unchanged)

(5) Income-Producing Property.

(a) Income-producing property associated with the home includes farm machinery, business equipment, vehicles, special tools, farm animals, and livestock related to self-support activities. This property shall be excluded if the total equity value of these resources does not exceed the limit set forth in [§H(5)(c)] §G(5)(c) of this regulation and the resource produces a net annual return of at least 6 percent of the equity.

(b) Income-producing property not associated with the home includes land, buildings, farm machinery, business equipment, vehicles, special tools, farm animals, and livestock related to self-support activities. This property shall be excluded if the total equity value of these resources does not exceed the limit set forth in [§H(5)(c)] §G(5)(c) of this regulation and the resource produces a net annual return of at least 6 percent of the equity.

(c) \$6,000 Equity Value Exclusion. A \$6,000 equity value exclusion applies to the combined equity value of resources in [§H(5)(a) and (b)] §G(5)(a) and (b) of this regulation. The exclusion does not apply to each individual property.

(d) (text unchanged)

(6) Burial Funds.

(a)—(d) (text unchanged)

(e) Section [H(6)(d)] G(6)(d) of this regulation may not apply if countable resources, when added to the total excluded burial funds, including the amount misspent, were within the applicable amount in Schedule MA-2 during the month in which the use of burial funds for some other purpose occurred.

(f) An individual's \$1,500 exclusion as described under [§H(6)(a)] §G(6)(a) of this regulation shall be reduced by:

(i) (text unchanged)

(ii) Amounts in an irrevocable burial fund as described under [§H(7)] §G(7) of this regulation.

(7) (text unchanged)

[H-1.] H. Exclusion of the home under [§G(1) and H(1)] §§F(1) and G(1) of this regulation and exclusion of income-producing property under [§G(1) and H(5)] §§F(1) and G(5) of this regulation do not prevent a lien being attached to or executed on the home or property except as provided in Regulation .15A-2(3) of this chapter.

[I. Excludable Resources. When the applicable conditions are met, the following resources shall be excluded in determining financial eligibility for families and children being considered as medically needy:

(1) The home as defined in §B(7) of this regulation. The home shall also be excluded when a person ceases to live in it because of institutionalization if it is occupied by the institutionalized person's spouse or unmarried children younger than 21 years old, or both, and continues to be their principal place of residence.

(2) Basic items essential to day-to-day living such as clothing, furniture, and other similarly essential items of limited value.

(3) Any automobile owned by a member of the assistance unit regardless of its value or purpose.

(4) Tools and equipment necessary for employment.

(5) Income-producing farm machinery, livestock, tools, and business equipment.

(6) Burial spaces for each member of the assistance unit and other persons whose income and resources are considered.

(7) Burial funds up to a total of \$1,500 for each member of the assistance unit or person whose income and resources are considered.]

[J.] I. Treatment of Joint Accounts.

- (1)—(3) (text unchanged)
- (4) Rebuttal of Presumption of Full Ownership Interest.
 - (a) (text unchanged)

(b) If either the applicant, the spouse of the applicant, or the nonapplicant owner of a joint account believes that the ownership interest attributed to him or her by the Department under [§§J(1)—(3) or J(4)(a)] §§I(1)—(3) or I(4)(a) of this regulation is incorrect and can demonstrate, under [§J(5)(b)] §I(5)(b) of this regulation, to the satisfaction of the Department, an ownership interest other than that attributed to him or her by the Department, the Department shall consider the amount established through rebuttal as the correct amount for the purpose of determining eligibility for Medical Assistance.

- (5) (text unchanged)
- (6) If the nonapplicant owner withdraws funds from the account during or after the 30-month period immediately before the month of application, the withdrawal is considered a disposal by the applicant or the spouse of the applicant to the extent that the remaining funds are less than the amounts considered available to the applicant under [§J(1)—(4)] §I(1)—(4) of this regulation.

[J-1.] J. Medicaid Qualifying Trust.

- (1) (text unchanged)
- (2) Section [J-1] J of this regulation shall apply whether or not the:

- (a) (text unchanged)
- (b) Discretion described under [§J-1] §J of this regulation is actually exercised.
- (3) (text unchanged)
- (4) The Department may waive the application of [§J-1] §J of this regulation if the Department determines that to do so would work an undue hardship.

- K.—L. (text unchanged)
- M. Schedule MA-2.

[Persons] <i>Individuals</i>	Medically Needy Resource Standard [(ABD and FAC)] (ABD)
1 — 10 (text unchanged)	
Each Additional [Person] <i>Individual</i>	100

- N. (text unchanged)
- [O. Schedule MA-2B.

Persons	Categorically Needy Resource Standard (FAC)
1	\$1,000
Each additional person	0]

.09 Determining Financial Eligibility for Noninstitutionalized [Persons] *Individuals*.

A. Basis.

(1) Financial eligibility is determined on the basis of the countable net income and resources of members of the *MAGI exempt* assistance unit and those [persons] *individuals* whose income and resource are considered pursuant to Regulations .06, .07, and .08 of this chapter for the period under consideration. For current eligibility under spend-down, a review to identify changes in the unit's financial and nonfinancial eligibility status shall be made before spend-down eligibility is established.

- (2)—(3) (text unchanged)
- (4) *Financial eligibility is determined on the basis of the countable income for members of the MAGI household unit and those individuals whose income are considered pursuant to Regulations .06-1 and .07 of this chapter for the period under consideration. For current eligibility under spend-down, a review to identify changes in*

the unit's financial and nonfinancial eligibility status shall be made before spend-down eligibility is established.

- B.—C. (text unchanged)

.12 Post-Eligibility Requirements.

A. Notice of Eligibility Determination. The [local department of social services] *Department or its designee* shall inform an applicant of [his] *the applicant's* legal rights and obligations and give the applicant written or *electronic* notification of the following:

(1) For eligible [persons] *individuals in MAGI coverage groups*:

- (a) [A finding of eligibility, the beginning and ending dates for coverage; and] *The basis and effective date for eligibility;*
- (b) [The right to request a hearing.] *Instructions for reporting changes that may affect the recipients eligibility; and*
- (c) *The right to request a hearing.*

(2) For [ineligible] eligible [persons] *individuals in MAGI Exempt coverage groups*:

- (a) A finding of [ineligibility, the reason for the finding, and the regulation supporting the finding:] *eligibility, the beginning and ending dates for coverage; and*
- (b) (text unchanged)

(3) *For ineligible individuals in MAGI coverage groups:*

- (a) *A finding of ineligibility, the reason for the finding, and the regulation supporting the finding;*
- (b) *Information regarding application for MAGI exempt coverage groups; and*

(c) *The right to request a hearing.*

(4) *For ineligible individuals in MAGI exempt coverage groups:*

- (a) *A finding of ineligibility, the reason for the finding, and the regulation supporting the finding; and*
- (b) *The right to request a hearing.*

B. Recipient Responsibility.

(1) A recipient or his representative shall notify the [local department of social services] *Department or its designee* within 10 working days of changes [affecting the] *that may affect* eligibility [of a member of the assistance unit].

(2) (text unchanged)

(3) Third-Party Liability.

(a) A recipient or his representative shall notify the [local department of social services] *Department or its designee* within 10 working days when medical treatment has been provided as a result of any accident or other occurrence in which a third party might be liable.

(b) Recipients shall cooperate with the [local department of social services] *Department or its designee* in completing a form designated by the Department to report all pertinent information that would assist the [Medical Care Compliance Administration] *Department or its designee* in seeking reimbursement.

(c) In accident situations, recipients shall notify the [local department of social services] *Department or its designee* of the time, date, and location of the accident, the name and address of the attorney, the names and addresses of all parties and witnesses to the accident, and the police report number if an investigation is made.

(4) When written notice of cancellation is received, a recipient shall discontinue use of the Medical Assistance card on the first day of ineligibility and return it to the [Medical Care Operations Administration] *Department or its designee*.

(5) (text unchanged)

(6) Failure to comply with the provisions of §B(1)—(4) of this regulation may result in legal action, referral to the [Medical Care Compliance Administration] *Department or its designee* for reimbursement, fraud investigation, or both, for illegal use of the Medical Assistance card.

(7) Recipients shall cooperate with the [State's Quality Control] *Department's quality control and audit* review process, including provision and verification of all information pertinent to eligibility determination. Failure to cooperate [shall] *may* result in the [following actions:] *termination of coverage*.

[(a) The Quality Control Division shall notify the local department of social services of a recipient's failure to cooperate;

(b) The local department of social services shall immediately attempt to secure the recipient's cooperation;

(c) If the recipient still refuses to cooperate, his coverage shall be terminated in accordance with this provision, subject to the regulation governing timely and adequate notice.]

C. Redeterminations.

(1) Redetermination for Former SSI Recipients.

(a) The [local department of social services] *Department or its designee* shall promptly redetermine eligibility when notice has been received from the Social Security Administration that [a person's] *an individual's* SSI benefits have been terminated.

(b) When notice of SSI termination is received, [the local department of social services] *Department or its designee* shall notify the person that redetermination is required to establish continuing eligibility and shall make the application available to him.

(c) When the written *or electronic*, signed application is received by the [local department of social services] *Department or its designee*, a new period under consideration will be set. The new period will be related to the date the application is received but may not include any months in which the [person] *individual* was entitled to coverage under the current certification period.

(d) The [local department of social services] *Department or its designee* shall notify the [person] *individual* or his representative of the required information and verifications needed to determine eligibility and the time standards in acting in the redetermination process.

[(e) The local department of social services shall require the recipient or his representative to appear in person unless the local department of social services has determined that face-to-face contact is not necessary to make an accurate eligibility determination.]

[(f)] *(e)* (text unchanged)

[(g)] *(f)* The following applies when the [person] *individual* is determined ineligible for Medical Assistance:

(i) When the SSI termination is received by the tenth day of the month, the [local department of social services] *Department or its designee* shall cancel certification effective the end of the month, unless the recipient requests a hearing in accordance with [Regulation .13 of this chapter] *COMAR 10.01.04*.

(ii) When the SSI termination notice is received after the tenth day of the month, the [local department of social services] *Department or its designee* shall cancel certification effective the end of the following month unless the recipient requests a hearing in accordance with [Regulation .13 of this chapter] *COMAR 10.01.04*.

(h) Notice of Eligibility Decisions.

(i) Eligible [Persons. Persons] *Individuals. Individuals* who are determined eligible for a new period under consideration shall be sent notice in accordance with [§A(1)] *§A(1) and (2)* of this regulation.

(ii) Ineligible [Persons. Persons] *Individuals. Individuals* determined ineligible shall be sent notice in accordance with [§A(2)] *§A(3) and (4)* of this regulation.

(i) (text unchanged)

(2) Unscheduled Redetermination.

(a) The [local department of social services] *Department or its designee* shall promptly make unscheduled redetermination when:

(i)—(ii) (text unchanged)

(iii) Relevant facts or changes are brought to the attention of the [local department of social services] *Department or its designee* from other responsible sources.

(b) The [local department of social services] *Department or its designee* shall notify the recipient that redetermination is required to establish continuing eligibility. Notification will be sent in a timely manner so that a decision of eligibility will be made within 30 days from the date of change.

(c) The [local department of social services] *Department or its designee* shall notify the recipient of the required information and verifications needed to determine eligibility and the time standards in acting in the redetermination process.

(d) The [local department of social services shall] *Department or its designee may not* require the recipient or his representative to appear in person unless the [local department of social services] *Department or its designee* has determined that a face-to-face contact is [not] necessary to make an accurate eligibility determination, *or the recipient requests a face to face interview*.

(e) (text unchanged)

(f) Eligibility Decisions.

(i) Eligibility Continued for the Remainder of the Certification Period. Recipients who are determined eligible for the remainder of the certification period will be sent notice in accordance with [§A(1)] *§A(1) and (2)* of this regulation.

(ii) Recipients Determined Ineligible for the Remainder of the Certification Period. Recipients determined ineligible for the remainder of the certification period because of a change in circumstances or failure to establish eligibility following a change in circumstances, shall be sent notice in accordance with [§A(2)] *§A(3) and (4)* of this regulation.

(g) (text unchanged)

(3) Scheduled Redetermination.

(a) The [local department of social services] *Department or its designee* shall make scheduled redeterminations at least once every 6 months for noninstitutionalized [persons] *individuals* certified under Regulation .11B(3) of this chapter and at least once every 12 months for institutionalized [persons] *individuals* certified under Regulation .11D(3) of this chapter.

(b) The [local department of social services] *Department or its designee* shall notify the recipient that redetermination is required to establish continuing eligibility. The notice and application will be sent at least 45 days before expiration of the current certification period.

(c) When the written, *telephonic, or electronic*, signed application is received by the [local department of social services] *Department or its designee*, a new period under consideration will be set. The new period will be related to the date the application is received but may not include any months in which the [person] *individual* was entitled to coverage under the current certification period.

(d)—(e) (text unchanged)

(f) The local [department of social services] *Department or its designee* shall make timely decisions in accordance with the provisions of Regulation [.04I] *.04H* of this chapter.

(g) Eligibility Decisions.

(i) Eligibility Established. Applicants who are determined eligible for a new period under consideration shall be sent notice in accordance with [§A(1)] *§A(1) and (2)* of this regulation.

(ii) Ineligibility Established. Applicants determined ineligible for the new period under consideration shall be sent notice in accordance with [§A(2)] *§A(3) and (4)* of this regulation.

(h) (text unchanged)

D. (text unchanged)

.13 Hearings.

The procedures for the [Program] *Department or its designee* granting a hearing to an applicant or a recipient and the status of benefits pending a hearing are set forth in COMAR 10.01.04.

.14 Fraud.

A. "Medicaid fraud" means:

(1)—(5) (text unchanged)
 (6) Possession of a blank Medical Assistance prescription, unless possession is authorized by:

(a) (text unchanged)

(b) A grant of a rendering privilege as evidenced by the issuance of a rendering number by a state Medical Assistance program by which one is authorized to prescribe pharmaceutical products for Medical Assistance recipients if the authorization:

(i) (text unchanged)

(ii) Does not extend to possession of blank Medical Assistance prescriptions which have been obtained from a source not authorized to distribute blank Medical Assistance prescriptions under §S(6)(a) of this regulation; *or*

(c) Performance of one's lawful duties as a law enforcement officer or as one employed by a state Medical Assistance program; [or]

[(d) The Director, Medical Care Compliance Administration;]

(7) Possession of a Medical Assistance card [or Pharmacy Assistance card] without the authorization of the [person] *individual* to whom the card is issued, unless:

(a) Possession is obtained by a provider without knowledge that the presenting party lacked authorization; *or*

(b) Possession is pursuant to one's lawful duties as a law enforcement officer or as one employed by a state Medical Assistance program; [or]

[(c) Authorized by the Director, Medical Care Compliance Administration;]

(8) Manufacture, distribution, or possession of a counterfeit Medical Assistance card, *or* prescription blank [, *or* Pharmacy Assistance card] except when possession is obtained:

(a)—(b) (text unchanged)

(9) Manufacture, distribution, or possession of a provider identification plate used or capable of use to imprint Medical Assistance prescriptions unless authorized by:

(a) (text unchanged)

(b) Issuance by a state Medical Assistance program to the party in possession; *or*

(c) Performance of one's lawful duties as a law enforcement officer or as one employed by a state Medical Assistance program; [or].

[(d) The Director, Medical Care Compliance Administration.]

B. Examples. The following are examples of circumstances that may be Medicaid fraud:

(1) Failure to report income, resources, *if applicable*, and family composition at the time of application or reapplication;

(2) Failure to report within 10 working days any changes in income, resources, *if applicable*, and circumstances during any period of eligibility;

(3)—(4) (text unchanged)

C. LDSS Reporting. All cases of suspected Medicaid fraud that are discovered by personnel of a local department of social services shall be reported to the [Division of Utilization and Eligibility Review of the Medical Care Compliance Administration on a form specified by the Division of Utilization and Eligibility Review] *Department or its designee*.

D. Other Reporting. All cases of suspected Medicaid fraud that are discovered by agencies other than a local department of social services, that is, other state or federal agencies, providers, or concerned citizens, may be reported to the [Division of Utilization and Eligibility Review in writing or by telephone] *Department or its designee*.

E. [Division of Utilization and Eligibility Review.] *Review and Investigation*. The [Division of Utilization and Eligibility Review] *Department or its designee* shall review and, when appropriate, investigate all referrals when an allegation is made that a misrepresentation of a material fact has been made or is suspected to have been made.

F. Disposition of Referrals. Each referral shall be processed by the [Division of Utilization and Eligibility Review] *Department or its designee* for appropriate resolution which includes, but is not limited to:

(1)—(6) (text unchanged)

G. (text unchanged)

.14-1 Recipient Abuse.

A.—B. (text unchanged)

C. Procedures.

(1) The [Division of Utilization and Eligibility Review, Medical Care Compliance Administration,] *Department or its designee*, shall determine whether recipient abuse exists using the procedures in §C(2)—(8) of this regulation.

(2)—(5) (text unchanged)

(6) When a case is referred for medical review, a medical professional employed by the [Program] *Department or its designee* shall determine whether the recipient's use of medical services constitutes abuse, as defined under §A(1), (2), or (3) of this regulation. The medical reviewer shall consider all relevant and available information including [Program] *Medical Assistance* payment records and information secured from interviews, if conducted, in making a decision. The reviewer may, when appropriate, obtain records from other sources, including providers of medical services.

(7) When a case is referred for administrative review, a determination shall be made by the [Chief, Division of Utilization and Eligibility Review, or his designee] *Department or its designee*, regarding whether the recipient's use of benefits constitutes abuse as defined under §A(4) of this regulation.

(8) If a recipient has been convicted of a crime involving use of Medical Assistance benefits, as defined in §A of this regulation, the [Program] *Department or its designee* may consider the recipient to have committed abuse as described under §A(4) of this regulation.

D. Notice. A recipient determined to have abused the [Program] *Medical Assistance entitlement* shall receive notice to that effect. Notice includes the following:

(1) A statement of the reason or reasons why the recipient was found to have abused the [Program] *Medical Assistance entitlement*;

(2) [A] *If applicable*, a statement that the recipient will be enrolled in the Corrective Managed Care Program and the effective date and duration of that enrollment;

(3) (text unchanged)

(4) [A] *If applicable*, a statement regarding an opportunity to identify a preference for an assigned primary medical care provider or pharmacy; and

(5) (text unchanged)

E. Consideration of Recipient Information.

(1) (text unchanged)

(2) Notice of the [Program's] determination *of the Department or its designee* regarding the additional information shall be sent to the recipient [by the Department]. The notice shall either confirm or reverse the decision to enroll the recipient.

(3) (text unchanged)

F. Corrective Managed Care Program.

(1) A recipient determined to have abused the [Program] *Medical Assistance entitlement* shall be enrolled in the Corrective Managed Care Program in which the recipient shall be required to meet the requirements of §F(1)—(3) of this regulation.

(2) — (3) (text unchanged)

G. Provider Selection.

(1) The [Program] *Department or its designee* shall select primary medical and pharmacy providers for the recipient according to the requirements of §G(2)—(7) of this regulation.

(2) (text unchanged)

(3) The [Program] *Department or its designee* may also designate a physician group, community health center, or clinic which participates in the Program as a physician provider and which assigns practitioners in one or more of the specialties named under §G(2) of this regulation to be the designated primary medical provider for the recipient.

(4) The [Program] *Department or its designee* may designate a provider which delivers limited or specialty services if the designation is in the recipient's best interest and the provider agrees to deliver or manage the recipient's primary care and refer the recipient for other services as necessary.

[(5) The recipient may enroll in a Health Maintenance Organization—Medical Assistance.]

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

[(7)] (6) The recipient shall be afforded an opportunity to suggest primary medical and pharmacy providers. However, the [Program] *Department or its designee* is not bound by the recipient's suggestion and may designate other providers if, in its sole discretion, the recipient's choice of provider would not serve the recipient's best interest in achieving appropriate use of the health care system and of Medical Assistance benefits.

H. (text unchanged)

I. A recipient who has chosen to enroll in a Health Maintenance Organization—Medical Assistance may select another Health Maintenance Organization—Medical Assistance or elect to have the Program designate new primary medical and pharmacy providers without cause, but shall first complete and process for voluntary disenrollment specified in the Program's contract with the Health Maintenance Organization—Medical Assistance.]

[J.] I.—[K.] J. (text unchanged)

[L.] K. The final determination of abuse, the decision to enroll the recipient for the Corrective Managed Care Program, and the designation of primary medical and pharmacy providers shall be the responsibility of the [Chief, Division of Utilization and Eligibility Review] *Department or its designee*.

[M.] L. The recipient shall be given notice of an opportunity for a hearing in conformity with [Regulation .13 of this chapter] *COMAR 10.01.04*.

.15 Liens, Adjustments, and Recoveries.

A.—C. (text unchanged)

D. Extended Benefits Pending a Hearing Decision.

(1) The [local department of social services] *Department or its designee* shall [refer to the Medical Care Compliance Administration for] *consider* reimbursement [consideration] *in* all cases in which:

(a) A recipient received extended benefits pending a hearing and decision by [hearing officer] *an administrative law judge at the Office of Administration Hearings*; and

(b) The [hearing officer] *administrative law judge* affirmed the *original* decision of the [local decision of the local department of social services] *Department or its designee*.

(2) The [Medical Care Compliance Administration] *Department or its designee* shall institute procedures to recover the

cost of any expenditures made on behalf of a recipient in cases identified in §D(1) of this regulation. This provision may not apply to a [person] *individual* who requested a hearing and extended benefits resulting from a bona fide belief that the [local department of social services] *Department or its designee* has taken an adverse action erroneously.

[E. The local department of social services shall refer to the Medical Care Compliance Administration for investigation and other appropriate action all cases in which a recipient has received coverage erroneously as a result of the action or inaction of the recipient, representative, or person acting responsibly for the recipient.]

[F.] E. (text unchanged)

G. Assignment of Benefits, Release of Information, and Requirement of Cooperation by Recipient in Recovery Procedures.

(1)—(3) (text unchanged)

(4) [A person] *An individual* who receives medical services that [were] *was* or will be paid for by [the Program] *Medical Assistance* is deemed to have made assignment to the Department of:

(a)—(b) (text unchanged)

(5)—(7) (text unchanged)

(8) The Department [through the local department of social services] *or its designee* shall:

(a)—(b) (text unchanged)

(9) (text unchanged)

[H. An applicant for, or recipient of, Medical Assistance shall enroll, unless unable to do so on the applicant's own behalf, in a group health plan when the enrollment is determined by the Department to be cost-effective.

I. Premiums may not be paid for employer group health insurance plans under the following circumstances:

(1) The insurance plan is that of an absent parent;

(2) The premium is used to meet a spend-down obligation; or

(3) The insurance plan is designed to provide coverage only for a temporary period of time, less than 6 months, unless the household's anticipated medical expenditures are enough to make the policy cost-effective.]

10.09.43 Maryland Children's Health Program (MCHP) Premium

Authority: Health-General Article, §§2-104(b), 15-101(f), 15-103(a)(2), 15-301.1, and 15-302—15-304; Insurance Article, §§15-1208, 15-1213, 15-1406, and 27-220; Annotated Code of Maryland; Ch. 202, Acts of 2003

.01 Purpose and Scope.

This chapter governs the determination of eligibility and the conditions of participation for MCHP Premium *with an income standard based on the modified adjusted gross income methodology specified in the Affordable Care Act of 2010, effective January 1, 2014*.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "*Affordable Care Act*" means the *Patient Protection and Affordable Care Act of 2010 (Pub.L.111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub.L.111-152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub.L.112-56)*.

[(1)] (2) "Applicant" means a child[

(a) Whose representative has submitted a written application for the Maryland Children's Health Program to the local health department or the local department of social services;

(b) Who has been determined ineligible for MCHP;

(c) Whose representative indicated on the application an interest in participating in MCHP Premium; and

(d) Whose family income is more than 200 percent but not more than 300 percent of the federal poverty level.] *or the child's representative who has filed a written, telephonic, or electronic application for health coverage in an Insurance Affordability Program to the Department or its designee but has not received final action.*

[(2)] (3) "Application" means [submitting] *the filing of a written [and], telephonic, or electronic signed application for [the Maryland Children's Health Program to the local health department or the local department of social services] health coverage in an Insurance Affordability Program to the Department or its designee.*

[(3)] (4) "Application date" means the date [the MCHP] *on which a written, telephonic, or electronic signed application is received by the Department or its designee [to be considered for eligibility for MCHP Premium].*

[(4)] "Application form" means the form designated by the Department to be completed, signed, and submitted to the local health department or the local department of social services as an official application for MCHP and MCHP Premium.]

(5) "Authorized representative" [means an individual 21 years old or older who acts on behalf of the applicant] *has the meaning stated in COMAR 10.01.04.12.*

[(6)] "Case manager" means an employee of the:

(a) Local health department, or the local department of social services, responsible for determining the eligibility of applicants and recipients for MCHP; or

(b) Department responsible for determining eligibility of applicants for MCHP Premium.]

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

(7) "Designee" means any entity designated to act on behalf of the Department such as:

(a) Baltimore City or a county social services department under the supervision of the Department of Human Resources;

(b) Baltimore City Health Department and its subgrantees, or a county health department; and

(c) The Maryland Health Benefit Exchange

(8) (text unchanged)

[(9)] "Disregard" means the amount of money specified by regulation that can be subtracted from countable income.

(10) Earned Income.

(a) "Earned income" means payment received by an individual in cash as a result of employment, including self-employment.

(b) "Earned income" includes, but is not limited to:

(i) Wages;

(ii) Salaries;

(iii) Commissions;

(iv) Tips; and

(v) Profit from self-employment.]

[(11)] (9)—[(19)] (17) (text unchanged)

(18) "Insurance Affordability Program" means a program that is one of the following:

(a) The Maryland State Medicaid program;

(b) The Maryland Children's Health Insurance Program (CHIP), including the program known as Maryland Children's Health Program (MCHP) Premium;

(c) An optional State basic health program established under §1331 of the Affordable Care Act;

(d) A program that makes available to qualified individuals coverage in a qualified health plan through the Maryland Health Benefit Exchange with advance payments of the premium tax credit established under §36B of the Internal Revenue Code; or

(e) A program that makes available coverage in a qualified health plan through the Maryland Health Benefit Exchange with cost-sharing reductions established under §1402 of the Affordable Care Act.

[(20)] "Local department of social services (LDSS)" means the Baltimore City or a county social services department under the supervision of the Department of Human Resources.

(21) "Local health department (LHD)" means the Baltimore City Health Department and its subgrantees, or a county health department.]

(19) "MAGI" means modified adjusted gross income, as calculated for purposes of determining eligibility for insurance affordability programs under the Affordable Care Act.

(20) "MAGI Exempt Coverage Group" means coverage groups such as Aged, Blind, Disabled; Categorically Needy; and Medically Needy as defined under COMAR 10.09.24.02, whose eligibility is not determined by MAGI.

[(22)] (21) (text unchanged)

[(23)] (22) "Maryland Children's Health Program (MCHP)" means the program established in Health-General Article, §15-301(b)(1), Annotated Code of Maryland, to provide comprehensive medical care and other health care services to certain children [and pregnant women].

(23) "Maryland Health Benefits Exchange" means the unit of State government that determines initial and continuing eligibility for the MAGI based insurance affordability programs, including, by delegation, certain eligibility in the program.

(24)—(33) (text unchanged)

[(34)] "Unearned income" means all income that does not meet the definition of earned income.]

.03 Coverage Groups.

Eligibility may be established for the MCHP Premium Program [covers] for children younger than 19 years old whose [family] household income is above 200 percent but at or below 300 percent of the [FPL] Federal Poverty Level.

.04 Application.

A. [Who Determines Eligibility.

(1) The [LHD and the LDSS] *Department or its designee* shall determine eligibility for [MCHP.

(2) The Department or its designee shall determine eligibility for MCHP Premium] *children.*

B. [Who Provides Program Information to Individuals.

(1) The [LHD or the LDSS] *Department or its designee* shall give oral, [or] written, *or electronic* information about [the eligibility requirements for] MCHP Premium [to any individual requesting this information.] *such as:*

(1) *Requirements for eligibility;*

(2) *Available services;*

(3) *An individual's rights and responsibilities;*

(4) *Information in plain English, supported by translation services; and*

(5) *Information accessible to disabled individuals requesting an application.*

(2) The Department shall give oral and written information about the eligibility requirements, coverage, scope, and related services of MCHP Premium, and an individual's rights and obligations under MCHP Premium, to any individual requesting this information.]

C. [The LHD, the LDSS, or the Department] *An individual requesting health coverage from an Insurance Affordability Program shall [provide the application form without delay to an individual requesting one] be given an opportunity to apply.*

D. *The Department or its designee shall make the application available to the individual without delay, by telephone, mail, in-*

person, internet, other available electronic means, and in a manner accessible to disabled individuals requesting an application.

[D.] E. Applicant Temporarily Absent from the State.

(1) If an applicant is temporarily absent from the State, the [applicant's] applicant or the applicant's representative may[

(a) Apply] apply for assistance by telephone, mail, in person, internet, and other electronic means to the [LHD] Department or its designee in[the] any jurisdiction [in which the resident applicant's home is located; and].

(b) Act on behalf of the applicant to satisfy application requirements to establish eligibility for the MCHP Premium, as specified in §D(2) of this regulation.]

(2) (text unchanged)

[E.] F. Application Filing and Signature Requirements.

(1) [The representative shall:

(a) Submit] An individual who wishes to apply for health coverage under Insurance Affordability Program shall submit a written [and signed MCHP], telephonic, or electronic application [form], signed under penalty of perjury to the [LHD or the LDSS] Department or its designee in [the] any jurisdiction [in which the applicant's residence is located; and]. An applicant is responsible for completing the application but may be assisted in the completion by an individual of the applicant's choice.

(b) Indicate on the MCHP application form a willingness to contribute part of the cost of a health plan to provide medical care for the applicant, if the applicant is not eligible for MCHP.]

(2) [The representative is responsible for completing the application, but may be assisted in the completion by an individual of the representative's choice.] A signed application is required for all applicants who request assistance. If, after the completion of an eligibility determination, assistance is requested for additional family members, a signed application is required for those persons.

(3) The date of application [date is] shall be the date [the MCHP] on which a written, telephonic, or electronic signed application is received by the Department [for consideration for eligibility for MCHP Premium] or its designee. The application may be mailed or submitted electronically to the Department or its designee.

(4) The [parent or parents living with the child] following individuals shall complete and sign [the MCHP] a written or electronic application [form.] : [If the child does not live with a parent, an authorized representative who is 21 years old or older shall complete and sign the application form.]

(a) An applicant;

(b) An applicant's parents living with the child applicant; or

(c) If the applicant does not live with a parent, an authorized representative who is 21 years old or older shall complete and sign the application form.

[F.] G. [A representative] An applicant who has filed [an] a written, telephonic, or electronic application [, which has been received by the Department,] may voluntarily withdraw that application [at any time], but the application remains the property of the Department or its designee and the withdrawal does not affect the periods under consideration specified under §H of this regulation.

[G.] H. Period Under Consideration. The Department or its designee shall establish a current period under consideration [shall be] based on the date of application established under §F(3) of this regulation, for a 12-month period beginning with the month of application.

[H.] I. Processing Applications—Time Limitations.

(1) When [an] a written, telephonic or electronic application is filed, [the Department] a decision shall [make a determination of eligibility to participate in MCHP Premium] be made promptly, but not later than 60 calendar days from the application date.

(2) The time period specified in [§H(1)] §I(1) of this regulation covers the period from the application date to the date the Department[mails] or its designee sends a written or electronic notice of its decision to the applicant or the applicant's representative.

(3) Time standards do not apply if, due to extenuating circumstances, the Department cannot reasonably make the determination within 60 calendar days from the date of application.

(4) The Department shall provide notice of delay for extenuating circumstances within 60 calendar days of the delay, stating the reason for the delay and the anticipated date of decision.]

(3) The Department or its designee shall inform the applicant by written or electronic notice of the missing information needed to determine eligibility, and the applicable time limit.

(4) When an applicant fails to complete the application or to provide the required information needed to determine eligibility within the 60 calendar day limit provided under §I(1) of this regulation, the applicant shall be determined ineligible.

(5) The Department or its designee shall provide notice of delay for extenuating circumstances within 60 calendar days of the delay, stating the reason for the delay and the anticipated date of decision.

(6) If an applicant is determined ineligible for the current period under consideration due to a nonfinancial factor, the application shall be disposed of and the application date may not be retained. If the applicant reapplies, a new period under consideration shall be established based on the date the new application is filed.

[I.] J. Information Required.

(1) [The Department shall inform the representative of any additional information that the Department considers necessary for eligibility determination] All information needed to determine eligibility for the MCHP Premium shall be reported. When there is evidence of inconsistency with attested information given by the applicant and reported by the state and federal databases, the applicant shall be required to offer an explanation and appropriate verification to reconcile the inconsistency.

(2) The [representative] applicant shall provide the additional information within a reasonable time limit as established by the Department.

(3) If the [representative] applicant fails to provide required information within the 60 calendar days, the applicant shall be determined ineligible.

K. Social Security Number.

(1) As a condition of eligibility, an applicant shall furnish to the Department or its designee a Social Security number for the applicant. If the applicant cannot furnish a Social Security number, the applicant shall apply for a number. Assistance may not be denied, delayed, or discontinued pending the issuance or verification of the number if the applicant complies with this subsection.

(2) Eligibility may not be established until the applicant:

(a) Furnishes a Social Security number; or

(b) Requests the assignment of the number through the Social Security Administration.

(3) Failure to provide the required Social Security number shall result in ineligibility for the applicant.

(4) If an applicant lacks the resources to meet the requirements of this regulation, the Department or its designee services shall assist the applicant in obtaining the necessary documents, and any costs incurred shall be paid for out of administrative funds.

(5) If the application indicates that a Social Security number was issued previously, the Department or its designee shall request validation of the number by the Social Security Administration.

[J.] L. Third-Party Liability.

(1) [A representative] An applicant shall notify the Department or its designee within 10 working days if medical treatment has been

provided as a result of a motor vehicle accident or other occurrence in which a third party may be liable for the recipient's medical expenses.

(2) [A representative] *An applicant* shall cooperate with the Department or its designee in completing a form designated by the Department to report all pertinent information and in collecting available health insurance benefits and other third-party payments.

(3) In accident situations, a representative shall notify the Department or its designee of the:

(a)—(d) (text unchanged)

[K.] *M. Consent Forms.* [A representative] *An applicant* shall [sign] give consent [forms, as determined necessary by,] to verify information to establish eligibility to the Department [, authorizing the Department,] or [the Department's] its designee, [to verify information needed to establish eligibility and compliance with conditions of participation] by submitting a written, telephonic, or electronic application.

.05 Nonfinancial Eligibility Requirements.

A. (text unchanged)

B. Residency. The requirements relating to residency under COMAR [10.09.11.06B] 10.09.24.05-3 apply to this chapter.

C.—E. (text unchanged)

F. Access to or Coverage under Other Health Benefit Plans.

(1)—(2) (text unchanged)

[(3) Access to State Health Benefits Plan. Children of State employees who have access to coverage under a State employees' health benefits plan based on a family member's employment with a State agency are not eligible for MCHP Premium unless the premium contribution available from the State towards the cost of health benefits coverage for the child is not more than \$10 per month.]

G. (text unchanged)

.06 Consideration of Family Income.

A. The [representative] *applicant* shall report the income of each family member [.When there is evidence of regular expenditures that are inconsistent with reported income, the representative shall offer an explanation to reconcile the inconsistency], *except for the income of members that do not file a federal tax return and are not claimed as a federal tax dependent.*

B. Determining Countable [Family] Household Income.

(1) In determining an applicant's financial eligibility for MCHP Premium, the applicant's [family] *current household* income shall be considered [for the applicable period under consideration].

(2) [Family] *For the child applicant who is neither pregnant nor postpartum, household* income shall consist of the income of the applicant and the [following family members, if living with the applicant:

(a) The] applicant's parent or parents [; and

(b) At the option of the applicant's representative, any of the applicant's siblings.], *if living with the applicant.*

(3) *For the married child applicant, household income shall consist of the income of the married child applicant and the married child applicant's spouse.*

C. [Regularity of Income. If an applicant or family member with countable income has regular income (including income from self-employment, irregular, or seasonal earnings), the amount to be considered is the amount which is available, or the amount which can reasonably be expected to be available, as annual income.] *When an individual has regular income the amount to be considered is that which is available or can reasonably be expected to be available for a projected period of 12 months, including the month of application.*

D. Treatment of Income.

[(1) Earned and unearned income, which is addressed under Regulation .07 of this chapter, shall be counted to establish countable gross income.

(2) Countable gross income shall be reduced by subtracting appropriate income disregards as specified under Regulation .08 of this chapter to determine countable net income.]

(1) *Countable gross income for the Maryland Children's Health Program shall be the household income calculated according to MAGI.*

(2) *MAGI income limits shall be:*

(a) *Converted from traditional income limits to account for elimination of income disregards; and*

(b) *Increased by 5 percentage points of the federal poverty level for the following circumstances:*

(i) *When an individual's income exceeds the Medicaid income standard; and*

(ii) *The income standard is the highest income standard under which the individual can be determined eligible.*

(3) *Household Composition. For purposes of determining the income standard applicable to an applicant the following rules apply:*

(a) *An individual plus anyone for whom the individual claims personal exemption shall be included in the federal tax filing unit in the taxable year in which an initial determination or renewal of eligibility is being made.*

(b) *For an individual who does not file a federal tax return and is not claimed as a federal tax dependent in the taxable year in which an initial determination or renewal of eligibility is being made, the household size shall consist of the individual and the following individuals:*

(i) *Spouse; and*

(ii) *Natural, adopted or step children.*

(c) *In the taxable year in which an initial determination or renewal of eligibility is being made, the household size of a child applicant shall consist of the child and the following individuals:*

(i) *Natural, adopted, or step parents; and*

(ii) *Natural, adopted, or step siblings.*

(d) *In the case of a married couple living together, each spouse shall be included in the household of the other spouse, regardless of whether they expect to file a joint federal tax return in the taxable year in which an initial determination or renewal of eligibility is being made.*

(4) *No resources or assets test may be applied to applicants or recipients who are subject to a MAGI-based income test.*

.09 Determining Financial Eligibility.

Current and New Enrollees. An applicant is financially eligible for MCHP Premium if, for the period under consideration, the applicant's countable [net family] *household* income as determined under Regulation [.08] .06 of this chapter, is greater than 200 percent but not greater than 300 percent of the federal poverty level for [a family size] *the number of persons in an applicant's tax-dependent unit* equal to the size of the applicant's family.

.12 Program Participation Requirements—Enrollment.

A. (text unchanged)

B. Timely Enrollment.

[(1) The Department or its designee shall contact the representative to affirm the representative's willingness to pay a family contribution amount for coverage of the eligible individual.

(2) If the representative is not willing to pay a family contribution amount, or if the Department or its designee is not able to contact the representative within 30 days of the application date, the Department shall close the case.

(3) The representative shall:

(a) Send to the Department or its designee the first month's family contribution within 30 days of receiving notice of eligibility for MCHP Premium, [or the case will be closed] *before enrollment can be completed; and*

(b) Complete and submit to the Department's enrollment broker a MCO selection and enrollment form *within 28 days of receiving notice of eligibility* for each eligible child.

.13 Program Participation Requirements—Family Contribution.

A.—C. (text unchanged)

D. Payment Procedures.

(1) The representative shall [bring or mail] *send* the initial month's payment to the Department or its designee *by electronic transfer, money order, or check*.

(2) For months following the initial month of coverage:

(a)—(b) (text unchanged)

(c) The Department or its designee shall notify the [representative] *applicant* of the amount due and instruct on the manner of payment and date due, if timely payment has not been made; and

(d) The [representative] *applicant* shall make payment in full of amounts due to the Department *or its designee* no later than 30 days after the date of issuance of a request for payment, to ensure continuing eligibility unless the representative claims that payment will cause hardship as defined in Regulation .02B of this chapter.

E. Hardship.

(1) The [representative] *applicant* shall submit the claim of hardship in writing within 10 days of receipt of the Department's request for payment.

(2) The Department shall evaluate claims of hardship and notify the [representative] *applicant* of the decision within 30 days of receipt of the written claim of hardship.

F. Consequences of Nonpayment.

(1) If payment is not waived or due date adjusted due to hardship, the [representative] *applicant* shall make payment in full not later than 30 days after the date of issuance of a request for payment.

(2) If the [representative] *applicant* fails to comply with §F(1) of this regulation:

(a)—(b) (text unchanged)

(3) An individual whose eligibility was terminated due to failure to pay the Department as specified in §D(2)(d) of this regulation is ineligible for participation in MCHP Premium until [monies due to the Department are paid in full] *90 days from the notice date of termination or the date payment has been made in full, whichever is sooner*.

.14 Program Participation Requirements—Change in Status.

A. The [representative] *applicant* shall report any change in family status or *family* composition [of the eligible individual's family] within 10 days of the change.

B. (text unchanged)

C. The [representative] *applicant* shall complete a *written, telephonic, or electronic* [MCHP] application and file it with the [LHD or LDSS] *Department or its designee* in [the appropriate] *any* jurisdiction to apply for coverage [under MCHP Premium] for a child added to the family, including a newborn child, unless the newborn child's mother was eligible for Medicaid when the child was born.

D. For all changes except addition of a child, the Department *or its designee* shall evaluate the effect of the change on continued eligibility for MCHP Premium and notify the [representative] *applicant* of its determination within 60 days of the report of the change.

.15 Post-Eligibility Requirements.

A. Notice of Eligibility Determination. The Department *or its designee* shall inform the [representative] *applicant* of [the applicant's] *the applicant's* legal rights and obligations and give the [representative] *applicant* written *or electronic* notification of the following:

(1) For eligible [persons] *individuals*:

(a) [A finding of eligibility] *The basis and effective date for eligibility*;

(b) [The period of coverage] *Instructions for reporting changes that may affect the recipient's eligibility*; and

(c) (text unchanged)

(2) For ineligible [persons] *individuals*:

(a) A finding of ineligibility, *the reason for the finding, and the regulation supporting the finding*;

(b) [The reason for the finding] *Information regarding application for MAGI excluded coverage groups*; and

(c) [The regulation supporting the finding; and

(d)] *The right to request a hearing*.

B. [Representative] *Applicant* Responsibility.

(1) The [representative] *applicant* shall notify the Department within 10 working days of changes affecting the [recipient's] *applicant's* eligibility.

(2) [The representative] *Only an applicant that has been determined eligible by the Department or its designee* shall [limit] use [of] MCHP Premium benefits [to the eligible individuals].

(3) If written *or electronic* notice of cancellation is received, the [representative] *applicant* shall [ensure that the recipient discontinues] *discontinue* use of MCHP Premium benefits on the first day of ineligibility.

(4) (text unchanged)

(5) The [representative] *applicant* shall cooperate with the [State's Medical Assistance] *Department's* quality control review process, including verification of all information pertinent to the determination of eligibility.

(6) If the [representative] *applicant* refuses to cooperate, the [recipient's] *applicant's* coverage shall be terminated.

C. Unscheduled Redetermination.

(1) The Department shall:

(a) Promptly make an unscheduled redetermination of a recipient's eligibility if changes in circumstances or relevant facts are:

(i) Reported by someone on the [recipient's] *applicant's* behalf; or

(ii) (text unchanged)

(b) Notify the [representative] *applicant* of the required information and verifications needed to determine eligibility and the time standards in acting in the redetermination process.

(2)—(3) (text unchanged)

D. Scheduled Redetermination.

(1)—(2) (text unchanged)

(3) Completion of the application and determination of eligibility for MCHP by the [LHD or the LDSS] *Department or its designee* is required for renewal for program eligibility.

.16 Hearings.

The requirements relating to hearings under COMAR [10.09.24.13] *10.01.04* apply to this chapter.

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.86 Maryland Medicaid Managed Care Program: Independent Review Organization (IRO)

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

Notice of Proposed Action
[13-317-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.08 under a new chapter, **COMAR 10.09.86 Maryland Medicaid Managed Care Program: Independent Review Organization (IRO)**.

Statement of Purpose

The purpose of this action is to establish an independent review process for adjudicating disputes between providers and managed care organizations regarding denials of providers' claims for reimbursement for MCO covered services on grounds that the services were not medically necessary.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The funds to implement this chapter will come from either the managed care organization or providers, whichever party receives an adverse appeal decision from the Contractor. The Contractor will be responsible for the operational details of the contract. Agency monitoring is expected to be minimal. No other government agencies will be affected.

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: Managed care organizations or providers	(-)	Indeterminable
E. On other industries or trade groups: (1) Contractors	(+)	Indeterminable
(2) Contractors	(-)	Indeterminable
F. Direct and indirect effects on public:	NONE	

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

D. and E(1). Either the MCO or provider will receive an adverse determination from the IRO that party will be responsible for paying the IRO the case review charge established by the Department;

however there is no way to determine how many determinations will be made for or against an MCO or a provider and therefore the magnitude is indeterminable.

E(2). The Contractor will be responsible for the operational details of the contract; however because it cannot be determined how many complaints will be received, the cost is indeterminable.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.01 Scope and Purpose.

This chapter provides for a complaint resolution process for disputes between managed care organizations (MCOs) and providers regarding adverse medical necessity decision made by MCOs. Pursuant to this chapter, providers that receive an adverse medical necessity decision on claims for reimbursement may submit the adverse decision for review by an Independent Review Organization (IRO) designated by the Department.

.02 Definitions.

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

B. Terms Defined.

(1) "Adverse decision" means a review determination by a managed care organization that a health care service for which a provider seeks reimbursement is not medically necessary.

(2) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Case record" means documentation submitted to an independent review organization consisting of:

(a) A claim and only the supporting documentation, including medical records, originally submitted to a managed care organization by a provider prior to the managed care organization's adverse decision on the claim;

(b) The managed care organization's adverse decision; and

(c) The managed care organization's written rationale for the adverse decision.

(4) "Claim" means a clean claim as defined in COMAR 31.10.11.02.

(5) "Complaint" means an appeal of an adverse decision filed with the independent review organization.

(6) "Department" means the Maryland Department of Health and Mental Hygiene.

(7) "Expert reviewer" means a physician or other appropriate health care provider who contracts with the independent review organization to conduct a review of a managed care organization's adverse decision.

(8) "Health care service" means a health or medical care procedure or service rendered by a provider including:

(a) Testing, diagnosis, or treatment of a human disease or dysfunction;

(b) Dispensing of drugs, medical devices, medical appliances, or medical goods for the treatment of a human disease or dysfunction; or

(c) Any other care, service, or treatment of disease or injury, the correction of defects, or the maintenance of the physical and mental well-being of human beings.

(9) "Independent review organization" means an entity that contracts with the Department to conduct independent review of managed care organizations' adverse decisions.

(10) "Managed care organization (MCO)" has the meaning stated in Health-General Article, §15-101, Annotated Code of Maryland.

(11) "Medicaid" means the program administered by the State under Title XIX of the Social Security Act, which provides comprehensive medical and other health-related care for persons.

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

(13) "Medically necessary" means a health care service that is:

(a) Directly related to diagnostic, preventive, curative, palliative, rehabilitative, or ameliorative treatment of an illness, injury, disability, or health condition;

(b) Consistent with currently accepted standards of good medical practice;

(c) The most cost-efficient service that can be provided without sacrificing effectiveness or access to care; and

(d) Not primarily for the convenience of the consumer, the consumer's family, or the provider.

(14) "Provider" means any individual or entity that has a valid provider agreement with a Medicaid managed care organization or is a nonparticipating provider rendering covered Medicaid services to the managed care organization's enrollees.

.03 Use of Independent Review Organizations.

A. The Department shall procure the services of an IRO to make determinations of medical necessity on provider complaints regarding adverse decisions.

B. An IRO that contracts with the Department shall assure, in accordance with its contract with the Department, the:

(1) Timeliness and quality of the reviews;

(2) Qualifications and independence of the IRO and expert reviewers; and

(3) Confidentiality of medical records and review materials, consistent with federal and State laws.

C. An IRO designated by the Department shall have the authority to conduct the following functions:

(1) Obtaining all case information relative to the complaint from the MCO pursuant to time frames established by the Department;

(2) Assigning an expert reviewer for review of an adverse decision;

(3) Performing conflicts checks relative to the independent review organization and the expert reviewer assigned to review the adverse decision;

(4) Communicating procedural rules, as approved by the Department, and other information regarding appeals to the parties;

(5) Rendering a timely final decision in accordance with Regulation .06F of this chapter.

.04 Conflicts of Interest Standards for Independent Review Organizations and Expert Reviewers.

A. An IRO or expert reviewer may not be an affiliate or have a financial, familial or professional relationship with any facility, provider, or organization that has filed a complaint.

B. Upon request by the Department, the IRO shall provide to the Department information demonstrating compliance with the requirement in §A of this regulation.

.05 Assignment of an Expert Reviewer.

A. The IRO shall ensure that an expert reviewer:

(1) Has appropriate clinical expertise in the treatment of the specific medical condition being reviewed and holds a nonrestricted license as a health care provider in the United States; and

(2) Has no history of disciplinary investigations, actions, or sanctions, including loss of staff privileges or participation restrictions that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body.

B. Upon request by the Department, the independent review organization shall provide to the Department information demonstrating compliance with the requirements in §A of this regulation.

.06 Independent Review.

A. A provider shall exhaust an MCO's provider appeal process before filing a complaint with the IRO.

B. A provider shall file a complaint with the IRO in the form provided by the IRO not later than 30 calendar days following the date of an MCO's adverse decision.

C. A review of an adverse decision shall be based on the case record.

D. The IRO shall, after reviewing the case record, issue a final decision as to whether the health care services that are the subject of the complaint were medically necessary.

E. The final decision shall state in writing the factual bases for the decision of the expert reviewer and reference the criteria and standards on which the expert reviewer's decision was based.

F. Final decisions shall be rendered within 45 days of submission of the case record, unless the time period is extended by the Department.

.07 Payment of Fees and Sanctions.

A. In the event that a provider's complaint is unsuccessful, the provider is responsible for paying to the IRO the case review charge established by the Department.

B. The case review charge established by the Department shall be based on the contract between the Department and the IRO arrived at through a competitive procurement process.

C. An MCO that is determined by the IRO to have improperly denied, either in whole or in part, a provider's claim on medical necessity grounds is subject to the following:

(1) Within 60 calendar days of the date of an adverse decision by an IRO, the MCO shall fully reimburse the provider for claims determined to be medically necessary by the IRO, including any interest owed under Health Insurance Article, §15-1005(f), Annotated Code of Maryland; and

(2) Within 60 calendar days of the date of invoice by the IRO, the MCO shall reimburse the IRO the case review charge established by the Department.

D. In the event that the unsuccessful party does not pay the IRO within 60 calendar days of the date of the invoice, the Department shall impose penalties as follows:

(1) First delinquency: 17 percent of the invoice amount;

(2) Second delinquency: 35 percent of the invoice amount; and

(3) Third delinquency: 50 percent of the invoice amount plus:

(a) For providers, suspension from using the independent case review services for 1 year; or

(b) For MCOs, any sanction set forth in COMAR 10.09.73.01A(1)–(5), as determined by the Department.

.08 Appeal.

A. As a prerequisite for participating in the IRO complaint adjudication process, a provider waives all other administrative and judicial appeal rights and accepts the IRO's decision as final and binding.

B. An MCO that receives an adverse decision from an independent review organization may file an appeal in accordance with COMAR 10.09.72.06.

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

Subtitle 15 FOOD

10.15.04 Food and Drink Processing and Transportation

Authority: Health-General Article, §§21-102, 21-211, 21-234, 21-301, 21-304, 21-308, 21-309.1, Annotated Code of Maryland

Notice of Proposed Action

[13-315-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .02, .17, .20, and .23 under **COMAR 10.15.04 Food and Drink Processing and Transportation**.

Statement of Purpose

The purpose of this action is to change the definition of Food Processing Plant to include charity deer processing, the risk priority for inspections, and the frequency of food processing plant inspections in each risk priority.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(3) (text unchanged)

(4) "Charity deer processing" means the processing of legally harvested whitetail deer into cuts of raw meat as only a service for a charitable organization that donates the meat to the needy for consumption.

[(4)] (5)—[(12)] (13) (text unchanged)

[(13)] (14) Food Processing Plant.

(a) (text unchanged)

(b) "Food processing plant" includes a:

(i)—(xiv) (text unchanged)

(xv) Cider plant; [and]

(xvi) Charity deer processing plant; and

[(xvi)] (xvii) (text unchanged)

(c) (text unchanged)

[(14)] (15)—[(15)] (16) (text unchanged)

[(16)] (17) "HACCP plan" means a Hazard Analysis Critical

Control Point (HACCP) as specified by:

(a) (text unchanged)

(b) COMAR 10.15.12;

[(b)] (c)—[(c)] (d) (text unchanged)

[(17)] (18)—[(33)] (34) (text unchanged)

.17 Facility and Process Plan Review.

A.—D. (text unchanged)

E. The approving authority shall:

(1) (text unchanged)

(2) Classify a food processing plant as a:

(a) High priority facility if the food processing plant manufactures[:] food;

[(i)] Potentially hazardous food;

[(ii)] Low-acid canned food; or

[(iii)] Acidified food;]

(b) Moderate priority facility if the food processing plant[;

(i) Manufactures food that is not potentially hazardous; or

(ii) Is a food warehouse that stores and distributes potentially hazardous food; or

(c) (text unchanged)

.20 Animal Slaughtering, Meat Processing, and Poultry Processing.

A person that slaughters animals and processes meat shall ensure that:

A.—B. (text unchanged)

C. Poultry are slaughtered and processed in accordance with:

(1) (text unchanged)

(2) Applicable federal, State, and local regulations; [and]

D. When slaughtered and processed for food for the public, domesticated animals including poultry and rabbits that are not required by federal law or regulation to be inspected by the United States Department of Agriculture are:

(1) (text unchanged)

(2) Processed into human food while being regulated:

(a)—(b) (text unchanged)

(c) By an approving authority[.]; and

E. When processing deer meat for charitable donation;

(1) Deer is legally harvested;

(2) Gutting and skinning of the deer and butchering operations shall be separated by:

(a) Time; or

(b) Distance;

(3) Processing other animal species is separated by:

(a) Time; or

(b) Distance;

(4) Hanging meat carcasses is stored at an internal temperature of 41°F or less;

(5) Deer is processed for distribution only as fresh or frozen:

(a) Raw whole cuts; or

(b) Raw, ground 100 percent venison;

(6) Organ meat is not donated; and

(7) A label containing cooking instructions is included.

.23 Inspections.

A.—F. (text unchanged)

G. The approving authority shall ensure that a food processing plant is inspected:

(1) (text unchanged)

(2) When a shellfish shucker-packer or repacker, at a minimum of 4 times per year;

[(2)] (3) When a high [and moderate] priority plant, at a minimum of twice per year; [and]

(4) When a moderate priority plant, seasonal plant, or a producer mobile farmer's market unit, at a minimum of once per year; and

[(3)] (5) When a low priority plant, at a minimum of once [a year] every 2 years.

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

Subtitle 15 FOOD

10.15.07 Shellfish Sanitation

Authority: Health-General Article, §§18-102, 21-211, 21-234, 21-304, 21-321, and 21-346--21-350, Annotated Code of Maryland

Notice of Proposed Action

[13-314-P-I]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .01 under **COMAR 10.15.07 Shellfish Sanitation**.

Statement of Purpose

The purpose of this action is to update the incorporation by reference of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, Model Ordinance, to the most recent revision.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, 2011 Revision, Model Ordinance, except for Chapter IV, Shellstock Growing Areas, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 40:1 Md. R. 9 (January 11, 2013), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.01 Incorporation by Reference.

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

A. National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, [2009] 2011 Revision, Section I. Purpose and Definitions and Section II. Model Ordinance, except for Chapter IV, Shellstock Growing Areas; and

B. (text unchanged)

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

Subtitle 19 DANGEROUS DEVICES AND SUBSTANCES

10.19.07 Prohibition of Child Care Products Containing TCEP

Authority: Health-General Article, §24-306, Annotated Code of Maryland

Notice of Proposed Action

[13-312-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.04 under a new chapter, **COMAR 10.19.07 Prohibition of Child Care Products Containing TCEP**.

Statement of Purpose

The purpose of this action is to establish regulations that prohibit the import, sale, or offering for sale of child care products containing the flame-retardant chemical TCEP, also known as TRIS (2-chloroethyl) phosphate.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. This proposal includes civil penalties that may be applied if violations occur. In addition there may be a minimal negative economic impact on industries that import, sell, or offer for sale child care products containing the flame-retardant chemical TCEP.

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

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

A. and D. If violations occur, civil penalties may be collected; however the exact amount is indeterminable.

E. There could be a negative economic impact on industries that import, sell, or offer for sale child care products containing the flame-retardant chemical TCEP because this regulation will prohibit those actions and decrease revenue; however the exact amount is indeterminable.

F. This proposal would have a positive effect on the public because it will eliminate the potential and actual exposure of children to a fire-retardant chemical with potential adverse health consequences. At the same time, it should not increase the risk of fire-related injuries.

Economic Impact on Small Businesses

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

The number of child care articles containing TCEP that would be affected by this regulation is decreasing as manufacturers have been substituting alternative fire retardants for TCEP in recent years. There is no estimate of how many products containing TCEP are currently in Maryland stores that would need to be returned to manufacturers once the regulations go into effect. Enforcement of this regulation will be driven by consumer complaint; therefore it is difficult to estimate the impact of the civil penalties on the State and the regulated industries.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.01 Scope.

A. *This chapter establishes regulations that prohibit the import, sale, or offering for sale of child care products containing the flame-retardant chemical TCEP, also known as TRIS (2-chloroethyl) phosphate.*

B. *This chapter does not apply to the sale or distribution of a child care product that is resold, offered for resale, or distributed by a consumer for consumer use.*

.02 Definitions.

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

B. *Terms Defined.*

(1) *"Child care article" means a consumer product intended for use by a child under the age of 3 years, including a:*

- (a) *Baby product;*
- (b) *Toy;*
- (c) *Car seat;*
- (d) *Nursing pillow;*
- (e) *Crib mattress; and*
- (f) *Stroller.*

(2) *"Secretary" means the Secretary of Health and Mental Hygiene.*

(3) *"TCEP" means an industrial chemical also known as TRIS (2-Chloroethyl) Phosphate.*

.03 Prohibition of TCEP in Child Care Articles.

A. *On or after October 1, 2013, a person may not import, knowingly sell, or offer for sale in commerce a child care article containing more than 1/10 of 1 percent of TCEP by mass.*

B. *The Secretary may suspend implementation of this chapter if the Secretary determines that the fire safety benefits of TCEP are greater than the known health risks associated with TCEP.*

.04 Violations.

A. *A person that violates this chapter is subject to:*

- (1) *For a first violation, a civil penalty not exceeding \$1,000; and*
- (2) *For any subsequent violation, a civil penalty not exceeding \$2,500 for each violation.*

B. *In addition to the civil penalties described in §A of this regulation, a court may also enjoin an action prohibited in Regulation .04 of this chapter.*

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

Notice of Proposed Action

[13-318-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulations **.09** and **.13** under **COMAR 10.27.01 Examination and Licensure;** and
- (2) Regulations **.04** and **.06** under **COMAR 10.39.01 Certification of Nursing Assistants.**

This action was considered by the Maryland Board of Nursing at a public meeting held on July 23, 2103, notice of which was given by publication on the Board's website under Board news on June 1, and July 1, 2013.

Statement of Purpose

The purpose of this action is to repeal a provision for licensure and certification that recognizes a criminal history check done in another state. FBI confidentiality requirements do not allow states to share criminal history record check information. The corresponding statutory authority has been repealed.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

Subtitle 27 BOARD OF NURSING

10.27.01 Examination and Licensure

Authority: Health Occupations Article, §§8-205 (a)(1), 8-304, and 8-6A-05(a), Annotated Code of Maryland; Chapter 486, Acts of 2012

.09 Licensure by Endorsement.

A. An applicant licensed to practice registered nursing or practical nursing in another state, territory, or country is eligible for licensure without examination if the applicant:

- (1)—(2) (text unchanged)
- (3) Submits the following verifications directly to the Board from the appropriate authority:
 - (a)—(e) (text unchanged)
 - (f) Written, verified evidence that the applicant has[:]
 - (i) Submitted to a criminal history records check under Regulation .05 of this chapter; or
 - (ii) Completed a criminal history records check in accordance with Regulation .05 of this chapter through another state board of nursing within the 5 years preceding the date of application; and
 - (g) The criminal history records information for the applicant provided by either the Central Repository under §A(3)(f)(i) of this regulation or the other state under §A(3)(f)(ii) of this regulation] *completed an application for a criminal history records check in accordance with Regulation .05 of this chapter by:*
 - (i) *Submitting two sets of fingerprints required by the Central Repository and the FBI; and*
 - (ii) *Paying all fees required by the Central Repository and the FBI;*

(4)—(5) (text unchanged)

B.—D (text unchanged)

.13 Inactive Status.

A.—B. (text unchanged)

C. A licensee on inactive status may apply for an active status license provided that the licensee:

- (1) (text unchanged)
- (2) Submits to the Board:
 - (a) (text unchanged)
 - (b) Written, verified evidence that the renewal applicant has[:]

(i) Completed] *completed* an application for a criminal history records check *in accordance with Regulation .05 of this chapter* by [submitting]:

(i) *Submitting* two sets of fingerprints required by the Central Repository *and the FBI*; and [paying]

(ii) *Paying* all fees required by the Central Repository and the FBI[: or]

[(ii) Completed a criminal history records check in accordance with §C(2)(b)(i) of this regulation through another state board of nursing within 5 years preceding the date of the renewal application].

D.—E. (text unchanged)

**Subtitle 39 BOARD OF NURSING —
CERTIFIED NURSING ASSISTANTS**

10.39.01 Certification of Nursing Assistants

Authority: Health Occupations Article, §§8-205 (a)(1), 8-304, 8-308, and 8-6A-05, Annotated Code of Maryland; Chapter 486, Acts of 2012

.04 Application for Certification.

A.—C. (text unchanged)

D. Certification by Endorsement. An applicant certified as a nursing assistant in another state or territory is eligible for certification if the applicant:

(1)—(3) (text unchanged)

(4) Submits the following verifications directly to the Board from the appropriate authority:

(a)—(d) (text unchanged)

(e) Written, verified evidence that the applicant has[:]

[(i) Submitted to] *completed* a criminal history records check under §A(4) of this regulation[: or]

[(ii) Completed a criminal history records check in accordance with §D(4)(e)(i) of this regulation through another state board of nursing within the 5 years preceding the date of application].

E. (text unchanged)

.06 Renewal.

A.—G. (text unchanged)

H. [After January 1, 2010, upon] *Upon* notification by the Board that a criminal history records check is required before renewal of certification, a renewal applicant shall submit to the Board, before renewal of the certificate, written, verified evidence that the renewal applicant has completed[:]

(1) An] *an* application for a criminal history records check by submitting the following:

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

[(b)] (2) All fees required by the Central Repository and the FBI[: or]

[(2) A criminal history records check in accordance with §G(1) of this regulation through another state board of nursing within 5 years preceding the date of the renewal application].

I.—P. (text unchanged)

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

**Title 11
DEPARTMENT OF
TRANSPORTATION**

**Subtitle 11 MOTOR VEHICLE
ADMINISTRATION—**

ADMINISTRATIVE PROCEDURES

11.11.05 Motor Vehicle Fees

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

Notice of Proposed Action

[13-324-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulation .04 under **COMAR 11.11.05 Motor Vehicle Fees**.

Statement of Purpose

The purpose of this action is to set the fees for the issuance of the vintage registration plate as set forth in S.B. 39, Ch. 170, Acts of 2013.

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 action would set the fees for the issuance of the vintage registration plate as set forth in S.B.39, Ch. 170, Acts of 2013. Based on the assumptions and information contained in this fiscal impact statement, the estimated economic impacts (net) are as follows: (1) to MVA/MDOT, an estimated \$443,977 net revenue increase in FY 14 (based on a January 1, 2014 effective date) and an estimated \$266,386 net revenue increase in FY 15; (2) to local jurisdictions, an estimated \$47,148 revenue in FY 14 and an estimated \$28,289 revenue in FY 15. In calculating the estimated fiscal impact of this proposal, the following assumptions were made:

- This fiscal impact statement is making the assumption that a total of 10,000 plates will be issued during the period of time the plate is available for sale (presumed to be CY 14).
- This fiscal impact statement is further making the assumption that of these 10,000 plates, 6,250 will be sold in FY 14 (2,500 at titling and 3,750 as substitute plates) and 3,750 will be sold in FY 15 (2,500 at titling and 1,250 as substitute tags);
- This fiscal impact statement is making the assumption that the registration expiration for these plates will be for two years;
- This fiscal note is making the assumption that back-end fulfillment of the plates will be handled by Maryland Correctional Enterprises (MCE); All programming costs incurred are included in the production/distribution costs associated with these plates;
- This fiscal note is making the assumption that the amount of the vintage registration plate fee that is over and above the Administration's cost to produce/distribute the plate will be designated for the Gasoline and Motor Vehicle Revenue Account (GMVRA).
- The fiscal note is further making the assumption that, of the amount designated for the GMVRA, the percentage distributed to MDOT will be 90.4% and the amount distributed to local jurisdictions will be 9.6%.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
(1)	(R+)	\$ 577,852 (FY 14)
(2)	(E+)	\$ 133,875 (FY 14)
B. On other State agencies:	NONE	
C. On local governments:	(R+)	\$ 47,148 (FY 14)
	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). Based on the assumptions and information included in this fiscal impact statement, the MVA/MDOT would realize an estimated net revenue increase in FY 14 of \$443,977 and an estimated net revenue increase in FY 15 of \$266,386.

Estimated FY 14 expenditures are \$133,875. The estimated production/distribution cost of each plate is \$21.42. This figure is made of three components: (1) estimated cost of the plate (including plate design, etc.) of \$9.65/set; (2) estimated postage costs @ \$5.97/set; and (3) estimated programming costs @ \$5.80/set. Therefore, the total FY 14 expenditures are estimated at \$133,875 (6,250 estimated plates issued in FY 14 x \$21.42 production/distribution costs for each set of plates). Estimated costs in FY 15 are \$80,325 (3,750 estimated plates issued in FY 15 x \$21.42/each).

In FY 14, total revenue realized is estimated at \$625,000. The fee for the issuance of the vintage registration plates is set at \$80/each set of plates. In addition, an annual fee of \$10 (in addition to the normal registration fee) has been set. This would result in a total fee of \$100 (\$80 upon initial issuance + \$20 additional fee for two-year registration). Therefore, the total estimated revenue realized in FY 14 is \$625,000 (6,250 estimated plates issued x \$100/each). Of this amount, the estimated revenue realized which is over and above the Administration's cost to produce/distribute the plate, is assumed to be designated for the GMVRA. MVA/MDOT would receive 90.4% of this GMVRA designation. Therefore, the amount of estimated revenue realized in FY 14 is calculated as follows:

- Amount of revenue needed to recover costs = \$133,875;
- Amount of revenue designated for GMVRA = \$491,125 (\$625,000 - \$133,875)
- Amount of GMVRA revenue received by MVA/MDOT = \$443,977 (\$491,125 x 90.4%);
- Net total amount received by MVA/MDOT (FY 14) = \$577,852 (\$133,875 + \$443,977).

In FY 15, the estimated revenue to be realized is \$375,000 (3,750 estimated plates issued x \$100/each). Therefore, the amount of estimated revenue realized in FY 15 is calculated as follows:

- Amount of revenue needed to recover costs = \$80,325;
- Amount of revenue designated for GMVRA = \$294,675 (\$375,000 - \$80,325)
- Amount of GMVRA revenue received by MVA/MDOT = \$266,386 (\$294,675 x 90.4%);
- Net total amount received by MVA/MDOT (FY 15) = \$346,711 (\$80,325 + \$266,386).

A(2). Based on the assumptions and information included in this fiscal impact statement, the MVA/MDOT would realize an estimated net revenue increase in FY 14 of \$443,977 and an estimated net revenue increase in FY 15 of \$266,386.

Estimated FY 14 expenditures are \$133,875. The estimated production/distribution cost of each plate is \$21.42. This figure is made of three components: (1) estimated cost of the plate (including plate design, etc.) of \$9.65/set; (2) estimated postage costs @ \$5.97/set; and (3) estimated programming costs @ \$5.80/set. Therefore, the total FY 14 expenditures are estimated at \$133,875 (6,250 estimated plates issued in FY 14 x \$21.42 production/distribution costs for each set of plates). Estimated costs in FY 15 are \$80,325 (3,750 estimated plates issued in FY 15 x \$21.42/each).

In FY 14, total revenue realized is estimated at \$625,000. The fee for the issuance of the vintage registration plates is set at \$80/each set of plates. In addition, an annual fee of \$10 (in addition to the normal registration fee) has been set. This would result in a total fee of \$100 (\$80 upon initial issuance + \$20 additional fee for two-year

registration). Therefore, the total estimated revenue realized in FY 14 is \$625,000 (6,250 estimated plates issued x \$100/each). Of this amount, the estimated revenue realized which is over and above the Administration’s cost to produce/distribute the plate, is assumed to be designated for the GMVRA. MVA/MDOT would receive 90.4% of this GMVRA designation. Therefore, the amount of estimated revenue realized in FY 14 is calculated as follows:

- Amount of revenue needed to recover costs = \$133,875;
- Amount of revenue designated for GMVRA = \$491,125 (\$625,000 - \$133,875)
- Amount of GMVRA revenue received by MVA/MDOT = \$443,977 (\$491,125 x 90.4%;
- Net total amount received by MVA/MDOT (FY 14) = \$577,852 (\$133,875 + \$443,977).

In FY 15, the estimated revenue to be realized is \$375,000 (3,750 estimated plates issued x \$100/each). Therefore, the amount of estimated revenue realized in FY 15 is calculated as follows:

- Amount of revenue needed to recover costs = \$80,325;
- Amount of revenue designated for GMVRA = \$294,675 (\$375,000 - \$80,325)
- Amount of GMVRA revenue received by MVA/MDOT = \$266,386 (\$294,675 x 90.4%;
- Net total amount received by MVA/MDOT (FY 15) = \$346,711 (\$80,325 + \$266,386).

C. Based on the assumptions and information included in this fiscal impact statement, local jurisdictions would realize an estimated revenue increase in FY 14 of \$47,148 and an estimated revenue increase in FY 15 of \$28,289. As mentioned above, the total estimated revenue realized in FY 14 is \$625,000. Of this amount, the estimated revenue realized which is over and above the Administration’s cost to produce/distribute the plate, is assumed to be designated for the GMVRA. Local jurisdictions would receive 9.6% of this GMVRA designation. Therefore, the amount of estimated revenue realized in FY 14 is calculated as follows:

- Amount of revenue designated for GMVRA = \$491,125 (\$625,000 - \$133,875)
- Amount of GMVRA revenue received by local jurisdictions = \$47,148 (\$491,125 x 9.6%);

In FY 15, the estimated revenue to be realized is \$375,000 (3,750 estimated plates issued x \$100/each). Therefore, the amount of estimated revenue realized in FY 15 is calculated as follows:

- Amount of revenue designated for GMVRA = \$294,675 (\$375,000 - \$80,325)
- Amount of GMVRA revenue received by local jurisdictions = \$28,289 (\$294,675 x 9.6%.

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 November 18, 2013. A public hearing has not been scheduled.

.04 Vehicle Registration Fees.

Service	Section	Fee
A. Special Registration Fees.		
(1) — (4) (text unchanged)		
(5) <i>Vintage Registration Plates.</i>		
(a) <i>Fee paid on issuance of new plates.</i>	13-619.3	80
(b) <i>Annual fee in addition to the annual registration fee required.</i>	13-619.3	10
B. —K. (text unchanged)		

JOHN T. KUO
Administrator
Motor Vehicle Administration

Subtitle 17 MOTOR VEHICLE ADMINISTRATION—DRIVER LICENSING AND IDENTIFICATION DOCUMENTS

11.17.21 Proof of Age, Name, Identity, and Residency for Federally Noncompliant Driver Licenses and Identification Cards

Authority: Transportation Article, §§12-104(b), 12-301, 16-103.1, 16-104.2, 16-106, 16-115, 16-121—16-122, Annotated Code of Maryland

Notice of Proposed Action
[13-323-P]

The Administrator of the Motor Vehicle Administration proposes to adopt new Regulations **.01— .05** under a new chapter, **COMAR 11.17.21 Proof of Age, Name, Identity, and Residency for Federally Noncompliant Driver Licenses and Identification Cards.**

Statement of Purpose

The purpose of this action is to identify the documents acceptable to the Motor Vehicle Administration as proof of age, name, identity, and Maryland residence for the issuance of federally noncompliant Maryland driver’s license or identification card as set forth in SB 715, Chapter 309, Acts of 2013.

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 action identifies the documents acceptable to the Administration as proof of age, name, identity and Maryland residency for the issuance of federally noncompliant Maryland driver licenses and identification cards. Based on the assumptions and information contained in this fiscal impact statement, the estimated economic impacts (net) are as follows: to MVA/MDOT, an estimated \$1,479,378 net revenue increase in FY 14 (based on January 1, 2014 effective date) and an estimated \$296,522 net revenue loss in FY 15.

- Assumption is being made that approximately 135,000 noncompliant learner’s permits/driver’s licenses will be issued between fiscal years 2014—2018. Of these, 40 percent will obtain a noncompliant learner’s permit/driver’s license in FY 14 and 20 percent will obtain a noncompliant learner’s permit/driver’s license in FY 15;

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- Assumption is being made that approximately 30,000 noncompliant identification cards will be issued between fiscal years 2014—2018. Of these, 40 percent will obtain a noncompliant identification card in FY 14 and 20 percent will obtain a noncompliant identification card in FY 15;
- Assumption is being made that approximately 95,000 valid noncompliant credentials will have been issued prior to the implementation of this proposed action. Of these, 20 percent of these noncompliant credentials will be renewed in FY 14 and 50 percent of these noncompliant credentials will be renewed in FY 15;
- Assumption is being made that approximately 85 percent of the driver’s license renewal transactions will be for a 5-year expiration and approximately 15 percent of the driver’s license renewal transactions will be for an 8-year expiration.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
<hr/>		
A. On issuing agency:		
(1)	(R+)	\$3,900,000 FY14
(2)	(E+)	\$2,420,622 FY14
B. On other State agencies:		
	NONE	Unquantifiable
C. On local governments:		
	NONE	Unquantifiable
<hr/>		
	Benefit (+) Cost (-)	Magnitude
<hr/>		
D. On regulated industries or trade groups:		
	NONE	
E. On other industries or trade groups:		
	NONE	
F. Direct and indirect effects on public:		
	NONE	Net neutral

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

A(1). In FY 14, total revenues realized are estimated to be approximately \$3,900,000 Revenue would be realized from the renewal of existing driver’s licenses, the sale of new learner’s permits/driver’s licenses and the sale of identification cards. Estimated revenues to be realized in FY 15 is approximately \$3,200,000.

Based on the assumptions included under Section III above, the approximate revenue to be realized from the above sources is calculated as follows:

- Renewals of existing driver’s license credentials (FY 14) = approx. \$632,970 (approx. 16,443 credentials renewed for 5 years @ \$30/ea. + approx. 2,910 credentials renewed for 8 years @ \$48/ea.). Revenue realized from renewals in FY 15 is estimated at \$1,501,387;
- Sale of new learner’s permits/driver’s licenses (FY 14) = approx. \$2,967,900 (approx. 59,358 @ \$50/ea.). Revenue realized from sale of these permits/licenses in FY 15 is estimated at \$1,505,150;
- Sale of identification cards (FY 14) = approx. \$299,130 (approx. 1,294 with 5-year expiration @ \$15/ea. + approx. 11,655 with 8-year expiration @ \$24/ea.). Revenue realized from the sale of identification cards in FY 15 is estimated at \$193,463.

A(2). Estimated FY 14 expenditures are \$2,420,622. This figure includes the salaries/fringe benefits and related costs for additional regular employees, salaries/fringe benefits and related costs for additional non-regular employees (State TE, etc.), purchase of automobiles (for MVA Investigators) and related fuel/maintenance costs, advertising (public awareness) costs, postage costs, costs related to the purchase of additional photo supplies, and the purchase of laptops (for MVA Investigators). Estimated FY 15 expenditures are \$3,496,522.

An additional ten regular employee positions (customer agents, driver’s license agents and an administrator) are needed to implement this program. Based on the current salary structure and fringe benefits rates, the estimated costs associated with these regular positions is \$323,468. The costs related to these regular positions in FY 15 is estimated at \$542,553. Also, 55 additional non-regular employee (State TE, etc.) positions are needed. These would include customer agent, driver’s license agent, MVA Investigator, and Administrative Assistant positions. Based on the current salary structure and fringe benefit rates, the estimated FY 14 costs associated with these non-regular positions is \$1,325,741. The costs related to these positions in FY 15 is estimated at \$1,597,504. Related employee costs (training, telephone operation, office supplies) are estimated at \$94,689 in FY 14 and \$184,011 in FY 15.

Other costs in FY 14 total \$676,724 and include the following: automobile purchase and related fuel/maintenance cost of \$106,950 (six automobiles for MVA Investigators @ \$15,000/ea. + 16,350 fuel costs based on current fuel rates + estimated \$600 for maintenance), advertising (public awareness) at an estimated \$150,000, postage of \$82,950 (based on estimated transaction levels), photo supplies of \$327,824 (based on estimated transaction levels), and laptops for \$9,000 (six laptops for MVA Investigators @ \$1,500/ea.). Other costs in FY 15 (fuel, public awareness, postage, photo supplies, etc.) are estimated at \$1,172,454.

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, Motor Vehicle Administration, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call 410-768-7545, or email to tshellfield@mdot.state.md.us, or fax to 410-768-7506. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.01 Purpose and Application.

The purpose of this chapter is to identify the documents acceptable to the Administration as proof of age, name, identity, and Maryland residence for the issuance of a federally noncompliant Maryland license or identification card as set forth in Ch. 309, Acts of 2013.

.02 Definitions.

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

B. Terms Defined.

- "Administration" means the Motor Vehicle Administration.
- "Identification card" means a photo identification card issued under Transportation Article, § 12-301, Annotated Code of Maryland.
- "Individual taxpayer identification number (ITIN)" means a tax processing number issued by the Internal Revenue Service.

(4) License.

(a) "License" means an original, renewal, duplicate, or corrected driver's license or permit to drive a motor vehicle issued by the Administration; and

(b) "License" includes a:

- (i) Learner's instructional permit;
- (ii) Moped operator's permit;
- (iii) Provisional license; or
- (iv) Commercial driver's license.

(5) "Name" has the meaning stated in Transportation Article, §11-137, Annotated Code of Maryland.

(6) "Noncompliant" means a license or identification card not acceptable by federal agencies for official purposes.

(7) "Renewal" means a license or identification card issued to replace an expiring license or identification card.

(8) "Residence" has the meaning stated in Transportation Article, §11-149, Annotated Code of Maryland.

(9) "SSN" means Social Security number issued by the Social Security Administration.

(10) "Source document" means the original or a certified copy of a document acceptable to the Administration that is submitted by an applicant for a license or identification card.

(11) "State" means any state, possession, or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

.03 Applicant's Requirements.

A. An applicant requesting a noncompliant Maryland license or noncompliant Maryland identification card shall provide documentation acceptable to the Administration as specified in this chapter. The documentation shall provide proof of:

(1) Age, name, and identity as set forth in Regulation .04A of this chapter;

(2) Residency as set forth in Regulation .04B of this chapter; and

(3) Maryland income tax filings for the preceding 2 years certified by the Maryland Comptroller's Office.

B. The applicant shall:

(1) Certify under penalty of perjury that the information provided in the application is true and correct; and

(2) Pay any applicable fees set forth in COMAR 11.11.05.03.

.04 Source Documents for Proof of Age, Name, Identity, and Residence.

A. An applicant, to establish proof of age, name, and identity, shall submit a valid, unexpired passport or a valid unexpired consular ID document, meeting the issuance standards established by the Administration.

B. If an applicant is unable to provide the documentation required by §A, the applicant shall submit two of the following, accompanied by an English translation, one of which shall contain a photo not more than 8 years old;

(1) Foreign (non-U.S.) drivers' license;

(2) Original or certified copy foreign (non-U.S.) civil birth certificate;

(3) National identification card or national voter card displaying applicant's photo, name, date of birth;

(4) State license;

(5) State identification card;

(6) US military dependent identification card;

(7) US military identification card;

(8) Certified State school record, on a form provided by the Administration, not more than 12 months old;

(9) I-766 Employment Authorization Document; or

(10) Any other documents adopted as acceptable by the Administration through written approval.

C. Source Documents for Residency.

(1) To establish Maryland residency, an applicant for a non-compliant license or identification card shall submit at least two source documents. The address on source documents shall match the address on the application and may not be from the same business, company, or agency. The residency source documents include:

(a) Maryland vehicle registration card or title;

(b) Utility, telephone, or cable or satellite TV bill;

(c) Checking or savings account statement;

(d) Life insurance card or policy over 3 years old;

(e) Property tax bill or receipt;

(f) Mortgage account or proof of home ownership;

(g) Residential rental contract, an apartment lease, or other rental of real property;

(h) First class mail from a federal, state, or local government agency to include the contents and envelope, excluding mail from the Administration;

(i) Installment contract from a bank or other financial institution;

(j) Sales tax or business license;

(k) Major credit card bill;

(l) Residential service contract for services performed at the address of residence, for example, cable or satellite television service, TV repairs, lawn service, or exterminator contract;

(m) Court order of probation, order of parole, or order of mandatory release;

(n) Cancelled check with imprinted name and address; or

(o) Selective Service Card.

(2) A post office box number may only be used if in conjunction with the applicant's address and in the same zip code area. The use of a private mail drop is not permitted.

D. To establish proof of Maryland income tax filings for the preceding 2 tax years, the applicant shall submit a certified letter from the Maryland Comptroller's office reflecting the applicant's ITIN or SSN.

E. Applicants requesting a name change or to establish a name other than the name that appears on a source document shall submit documentation issued by a court, governmental body, or other entity acceptable to the Administration, accompanied by an English translation, to include:

(1) Certified copy of a court order pertaining to the name change;

(2) Original or certified copy of a marriage certificate;

(3) Original or certified copy of a divorce decree; or

(4) Original or certified copy of a birth certificate.

.05 Exception Process.

A. If an applicant is unable to comply with the Maryland residency source document requirements set forth in Regulation .04C of this chapter due to circumstances beyond the applicant's control, the applicant may submit the following alternate source documents under the following circumstances.

(1) If the applicant is a dependent:

(a) The signature on the application of the parent or guardian with whom the applicant resides, signed in the presence of a representative of the Administration;

(b) Documentation of the relationship between the applicant and parent or guardian;

(c) Documentation to prove the applicant is a dependent of the parent or guardian, if the applicant is 18 years of age or older; and

(d) Acceptable proof of the parent or guardian's identity and Maryland residence address.

- (2) *If the applicant is a married individual:*
- (a) *A statement from the applicant's adult spouse with whom the applicant resides, signed in the presence of a representative of the Administration; and*
 - (b) *An original or certified copy of their marriage certificate;*
- (3) *If the applicant is a resident of a nursing home, a statement from the nursing home written on the nursing home's letterhead, which shall include:*
- (a) *The applicant's name and date of birth;*
 - (b) *Address of the nursing home;*
 - (c) *Name and phone number of the contact person at the home; and*
 - (d) *Signature of the nursing home's manager or representative;*
- (4) *If the applicant is an inmate or former inmate within 60 days of release:*
- (a) *An Order of Parole;*
 - (b) *An Order of Mandatory Release; or*
 - (c) *An address certification form issued by the Administration and signed by a designated official of the correctional facility, or other designated official of the Department of Public Safety and Correctional Services;*
- (5) *If the applicant is a homeless individual, an original letter on letterhead from a homeless shelter, or service provider, which shall include:*
- (a) *A statement that the applicant is homeless;*
 - (b) *The address of the shelter or service provider;*
 - (c) *The name and phone number of the contact person; and*
 - (d) *The signature of the shelter representative or service provider; or*
- (6) *If the applicant is in the care of the Department of Juvenile Services, the Administration may accept an address certification form issued by the Administration and signed by a designated official of the Department of Juvenile Services.*
- B. If an applicant is incapacitated and physically unable to visit the Administration to apply for an identification card in person, the Administration may complete the application and issuance process by mail if the applicant:*
- (1) *Holds or has held a Maryland license or identification card and there is a usable image and signature of the applicant on file;*
 - (2) *Submits certification stating the reason the applicant is physically unable to apply for an identification card in person; and*
 - (3) *Submits a completed application and includes any applicable fees.*

JOHN T. KUO
 Administrator
 Motor Vehicle Administration

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

Notice of Proposed Action

[13-326-P-I]

The Secretary of Agriculture proposes to amend:

- (1) Regulation **.11** under **COMAR 15.20.04 Nutrient Management Certification and Licensing;**
- (2) Regulation **.02** under **COMAR 15.20.07 Agricultural Operation Nutrient Management Plan Requirements;** and
- (3) Regulation **.05** under **COMAR 15.20.08 Content and Criteria for a Nutrient Management Plan Developed for an Agricultural Operation.**

At this time, the proposal to amend Regulation **.02** under **COMAR 15.20.07 Agricultural Operation Nutrient Management Plan Requirements**, and Regulation **.05** under **COMAR 15.20.08 Content and Criteria for a Nutrient Management Plan Developed for an Agricultural Operation**, as published in 40:2 Md. R. 162—164 (January 25, 2013), is being withdrawn.

Statement of Purpose

The purpose of this action is to add Supplement No. 8 (September, 2013) to the Maryland Nutrient Management Manual, which is incorporated by reference under COMAR 15.20.07.02. Supplement No. 8 (September, 2013) includes modification to the method for determining nutrient recommendations, specifically the method for the determination of phosphorus as the limiting nutrient by implementing a new Phosphorus Management Tool to replace the existing Phosphorus Site Index. This action subsequently impacts COMAR 15.20.08.05 and 15.20.04.11 by defining the method and elements for determining required nutrient recommendations in a nutrient management plan and requiring certain related reports to be filed with the Department by certified nutrient management consultants.

This proposal is part of the Department's ongoing efforts to promulgate the amendments to these particular regulations that was initiated in 2012.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed regulation will affect certain farms with high phosphorus levels in the soil. Additional management will be required on farms based on the risk of phosphorus loss from the field. In certain cases, farmers will be required to reduce the rate of application of phosphorus to their fields. In cases where organic sources of nutrients, such as animal manures, are applied, additional land will be required to utilize manures generated on the farm, based on the reduced rate of application. Additional costs will be incurred, based on manure applications to additional acres and the added cost to transport manures to acreage that can appropriately utilize the manure.

The Department does not have data to assess the number of acres potentially impacted by the proposed regulation.

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

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

D. The proposed regulation will affect certain farms with high phosphorus levels in the soil. The proposal amends an existing risk assessment tool, known as the Phosphorus Site Index (PSI), used to determine the potential for phosphorus loss from the field. University of Maryland scientists who developed the PSI indicate the greatest potential impact will be on soils with high soil phosphorus in areas where ground water is closest to the surface.

Additional management will be required on farms based on the risk of phosphorus loss from the field. In certain cases, farmers will be required to reduce the rate of application of phosphorus to their fields. In cases where organic sources of nutrients, such as animal manures, are applied, additional land will be required to utilize manures generated on the farm, based on the reduced rate of application. Additional costs will be incurred, based on manure applications to additional acres and the added cost to transport manures to acreage that can appropriately utilize the manure.

The Department does not have data to assess the number of acres potentially impacted by the proposed regulation.

F. The public will benefit from the proposal through improved water quality and environmental conditions in local rivers and streams. The quality of life of Marylanders will improve by virtue of healthy local water bodies and additional measures toward a restored Chesapeake Bay.

Economic Impact on Small Businesses

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

The proposed regulation will affect certain farms with high phosphorus levels in the soil. Additional management will be required on farms based on the risk of phosphorus loss from the field. In certain cases, farmers will be required to reduce the rate of application of phosphorus to their fields. In cases where organic sources of nutrients, such as animal manures, are applied, additional land will be required to utilize manures generated on the farm, based on the reduced rate of application. Additional costs will be incurred, based on manure applications to additional acres and the added cost to transport manures to acreage that can appropriately utilize the manure and potential to purchase commercial fertilizer inputs on filed where manure can no longer be used as a nutrient source

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jo A. Mercer, Ed.D., Administrator, Nutrient Management Program, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, or fax to 410-841-5950, or call 410-841-5959, or email to Jo.Mercer@maryland.gov. Comments will be accepted through November 18, 2013.

Editor’s Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Maryland Nutrient Management Manual, Supplement No. 8, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 40:1 Md. R. 9 (January 11, 2013), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

15.20.04 Nutrient Management Certification and Licensing

Authority: Agriculture Article, §§8-801—8-806, Annotated Code of Maryland

.11 Record-Keeping and Reporting Requirements.

A. (text unchanged)

B. *Information Concerning Phosphorus Management Tool.*

(1) *As specified in §§B(2) and (3) of this regulation, a license holder or a certified consultant who is not operating under a license shall file a report with the Department that includes certain information related to nutrient management plans developed for operations which have soils with a phosphorus fertility index value of 150 or above.*

(2) *The report shall include information that the Department determines necessary to evaluate the implementation of the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2.*

(3) *The report shall be filed on a form developed by the Department in accordance with a schedule determined by the Department.*

[B.] C. (text unchanged)

15.20.07 Agricultural Operation Nutrient Management Plan Requirements

Authority: Agriculture Article, §§8-801—8-806, Annotated Code of Maryland

.02 Incorporation by Reference.

The performance and technical standards provided in this subtitle are found in the Department of Agriculture's Maryland Nutrient Management Manual (November 1999), Supplement No. 1 (September 2000), Supplement No. 2 (November 2001), Supplement No. 3 (September 2004), Supplement No. 4 (November 2005), [and] Supplement No. 5 (November 2006), Supplement No. 6 (May 2009), [and] Supplement No. 7 (May 2012), and Supplement No. 8 (September 2013), which are incorporated by reference.

15.20.08 Content and Criteria for a Nutrient Management Plan Developed for an Agricultural Operation

Authority: Agriculture Article, §§8-801—8-806, Annotated Code of Maryland

.05 Nutrient Management—Required Plan Recommendations.

A. — D. (text unchanged)

E. Determination of Limiting Nutrient.

(1) — (2) (text unchanged)

(3) If the soil sample analysis results show a phosphorus fertility index value (FIV) of less than 150, nutrient recommendations may [use] *be based on* nitrogen plant needs as the limiting factor *in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B.*

(4) Phosphorous Criteria for Nutrient Management Plans Developed Before October 1, 2014.

(a) *The phosphorus criteria in this subsection shall be followed for nutrient management plans:*

(i) *Developed before October 1, 2014; and*

(ii) *Implemented before December 31, 2014.*

[(a)] (b) If the soil sample analysis results show a phosphorus fertility index value (FIV) of 150 or greater, [a phosphorus site index or other phosphorus risk assessment method acceptable to the Department] *the Phosphorus Site Index*, as provided in the Maryland Nutrient Management Manual, Section II-[B]C1, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

[(b)] (c) *Low Risk of Potential Phosphorus Loss.* If the risk for potential [movement] *loss* of phosphorus from the site is low according to the [phosphorus site index] *Phosphorus Site Index*, nutrient recommendations by the consultant or certified farm operator may use nitrogen plant needs as the limiting factor.

[(c)] (d) *Medium Risk of Potential Phosphorus Loss.*

(i) [If] *Except as provided in §E(4)(d)(i) of this regulation, if the risk for potential [movement] loss of phosphorus from the site is medium according to the [phosphorus site index:] Phosphorus Site Index, nutrient rates shall be based on nitrogen plant needs as the limiting factor not more than one out of every 3 years. Phosphorus rates for the other 2 years shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.*

(i) Nutrient rates shall be based on nitrogen plant needs as the limiting factor no more than 1 out of every 3 years. Phosphorus rates the other 2 years shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater; or]

(ii) Nutrient recommendations may use nitrogen plant needs as the limiting factor if BMPs are implemented by the operator [and] *before or during the application of additional phosphorus that address site or management characteristics [to] which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to low.*

[(d)] (e) *High Risk of Potential Phosphorus Loss.*

(i) *Except as provided in §E(4)(e)(ii) of this regulation, [If] if the risk for potential [movement] loss of phosphorus from the site is high according to the [phosphorus site index] Phosphorus Site Index, phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing, in accordance with the recommendations*

described in the Maryland Nutrient Management Manual, Section I-B.

[(i) Phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B; or]

(ii) If BMPs are implemented by the operator, [and] *before or during the application of additional phosphorus, that address site or management characteristics [to] which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to medium, nutrient rates may be based on nitrogen plant needs as the limiting factor not more than 1 out of every 3 years. Phosphorus rates for the other 2 years shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing or in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B, whichever is greater.*

[(e)] (f) *Very High Risk of Potential Phosphorus Loss.*

(i) *Except as provided in §E(4)(f)(ii) of this regulation, [If] if the risk for potential [movement] loss of phosphorus from the site is very high according to the [phosphorus site index] Phosphorus Site Index, no additional phosphorus may be applied.*

[(i) No additional phosphorus may be applied; or]

(ii) If BMPs are implemented by the operator, [and] *before or during the application of additional phosphorus, that address site or management characteristics [to] which, according to the outcome of a recalculation using the Phosphorus Site Index, reduce the risk of phosphorus loss to high, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the crop or plant harvest, or the amount indicated by soil testing in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B.*

[(5) Before the deadlines set forth in COMAR 15.20.07.03 for the development of a phosphorus-based plan, a certified nutrient management consultant or certified farm operator may use:

(a) The requirements of §E(1)—(3) of this regulation as a planning tool to determine if future management changes are indicated by the P index, and if development of a phased-in approach to a phosphorus-based plan should be recommended; or

(b) §E(1)—(3) of this regulation as a guide to determine nutrient management recommendations.]

(g) *Steps to be Taken if the Soil Analysis Shows a Phosphorus FIV of 150 or Greater.*

(i) *Nutrient management plans based on soil samples subject to §E(4)(b) of this regulation shall be developed using both the Phosphorus Site Index described in §E(4)(b) of this regulation and the Phosphorus Management Tool, as provided in §E(5) of this regulation.*

(ii) *The operator shall be provided information by the certified consultant that outlines the changes to the operation that will be required when the Phosphorus Management Tool becomes effective, beginning on October 1, 2014.*

(h) *On or after January 1, 2015, implementation of a nutrient management plan or any portion of a nutrient management plan developed before October 1, 2014, shall be in accordance with §E(5) of this regulation without regard to when the plan was developed.*

(5) *Phosphorus Criteria for Nutrient Management Plans Developed on and After October 1, 2014.*

(a) *The phosphorus criteria in this subsection shall be followed for nutrient management plans:*

(i) *Developed on or after October 1, 2014; and*

(ii) *Implemented on or after January 1, 2015.*

(b) If the soil sample analysis results show a phosphorus fertility index value (FIV) of 150 or greater, the Phosphorus Management Tool, as provided in the Maryland Nutrient Management Manual, Section II-C2, shall be used to determine the potential risk of phosphorus loss due to site characteristics.

(c) *Low Risk of Potential Phosphorus Loss.* If the risk for potential loss of phosphorus from the site is low according to the Phosphorus Management Tool, total phosphorus applications related to crops planted in a 3-year period shall not exceed the amount of phosphorus removed by the crops over the 3-year period.

(d) *Medium Risk of Potential Phosphorus Loss.*

(i) Except as provided in §E(5)(d)(ii) of this regulation, if the risk for potential loss of phosphorus from the site is medium according to the Phosphorus Management Tool, phosphorus rates shall be limited to the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application, or the amount indicated by soil testing, in accordance with the recommendations described in the Maryland Nutrient Management Manual, Section I-B.

(ii) If BMPs are implemented by the operator before or during the application of additional phosphorus that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to low, nutrient rates may be established as provided by §E(5)(c) of this regulation.

(e) *High Risk of Potential Phosphorus Loss.*

(i) Except as provided in §E(5)(e)(ii) of this regulation, if the risk for potential loss of phosphorus from the site is high according to the Phosphorus Management Tool, no additional phosphorus may be applied.

(ii) If BMPs are implemented by the operator before or during the application of additional phosphorus, that address site or management characteristics which, according to the outcome of a recalculation using the Phosphorus Management Tool, reduce the risk of phosphorus loss to medium, recommended rates of application of phosphorus shall be limited to the expected amount removed from the field by the crop or plant harvest immediately following the phosphorus application, or the amount indicated by soil testing in accordance with recommendations described in the Maryland Nutrient Management Manual, Section I-B.

(iii) The operator shall consider the implementation of management practices and technologies that are effective in lowering the risk of phosphorus loss, based on research and demonstration of the University of Maryland, or other land grant university, or by the United States Department of Agriculture, Natural Resources Conservation Service, National Planning Procedures Handbook and practice standards adopted for Maryland.

(f) On or after January 1, 2015, implementation of nutrient management plans or any portion of a nutrient management plan shall be in accordance with this section.

F. — I. (text unchanged)

EARL F. HANCE
Secretary of Agriculture

Title 26

DEPARTMENT OF THE ENVIRONMENT

Subtitle 12 RADIATION MANAGEMENT

26.12.01 Radiation Protection

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

Notice of Proposed Action [13-325-P-I]

The Secretary of the Environment proposes to amend Regulation **.01** under **COMAR 26.12.01 Radiation Protection**.

Statement of Purpose

The purpose of this action is to update the regulation to incorporate Supplement 23, which includes:

- (1) Two U.S. Nuclear Regulatory Commission rules relating to improvement of radioactive material licensee decommissioning planning, and clarification of “construction” relative to radioactive material licensees;
- (2) Deletion of any use of a C-arm fluoroscope by an untrained user;
- (3) Documentation requirements for radiation machine preventive maintenance reports;
- (4) Definition of a healing arts practitioner as related to radiation use; and
- (5) Minor corrections to regulations.

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

Written comments may be sent to Michael D. Kurman, Regulations Coordinator, Radiological Health Program, Air and Radiation Management Administration, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 750, Baltimore, Maryland 21230, or e-mail to michael.kurman@maryland.gov, or call 410-537-3208, or fax to 410-537-3198. Comments will be accepted until the close of business on November 18, 2013.

No public hearing has been scheduled. For more information call Michael Kurman at 410-537-3208.

A copy of the proposed regulation may be viewed on the MDE Website at <http://www.mde.state.md.us/programs/regulations/air/Pages/index.aspx>, or at official depository libraries throughout the State. A listing of these depository libraries is available on the Internet at <http://www.dsd.state.md.us/Depositories.aspx>. You may also call the Division of State Documents at 410-974-2486 or 800-633-9657 for information about a depository library in your area. Also, a copy may be viewed at the Maryland Department of the Environment, 1800 Washington

Boulevard, Baltimore, Maryland 21230; contact Michael Kurman for an appointment to view a copy of the proposed action at this location.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Regulations for the Control of Ionizing Radiation (1994), Supplement 23, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 40:1 Md. R. 9 (January 11, 2013), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.01 Incorporation by Reference.

All provisions of the "Regulations for the Control of Ionizing Radiation (1994)" as amended by Supplement 1 through Supplement [22] 23 are incorporated by reference.

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

Opportunity for Public Comment

Comments may be sent to Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to Katrina.Lawhorn@Maryland.Gov, or fax to 410-468-2020. Comments will be accepted through November 18, 2013. A public hearing has not been scheduled.

.02 Definitions.

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

(1) "Application counselor" has the meaning stated in Insurance Article, §31-101(a-1), Annotated Code of Maryland.

[(1)] (2) — [13] (14)

.03 Written Consent Required.

A. Scope. This regulation applies to the following individuals:

- (1) — (2) (text unchanged)
- (3) An individual who maintains a resident license or certificate of qualification in Maryland, including:
 - (a) — (c) (text unchanged)
 - (d) A SHOP exchange navigator; [and]
 - (e) An individual exchange navigator; *and*
 - (f) *An application counselor.*
- B. — C. (text unchanged)

THERESE M. GOLDSMITH
Insurance Commissioner

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 03 INSURANCE PRODUCERS AND OTHER INSURANCE PROFESSIONALS

31.03.12 Procedures — Written Consent — Federal Law

Authority: Insurance Article, §2-109(e), Annotated Code of Maryland

Notice of Proposed Action

[13-329-P]

The Insurance Commissioner proposes to amend Regulations **.02** and **.03** under **COMAR 31.03.12 Procedures—Written Consent—Federal Law**.

Statement of Purpose

The purpose of this action is to give convicted felons who want to become application counselors the opportunity to apply for a 1033 waiver. Currently, an individual who is a convicted felon may not become an application counselor. This action proposes to afford individuals who have been convicted of a felony the opportunity to apply for a waiver of that requirement by submitting documentation to the Commissioner for review.

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.

Errata

COMAR 13A.08.01.11

At 40:20 Md. R. 1681 (October 4, 2013), col. 1, line 16 from the bottom:

For: *services to promote successful return to a regular academic program.*

Read: *services to promote successful return to the student's regular academic program.*

At 40:20 Md. R. 1681 (October 4, 2013), col. 2, line 7 from the top:

For: *services to promote successful return to a regular academic program.*

Read: *services to promote successful return to the student's regular academic program.*

At 40:20 Md. R. 1681 (October 4, 2013) col. 2, line 22 from the bottom:

For: *the delay in the process and the denial of reentry.*

Read: *the delay in the process and the denial of reentry and send a copy of the notice to the State Superintendent of Schools.*

[13-21-52]

Special Documents

DEPARTMENT OF STATE POLICE

HANDGUN ROSTER BOARD

Proposed Additions to Handgun Roster and Notice of Right to Object or Petition

The following is a list of handguns that the Handgun Roster Board proposes to add to the official handgun roster. These handguns will be officially placed on the Handgun Roster if no timely objection is received or if all timely objections are dismissed.

Under the Public Safety Article, §5-405, Annotated Code of Maryland and COMAR 29.03.03.13 and .14, any person may object to the placement of any of those handguns on the Handgun Roster. Objections must be filed within 30 days after **October 18, 2013**. In addition, any person may petition for the placement of an additional handgun on the Handgun Roster. Forms for objections or petitions may be obtained from: Marlene Jenkins, Administrator, Handgun Roster Board, 1201 Reisterstown Road, Pikesville, Maryland 21208.

Manufacturer	Model	Model Number	Caliber
Armatix	IP1		.22 LR
Double Tap Defense	Doubletap	DT009011	9mm, 40 S&W, .45 ACP, .45 LC, .410 Shotgun
Double Tap Defense	Doubletap	DT045011	9mm, 40 S&W, .45 ACP, .45 LC, .410 Shotgun
Engage Armament	223 Target Pistol		5.56 mm
Kahr Arms	P 45,	KP4543,	.45 ACP
Kimber	Ultra CDP II	All	9mm
Para USA, Inc. & Para USA, LLC	Black OPS 10.45	96696	.45 ACP
Para USA, Inc. & Para USA, LLC	Black Ops Recon	96697	.45 ACP
Para USA, Inc. & Para USA, LLC	Elite (Target)	96664	.45 ACP
Para USA, Inc. & Para USA, LLC	Elite Carry	96669	.45 ACP
Para USA, Inc. & Para USA, LLC	Elite Pro & Elite Pro Stainless	96665 & 96672	.45 ACP
Para USA, Inc. & Para USA, LLC	Elite Commander	96667	.45 ACP
Para USA, Inc. & Para USA, LLC	Elite Officer	96668	.45 ACP
Para USA, Inc. & Para USA, LLC	Expert Carry	96745	.45 ACP
Rock Island Armory	Tactical	1911 Tactical	.10 mm
Sig Sauer/Sigarms Inc.	P-227	227R-45 B, 227R-45	.45 ACP
Sphinx	SDP Compact		9mm
Sturm Ruger	New Vaquero	5133 & 5134	.357 Mag & 45 Colt
Sturm Ruger	New Vaquero	5141, 5144	45 Colt & .45 ACP
Taurus	M85 S		.38 Cal, .38 Special
Tri Star	C-100	85009	9mm
Zastava Arms	Tokarev	M70 A	9mm

[13-21-34]

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.

MARYLAND STATE ARTS COUNCIL

Subject: Public Meeting
Date and Time: October 24, 2013, 9 a.m. — 5 p.m.; All Day Event
Place: The Mid Atlantic Arts Foundation, Baltimore, MD
Add'l. Info: Dance (Choreography and Solo Performance) Jury Date.
Contact: Pamela Dunne (410) 767-6484
 [13-21-19]

MARYLAND STATE ARTS COUNCIL

Subject: Public Meeting
Date and Time: October 25, 2013, 9:30 — 11:30 a.m.
Place: Maryland State Arts Council Offices, 175 W. Ostend St., Ste. E, Baltimore, MD
Contact: Lucas Cowan (410) 767-6544
 [13-21-32]

MARYLAND STATE ARTS COUNCIL

Subject: Public Meeting
Date and Time: October 31, 2013, 9 a.m. — 5 p.m.; All Day Event
Place: The Mid Atlantic Arts Foundation, Baltimore, MD
Add'l. Info: Classical Music (Composition and Performance) Jury Date.
Contact: Pamela Dunne (410) 767-6484
 [13-21-21]

MARYLAND STATE ARTS COUNCIL

Subject: Public Meeting
Date and Time: November 15, 2013, 9 a.m. — 5 p.m.; All Day Event
Place: The Mid Atlantic Arts Foundation, Baltimore, MD
Add'l. Info: Poetry Jury Date
Contact: Pamela Dunne (410) 767-6484
 [13-21-22]

ATHLETIC COMMISSION

Subject: Public Meeting
Date and Time: October 30, 2013, 2 — 5 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patrick Pannella (410) 230-6223
 [13-21-35]

BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

Subject: Public Meeting
Date and Time: December 13, 2013, 9:30 a.m.
Place: 4201 Patterson Ave., Baltimore, MD
Contact: Gwendolyn A. Joyner (410) 764-5996
 [13-21-06]

CONSUMER COUNCIL OF MARYLAND

Subject: Public Meeting
Date and Time: November 1, 2013, 9:15 a.m. — 10:30 a.m.
Place: 200 St. Paul Pl., 16th Fl., Baltimore, MD
Contact: Stephanie A. Hodge (410) 576-6557
 [13-21-33]

JOINT CHAIRS OF THE DESIGN BOARDS

Subject: Public Meeting
Date and Time: October 23, 2013, 1:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6262
 [13-21-47]

MARYLAND STATE BOARD OF EDUCATION

Subject: Public Meeting
Date and Time: October 30, 2013, 9 a.m. — 4 p.m.
Place: 200 W. Baltimore St., 7th Fl. Board Room, Baltimore, MD
Add'l. Info: The State Board of Education is pleased to receive oral public comment at each of its regular monthly meetings. In order to allow the State Board sufficient time for its other business, the total time allotted to public comment will generally be limited to 30 minutes. Individuals seeking to speak to the Board will be given 3 minutes each. Persons desiring to speak to the State Board must call (410-767-0467) or email (cnecessary@msde.state.md.us) the Board office no earlier than 1 week prior to the meeting to register to speak. Registration

will be accepted on a first-come, first-served basis. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views.

Contact: Charlene Necessary (410) 767-0467

[13-21-41]

PROFESSIONAL STANDARDS AND TEACHER EDUCATION BOARD

Subject: Public Meeting
Date and Time: November 7, 2013, 9:30 a.m. — 12:30 p.m.
Place: 200 W. Baltimore St., 7th Fl. Board Room, Baltimore, MD
Contact: Jean Satterfield (410) 767-0385
 [13-21-42]

STATEWIDE EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL (SEMSAC)

Subject: Public Meeting
Date and Time: November 7, 2013, 1 — 3 p.m.
Place: 653 W. Pratt St., Ste. 212, Baltimore, MD
Add'l. Info: The State Emergency Medical Services Advisory Council (SEMSAC) meets regularly on the 1st Thursday of each month.
Contact: Leandra Giliam (410) 706-4449
 [13-21-16]

BOARD OF ENVIRONMENTAL HEALTH SPECIALISTS

Subject: Public Meeting
Date and Time: November 6, 2013, 10 a.m. — 3 p.m.
Place: Howard Co. Bureau of Utilities, 8720 Old Washington Rd., Columbia, MD
Add'l. Info: The board may discuss/review on proposed regulations. A portion of the meeting may be held in closed session.
Contact: James T. Merrow (410) 764-4722
 [13-21-28]

GENERAL NOTICES

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DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subject: Public Meeting

Date and Time: November 15, 2013, 9 — 11 a.m.

Place: 201 W. Preston St., L3, Baltimore, MD

Contact: Meredith Truss (410) 767-5641
[13-21-26]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/HEART DISEASE AND STROKE COUNCIL

Subject: Public Meeting

Date and Time: October 24, 2013, 6 — 8 p.m.

Place: 201 W. Preston St., Conf. Rm. L1, Baltimore, MD

Contact: Adelline Ntatin (410) 767-2623
[13-21-45]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MEDICAID PHARMACY AND THERAPEUTICS COMMITTEE

Subject: Public Meeting

Date and Time: November 7, 2013, 9 a.m. — 1 p.m.

Place: UMBC Research and Technology Park — South Campus, 1450 Rolling Rd., Halethorpe, MD

Add'l. Info: Meeting of the Maryland Medicaid Pharmacy Program's Pharmacy and Therapeutics Committee (Preferred Drug List). Classes of drugs to be reviewed are posted on the Maryland Pharmacy Program website at:

<http://mmcp.dhmh.maryland.gov/pap/SitePages/Public%20Meeting%20Announcement%20and%20Procedures%20for%20Public%20Testimony.aspx>.

See website for agenda, speaker registration, restrictions, and driving directions. Submit email questions to dhmh.marylandpdlquestions@maryland.gov.

Contact: Paul Holly (410) 767-5395
[13-21-23]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: 1915(i) State Plan Amendment for Children, Youth and Families

Add'l. Info: The Secretary of Health and Mental Hygiene is proposing to apply for a 1915(i) State Plan Amendment (SPA). Over the past several years, Maryland has operated a special CMS demonstration project known locally as the Residential Treatment Center (RTC) Waiver. This time-limited demonstration project used a special authority granted by the federal government under Section 1915(c) of the

Social Security Act to provide home and community-based services for children and youth with emotional disturbances and their families. The demonstration project has now effectively reached its statutory end. In order to sustain and refine the approach undertaken in the initial CMS Demonstration Project, Maryland intends to apply for a 1915(i) State Plan Amendment (SPA) to serve a similar, but not identical, population of youth and families as prescribed by the federal government. The service mix proposed is also similar to the initial demonstration, but has been refined and enriched, based on lessons learned from the process of implementing the original project. In addition to the full range of Medicaid somatic and behavioral health benefits available to all eligible individuals, participants enrolled in the proposed 1915(i) SPA will have access to a number of additional specialized services if they meet applicable medical necessity criteria. These specialized services and the proposed approach under which they will operate are described in the application.

The full draft proposal can be found on the DHMH website using the following link:

[http://dhmh.maryland.gov/bhd/SitePages/1915\(i\)%20State%20Plan%20Amendment%20for%20Children%20Youth%20and%20Families.aspx](http://dhmh.maryland.gov/bhd/SitePages/1915(i)%20State%20Plan%20Amendment%20for%20Children%20Youth%20and%20Families.aspx)

The proposed effective date to begin 1915(i) services is July 1, 2014. The approximate number of individuals served under this waiver is estimated at 200 per year beginning FY 15.

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

Contact: Rebecca Frechard (410) 767-1750

[13-21-30]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Telemedicine Public Notice

Add'l. Info: Maryland Medical Assistance Telemedicine Program Implementation Effective October 1, 2013, the Maryland Medical Assistance Program (the Program) will reimburse approved providers for services rendered to Program participants via telemedicine.

The Secretary of Health and Mental Hygiene has approved provider reimbursement for services rendered to Program participants via telemedicine. The Program will implement two telemedicine service programs — the Rural Access Telemedicine Program and the Cardiovascular Disease and Stroke Telemedicine Program.

To enroll in either telemedicine program, eligible providers must apply through the Department using the appropriate application (addendum) for either the Rural Access Telemedicine or the Cardiovascular and Stroke Telemedicine Program. Both provider addenda are available on the new Telemedicine page on the Maryland Medicaid Provider Information website at:

<https://mmcp.dhmh.maryland.gov/SitePages/Provider%20Information.aspx>.

Copies of the Telemedicine Program Regulations are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Kale Sweeney, Office of Health Services, DHMH, 201 W. Preston St., Rm. 214, Baltimore, MD 21201, or fax to (410) 333-5620 or call (410) 767-1487, or email to dhmh.telemedicineinfo@maryland.gov.

Contact: Kale Sweeney (410) 767-1487
[13-21-43]

BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

Subject: Public Meeting

Date and Time: November 13, 2013, 10 a.m. — 12:30 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: John Papavasiliou (410) 230-6160

[13-21-05]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Meeting

Date and Time: October 29, 2013, 10 a.m. — 12 p.m.

Place: Maryland Insurance Administration, 200 St. Paul Pl., 22nd Fl., Francis Scott Key Conf. Rm., Baltimore, MD

Add'l. Info: Two advisory boards, charged with assisting the Insurance Commissioner in reviewing continuing education courses, examinations, and other matters relating to the education and qualification of insurance producers, will hold quarterly public meetings. Maryland Insurance Commissioner Therese M. Goldsmith

earlier this year appointed members, all volunteers, to serve on the Life and Health Producer Licensing Advisory Board and the Property and Casualty Producer Licensing Advisory Board. Under Insurance Article, §10-110, Annotated Code of Maryland, the Insurance Commissioner has the authority to appoint board members to 4-year terms.

Please visit our website, www.mdinsurance.state.md.us, to sign up for eNotices and receive specific information related to producer licensing, including notifications of quarterly scheduled meetings. In addition meeting announcements will be listed on the MIA website and in the Maryland Register. For more information or to apply to serve on one of the boards contact Shelley Taylor.

Contact: Shelley Taylor (410) 468-2442

[13-21-18]

BOARD OF CERTIFIED INTERIOR DESIGNERS

Subject: Public Meeting

Date and Time: October 28, 2013, 2 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Add'l. Info: Public hearing will be convened at 2:30 p.m. to hear comments from the public regarding proposed certificate fee increase.

Contact: Pamela J. Edwards (410) 230-6262

[13-21-48]

FACILITIES ADVISORY BOARD— JUVENILE SERVICES

Subject: Public Meeting

Date and Time: November 19, 2013, 6 — 8 p.m.

Place: Western Maryland Children's Center (WMCC), 18420 Roxbury Rd., Hagerstown, MD

Add'l. Info: Quarterly Facility Advisory Board meeting

Contact: Mark Bishop (301) 745-6071

[13-21-25]

FACILITIES ADVISORY BOARD — JUVENILE SERVICES

Subject: Public Meeting

Date and Time: December 5, 2013, 4:30 — 6 p.m.

Place: Alfred D. Noyes Center, 9925 Blackwell Rd., Rockville, MD

Add'l. Info: Alfred D. Noyes Center Facility Advisory Board meeting

Contact: Antoinette McLeod (301) 315-1610

[13-21-24]

STATE ADVISORY BOARD FOR JUVENILE SERVICES

Subject: Public Meeting

Date and Time: November 19, 2013, 2 — 4 p.m.

Place: 49 Old Solomons Island Rd., Ste. 300, Annapolis, MD

Contact: Tim Gilbert (410) 230-3488

[13-21-51]

BOARD FOR PROFESSIONAL LAND SURVEYORS

Subject: Public Meeting

Date and Time: October 31, 2013, 10 a.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Pamela J. Edwards (410) 230-6262

[13-21-49]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting

Date and Time: November 5, 2013, 3 — 5 p.m.

Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD

Add'l. Info: Telemedicine Technology Solutions and Standards Advisory Group

Contact: Christine Karayinopoulos (410) 764-3444

[13-21-20]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting

Date and Time: November 21, 2013, 1 p.m.

Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD

Contact: Valerie Wooding (410) 764-3460

[13-21-03]

MARYLAND HEALTH CARE COMMISSION

Subject: Notice of Receipt of Application

Add'l. Info: On September 30, 2013, the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by Seasons Hospice & Palliative Care of Maryland, Inc. — Matter No. 13-24-2346 — Establishment of a 12-bed inpatient hospice unit in currently vacant space at Sinai Hospital of Baltimore. Proposed Cost: \$70,000.

The MHCC shall review the application under Health-General Code Article, §9-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter No. listed above in any correspondence on the application.

A copy of the application is available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Deputy Director, Center for Health Care Facilities Planning & Development, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Ruby Potter (410) 764-3276

[13-21-44]

MARYLAND HEALTH CARE COMMISSION

Subject: Notice of Receipt of Application

Add'l. Info: On October 4, 2013, the Maryland Health Care Commission (MHCC) received five Certificate of Need applications submitted by:

Prince George's Post Acute Care, LLC — Matter No. 13-16-2347 — Construction of a new 150 bed comprehensive care facility to be located at 9800 Apollo Drive, Upper Marlboro, Prince George's County. Proposed Cost: \$17,160,552.

Blue Heron Nursing & Rehabilitation Center — Matter No. 13-18-2348 — Construction of a new 140 bed comprehensive care facility to be located at 20877 Point Lookout Road, Callaway, St. Mary's County. Proposed Cost: \$16,165,000.

Washington Adventist Hospital — Matter No. 13-15-2349 — Relocation and construction of a new 201 bed hospital in the White Oak area of Silver Spring to be located at 12100 Plum Orchard Drive, Silver Spring, Montgomery County. Behavioral health services, including 40 acute psychiatric beds, will remain in renovated space inside the current Washington Adventist Hospital site located in Takoma Park, Montgomery County. Proposed Cost: \$373,035,900.

MedStar Southern Maryland Hospital Center — Matter No. 13-16-2450 — New construction and renovation to modernize and enhance the Intensive Care Unit, the Emergency Department, the operating rooms and associated pre- and post-surgical care units, Prince George's County. Proposed Cost: \$126,380,662.

Prince George's Regional Medical Center — Matter No. 13-16-2351 — Relocation and construction of a new 231 bed hospital to be located at The Boulevard

GENERAL NOTICES

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at the Capital Center, Largo, Prince George's County. Proposed Cost: \$764,500,000.

The MHCC shall review the applications 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 applications. All further notices of proceedings on the applications will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter Nos. listed above in any correspondence on the applications. A copy of the applications is available, for review, in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Deputy Director, Center for Health Care Facilities Planning & Development, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Ruby Potter (410) 764-3276 [13-21-50]

OFFICE OF THE CHIEF MEDICAL EXAMINER

Subject: Public Meeting
Date and Time: November 7, 2013, 10 — 11:30 a.m.
Place: 900 W. Baltimore St., Baltimore, MD
Contact: Bruce Goldfarb (410) 333-3225 [13-21-38]

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Subject: Public Meeting
Date and Time: November 15, 2013, 8:30 a.m. — 2 p.m.
Place: Spring Grove Hospital Center, 55 Wade Ave., Catonsville, MD
Add'l. Info: Health Occupations Article, Title 10, Annotated Code of Maryland, and COMAR 10.46 amendments, additions, and revisions, including fee changes, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session. Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 1-800-735-2255.
Contact: Marilyn Pinkney (410) 402-8556 [13-21-09]

PRINCE GEORGE'S COUNTY JUVENILE COURT AND SCHOOL SAFETY WORKGROUP

Subject: Public Meeting
Date and Time: October 28, 2013, 10 a.m. — 12 p.m.
Place: Largo Government Center, 9201 Basil Ct., Penthouse, Rm. 500, Lake Arbor, MD
Add'l. Info: H.B. 1338 of 2013
Contact: Tim Gilbert (410) 627-5318 [13-21-07]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting
Date and Time: November 14, 2013, 1 p.m.
Place: 4201 Patterson Ave., Rm. 100, Baltimore, MD
Contact: Sheri Henderson (410) 764-4785 [13-21-12]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting
Date and Time: December 12, 2013, 1 p.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Sheri Henderson (410) 764-4785 [13-20-15]

REAL ESTATE COMMISSION

Subject: Public Meeting
Date and Time: November 20, 2013, 10:30 a.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patricia Hannon (410) 230-6199 [13-21-11]

REAL ESTATE COMMISSION

Subject: Public Hearing
Date and Time: November 20, 2013, 12:30 p.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patricia Hannon (410) 230-6199 [13-21-12]

DIVISION OF REHABILITATION SERVICES/MARYLAND STATE REHABILITATION COUNCIL

Subject: Public Meeting
Date and Time: November 6, 2013, 3 — 6 p.m.
Place: Workforce and Technology Center, 2301 Argonne Dr., Rm. T-130, Baltimore, MD
Add'l. Info: For more information please call Polly Huston, 410-554-9437, phuston@dors.state.md.us.
Contact: Polly Huston (410) 554-9437 [13-21-40]

RETIREMENT AND PENSION SYSTEM — BOARD OF TRUSTEES

Subject: Public Meeting
Date and Time: November 19, 2013, 10 a.m.
Place: 120 E. Baltimore St., 16th Fl. Boardroom, Baltimore, MD
Add'l. Info: Meeting date, time, and location are subject to change. Anyone interested in attending should contact the Retirement Agency for confirmation. Please note that the meeting may include a closed session. Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 410-625-5609 or 1-800-735-2258 TTY.
Contact: Angie Jenkins (410) 625-5609 [13-21-10]

SEXUAL OFFENDER ADVISORY BOARD

Subject: Public Meeting
Date and Time: November 15, 2013, 1 — 3 p.m.
Place: Patuxent Institute Roll Call Room, Jessup, MD
Add'l. Info: 7555 Waterloo Rd., Jessup, Maryland 20794, Phone: (410) 799-3400
Contact: Sherry R. Bailey (410) 585-3655 [13-21-27]

BOARD OF SOCIAL WORK EXAMINERS

Subject: Public Meeting
Date and Time: November 8, 2013, 11 a.m. — 3 p.m.
Place: Metro Office Bldg., 4201 Patterson Ave., Baltimore, MD
Add'l. Info: The Board may discuss/vote on proposed regulations. A portion of the meeting may be held in closed session.
Contact: James T. Mellow (410) 764-4722 [13-21-29]

**STATE BOARD OF INDIVIDUAL TAX
PREPARERS**

Subject: Public Meeting

Date and Time: November 18, 2013, 1 —
5 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf.
Rm., Baltimore, MD

Contact: Douglas Blackstone (410) 230-
6244

[13-21-17]

**BOARD OF WATERWORKS AND
WASTE SYSTEMS OPERATORS**

Subject: Public Meeting

Date and Time: November 21, 2013, 10
a.m. — 4 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) 537-3167

[13-21-01]

BOARD OF WELL DRILLERS

Subject: Public Meeting

Date and Time: November 20, 2013, 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

[13-21-02]

**WORKERS' COMPENSATION
COMMISSION**

Subject: Public Meeting

Date and Time: November 7, 2013, 9 —
11 a.m.

Place: 10 E. Baltimore St., Baltimore, MD

Add'l. Info: Portions of this meeting may
be held in closed session.

Contact: Amy S. Lackington (410) 864-
5302

[13-21-13]

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Title 18	Assessments and Taxation	\$28	\$18	_____	_____
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Title 20	Public Service Commission	\$64	\$42	_____	_____
Title 21	State Procurement Regulations	\$65	\$42	_____	_____
Title 22	State Retirement and Pension System	\$33	\$18	_____	_____
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### Title 10

Department of Health and Mental Hygiene: Part & Subtitles

#### Part 1

- 01 Procedures
- 02 Division of Reimbursements
- 03 Health Statistics
- 04 Fiscal
- 05 Freestanding Ambulatory Care Facilities
- 06 Diseases
- 07 Hospitals
- 08 Health Facilities Grants

#### Part 2

- 09 Medical Care Programs

#### Part 3

- 10 Laboratories
- 11 Maternal and Child Health
- 12 Adult Health
- 13 Drugs
- 14 Cancer Control
- 15 Food
- 16 Housing
- 17 Sanitation
- 18 Human Immunodeficiency Virus (HIV) Infection and  
Acquired Immunodeficiency Syndrome (AIDS)
- 19 Dangerous Devices and Substances
- 20 Kidney Disease Program
- 21 Mental Hygiene Regulations
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#### Part 4

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- 41 Board of Examiners for Audiologists, Hearing Aid  
Dispensers, and Speech-Language Pathologists
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- 43 Board of Chiropractic and Massage Therapy Examiners
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- 51 Forensic Laboratories
- 52 Preventive Medicine
- 53 Board of Nursing—Electrology Practice Committee
- 54 Special Supplemental Nutrition Program for Women,  
Infants, and Children (WIC)
- 55 State Board of Spinal Cord Injury Research
- 56 Board of Dietetic Practice
- 57 Board for Certification of Residential Child Care Program  
Professionals
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- 60 Board of Environmental Health Specialists

### Title 11

Department of Transportation – Volume & Subtitles

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  - 02 Transportation Service Human Resources System
  - 03 Maryland Aviation Administration
  - 04 State Highway Administration
  - 05 Maryland Port Administration
  - 06 Mass Transit Administration
  - 07 Maryland Transportation Authority
  - 08 State Railroad Administration
  - 09 Vacant
  - 10 Vacant
- #### Volume 2 and Volume 3
- 11 Motor Vehicle Administration – Administrative Procedures
  - 12 MVA – Licensing of Businesses and Occupations
  - 13 MVA – Vehicle Equipment
  - 14 MVA – Vehicle Inspections
  - 15 MVA – Vehicle Registration
  - 16 MVA – Vehicle Operations
  - 17 MVA – Driver Licensing and Identification Documents
  - 18 MVA – Financial Responsibility Requirements
  - 19 MVA – School Vehicles
  - 20 MVA – Motorcycle Safety Program
  - 21 MVA – Commercial Motor Vehicles
  - 22 MVA – Preventive Maintenance Program
  - 23 MVA – Drivers' Schools, Instructors, Driver Education Program

### Title 26

Department of the Environment – Part & Subtitles

#### Part 1

- 01 General Provisions
- 02 Occupational, Industrial, and Residential Hazards
- 03 Water Supply, Sewerage, Solid Waste, and Pollution Control  
Planning and Funding
- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
- 05 Board of Well Drillers
- 06 Waterworks and Waste Systems Operators
- 07 Board of Environmental Sanitarians

#### Part 2

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- 10 Oil Pollution and Tank Management
- 11 Air Quality
- 12 Radiation Management

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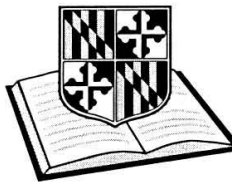
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