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# Maryland Register

Issue Date: October 14, 2016

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Volume 43 • Issue 21 • Pages 1155—1206

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Regulatory Review and  
Evaluation  
Regulations  
Errata  
Special Documents  
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before September 26, 2016, 5 p.m.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 26, 2016.

Brian Morris  
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 <http://www.dsd.state.md.us/PDF/CumulativeTable.pdf>. This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-260-3876.

### SUBSCRIPTION INFORMATION

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

### CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

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other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined.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

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

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

The Maryland Register is also available at [www.dsd.state.md.us](http://www.dsd.state.md.us).

For additional information, visit [www.dsd.state.md.us](http://www.dsd.state.md.us), Division of State Documents, or call us at (410) 974-2486 or 1 (800) 633-9657.

### Availability of Monthly List of Maryland Documents

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

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

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November 14***	October 24	November 2	October 31
November 28***	November 4	November 16	November 14
December 9**	November 18	November 30	November 28
December 23	December 5	December 14	December 12
January 6**	December 19	December 28	December 23
January 20**	December 30	January 11	January 9

\* 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](http://www.dsd.state.md.us).

### Table of Pending Proposals

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

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 13B.08.14.01—.15 • 43:6 Md. R. 421 (3-18-16)  
 13B.08.15.01—.16 • 43:9 Md. R. 546 (4-29-16)

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14.06.03.05,.06 • 42:26 Md. R. 1638 (12-28-15)  
 14.35.01.01,.02 • 43:18 Md. R. 1039 (9-2-16)  
 14.35.07 • 43:19 Md. R. 1092 (9-16-16) (err)  
 14.35.07.01—.21 • 43:18 Md. R. 1039 (9-2-16)  
 14.36.04.01,.03—.08 • 43:4 Md. R. 342 (2-19-16)

**15 DEPARTMENT OF AGRICULTURE**

15.05.01.02 • 43:19 Md. R. 1088 (9-16-16)  
 15.06.04.06 • 43:21 Md. R. 1171 (10-14-16)

**19A STATE ETHICS COMMISSION**

19A.01.01.02,.04 • 43:20 Md. R. 1140 (9-30-16)  
 19A.01.02.02,.04 • 43:20 Md. R. 1140 (9-30-16)  
 19A.01.03.02,.04 • 43:20 Md. R. 1140 (9-30-16)  
 19A.04.Appendices A and B • 43:20 Md. R. 1140 (9-30-16)  
 19A.04.01.03 • 43:20 Md. R. 1140 (9-30-16)  
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 19A.07.01.04,.06—.08 • 43:20 Md. R. 1140 (9-30-16)

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 21.02.01.04 • 43:21 Md. R. 1172 (10-14-16)  
 21.02.03.02,.03 • 43:21 Md. R. 1172 (10-14-16)  
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 21.05.12.01—.07 • 43:21 Md. R. 1172 (10-14-16)  
 21.06.07.09,.10 • 43:21 Md. R. 1172 (10-14-16)  
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 22.06.01.02,.04,.05 • 43:2 Md. R. 215 (1-22-16)  
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### 29 DEPARTMENT OF STATE POLICE

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30.01.02.01 • 43:16 Md. R. 930 (8-5-16) (ibr)

### 31 MARYLAND INSURANCE ADMINISTRATION

31.08.11.01,.02,.04,.05,.07 • 43:20 Md. R. 1145 (9-30-16)

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31.09.07.04 • 43:20 Md. R. 1147 (9-30-16)

31.13.01.04,.21 • 43:17 Md. R. 993 (8-19-16)

31.13.02.02—.04 • 43:17 Md. R. 993 (8-19-16)

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31.15.04.01—.07 • 43:1 Md. R. 76 (1-8-16)

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43:14 Md. R. 789 (7-8-16)

### 33 STATE BOARD OF ELECTIONS

33.01.01.01 • 43:4 Md. R. 345 (2-19-16)

33.05.04.05 • 43:4 Md. R. 346 (2-19-16)

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36.08.01.01,.02 • 43:17 Md. R. 997 (8-19-16)

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# The Judiciary

## COURT OF APPEALS OF MARYLAND

### DISCIPLINARY PROCEEDINGS

This is to certify that by an Order of the Court of Appeals dated September 22, 2016, **JING TAN**, 401 N. Washington Street, Suite 500, Rockville, MD 20850, a non-admitted attorney is excluded under Maryland Rule 19-742(g) from exercising the privilege of practicing law in this State for 60 days.

\* \* \* \* \*

This is to certify that by an Order of the Court of Appeals dated September 22, 2016, **ROBERT PAUL PRATZ**, 308 Crane Highway, NW, Glen Burnie, MD 21061 has been indefinitely suspended by consent with the right to reapply in one year, effective immediately, by and Order of the Court dated September 22, 2016 from the further practice of law in this State, and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 19-761).

\* \* \* \* \*

This is to certify that by an Order of the Court of Appeals dated September 27, 2016, **ABRAHAM ALLAN GERTNER**, 814 North Calvert Street, Baltimore, MD 21202, has been replaced upon the register of attorneys in the Court of Appeals as of September 27, 2016. Notice of this action is certified in accordance with Maryland Rule 19-752.

\* \* \* \* \*

This is to certify that by an Order of the Court of Appeals dated September 27, 2016, **SANFORD BRUCE JAFFE**, The Sanford Companies, Inc., 8600 Snowden River Parkway, Suite 207, Columbia, MD 21045, has been indefinitely suspended by consent, effective immediately, from the further practice of law in this State, and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 19-761).

\* \* \* \* \*

This is to certify that by an Order of this Court dated September 27, 2016 the resignation of **JAMES DORSEY WRIGHT**, 1310 Park Avenue, Baltimore, MD 21217, has been accepted and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 19-735(e))

[16-21-33]

# 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 32 BOARD OF PHYSICIANS

#### Regulatory Review and Evaluation Act: Health Occupations Boards — Comments Requested

In accordance with the Regulatory Review and Evaluation Act (RREA), State Government Article, §§10-130 — 10-139, the Department is required to review any current regulation that has not been newly adopted or comprehensively amended in the past 8 years, or that is not federally mandated.

The Health Occupations Boards (the Boards) are responsible for the COMAR subtitles listed below that are scheduled for RREA review this year. These regulations are being posted to invite public comment on the current regulations. Specifically, stakeholders are invited to review the regulations, provide comments and feedback that ensure the regulations are necessary, supported by statutory authority and judicial opinion, or are not otherwise obsolete or in need of amendments.

This posting is to assist the Boards in identifying interested stakeholders and to ensure participation in the review process.

#### The COMAR Regulations required to be reviewed:

- **10.31.01** Code of Conduct for Board Members and Investigators
- **10.31.02** Tax Compliance Regulations

All comments must be submitted by October 31, 2016 to Kristen Neville, Legislation and Regulations Specialist, Health Occupations Boards, 4201 Patterson Avenue, Baltimore, MD 21215 or by email at [kristen.neville@maryland.gov](mailto:kristen.neville@maryland.gov).

[16-21-20]

## Subtitle 34 BOARD OF PHARMACY

#### Notice of Regulatory Review and Evaluation

In accordance with the Regulatory Review and Evaluation Act, State Government Article, §§ 10-130-1—139, Annotated Code of Maryland, the Department of Health and Mental Hygiene (DHMH) is reviewing and evaluating certain regulations codified within Subtitle 34 of Title 10 of the Code of Maryland Regulations listed below. 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 COMAR Regulations being reviewed are:

- **10.34.02** Examination for Licensure and Professional Experience Programs
- **10.34.04** Transfer and Outsourcing of Prescriptions and Prescription Orders
- **10.34.16** Portable Drug Kits for Licensed Home Health Agencies, Hospices, and Home Infusion Providers Licensed as Residential Services Agencies
- **10.34.24** Record of Drug Inventory Acquisition
- **10.34.26** Patient Safety Improvement
- **10.34.27** Compelling Purpose Disclosure
- **10.34.31** Dispensing or Distributing at a Setting That Does Not Possess a Pharmacy Permit

Any comments should be submitted in writing and state with particularity the Chapter, Regulation and the review criteria that you believe have not been met as stated in COMAR. All comments received will be reviewed by the Board during its public Board Meeting.

Any interested parties or stake holders wishing to comment may make a written request to Maryland State Board of Pharmacy, 4201 Patterson Ave, Room 506. Baltimore, MD 21215, Attn: Brian Logan.

Comments must be submitted by October 28, 2016.

[16-21-13]

# 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 18 BOATING—SPEED LIMITS AND OPERATION OF VESSELS

#### 08.18.10 Eastern Bay

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

#### Notice of Final Action

[16-210-F]

On October 4, 2016, the Secretary of the Maryland Department of Natural Resources adopted amendments to Regulation .02 under **COMAR 08.18.10 Eastern Bay**. This action, which was proposed for adoption in 43:17 Md. R. 973—974 (August 19, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

MARK J. BELTON  
Secretary of Natural Resources

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

### Subtitle 10 RACING COMMISSION

#### Notice of Final Action

[16-149-F]

On September 20, 2016, the Maryland Racing Commission adopted amendments to:

(1) Regulation .25 under **COMAR 09.10.01 Thoroughbred Rules**; and

(2) Regulation .19 under **COMAR 09.10.02 Harness Racing**.

This action, which was proposed for adoption in 43:13 Md. R. 720—721 (June 24, 2016), has been adopted as proposed.

**Effective Date: January 1, 2017.**

J. MICHAEL HOPKINS  
Executive Director

## Subtitle 10 RACING COMMISSION

### 09.10.03 Prohibited Acts

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

#### Notice of Final Action

[16-131-F]

On September 20, 2016, the Maryland Racing Commission adopted amendments to Regulation .01-1 under **COMAR 09.10.03 Prohibited Acts**. This action, which was proposed for adoption in 43:12 Md. R. 681 (June 10, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

J. MICHAEL HOPKINS  
Executive Director

## Subtitle 21 BOARD OF ARCHITECTS

### 09.21.04 Fees

Authority: Business Regulation Article, §§2-106.1 and 2-106.2; Business Occupations and Professions Article, §§3-208, 3-209, 3-304, 3-307, and 3-309.2, Annotated Code of Maryland

#### Notice of Final Action

[16-147-F]

On September 28, 2016, the Board of Architects adopted amendments to Regulation .03 under **COMAR 09.21.04 Fees**. This action, which was proposed for adoption in 43:13 Md. R. 723—724 (June 24, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

DIANE CHO  
Chair  
State Board of Architects

## Subtitle 22 BOARD OF COSMETOLOGISTS

### 09.22.01 General Regulations

Authority: Business Occupations and Professions Article, §§5-205 and 5-206, Annotated Code of Maryland

#### Notice of Final Action

[16-150-F]

On October 3, 2016, the Board of Cosmetologists adopted amendments to Regulation .13 under **COMAR 09.22.01 General Regulations**. This action, which was proposed for adoption in 43:13 Md. R. 724 (June 24, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

SHIRLEY LEACH  
Executive Director  
Board of Cosmetologists

## Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### Notice of Final Action

[16-209-F]

On October 4, 2016, the Secretary of Health and Mental Hygiene adopted:

(1) Amendments to Regulation **.10** under **COMAR 10.09.08 Freestanding Clinics**; and

(2) Amendments to Regulations **.01**, **.02**, **.04—09**, the repeal of existing Regulation **.03**, new Regulation **.03**, the repeal of existing Regulation **.10**, and amendments to and the recodification of Regulations **.11** and **.12** to be Regulations **.10** and **.11**, respectively, under **COMAR 10.09.49 Telehealth Services**.

This action, which was proposed for adoption in 43:17 Md. R. 975—977 (August 19, 2016), has been adopted with the nonsubstantive changes shown below.

**Effective Date: October 24, 2016.**

#### 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:

Authority: Citations have been added to the authority line of COMAR 10.09.49 to reflect the applicable bills, 2016 HB 886 (Ch. 367) and SB 242 (Ch. 366).

VAN T. MITCHELL

Secretary of Health and Mental Hygiene

### Subtitle 09 MEDICAL CARE PROGRAMS

#### Notice of Final Action

[16-217-F]

On October 4, 2016, the Secretary of Health and Mental Hygiene adopted amendments to:

(1) Regulation **.09** under **COMAR 10.09.33 Health Homes**;

(2) Regulation **.08** under **COMAR 10.09.80 Community-Based Substance Use Disorder Services**; and

(3) Regulations **.10—14** under **COMAR 10.09.89 1915(i) Intensive Behavioral Health Services for Children, Youth, and Families**.

This action, which was proposed for adoption in 43:17 Md. R. 977—978 (August 19, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

VAN T. MITCHELL

Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Nursing Services for Individuals Younger than 21 Years Old

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

#### Notice of Final Action

[16-208-F]

On October 4, 2016, the Secretary of Health and Mental Hygiene adopted amendments to Regulation **.07** under **COMAR 10.09.53 Early and Periodic Screening, Diagnosis, and Treatment: Nursing Services for Individuals Younger than 21 Years Old**. This action, which was proposed for adoption in 43:17 Md. R. 979 (August 19, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

VAN T. MITCHELL

Secretary of Health and Mental Hygiene

## Subtitle 22 DEVELOPMENTAL DISABILITIES

### 10.22.14 Low Intensity Support Services (LISS) Program

Authority: Health-General Article, §§7-703, 7-708, 7-717, and 7-904,  
Annotated Code of Maryland

#### Notice of Final Action

[15-158-F]

On September 19, 2016, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.03** and **.05—10** and new Regulation **.11** under **COMAR 10.22.14 Low Intensity Support Services (LISS) Program**. This action, which was proposed for adoption in 42:21 Md. R. 1317—1321 (October 16, 2015), has been adopted with the nonsubstantive changes shown below.

**Effective Date: October 24, 2016.**

#### Attorney General's Certification

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

Regulation **.03B(4)—(6)** and Regulation **.05A(2)(a)** and **(b)** and **(3)(a)—(c)**: The current term “disabling condition” is not defined or used anywhere else in the DDA regulations, nor in the enabling statutes. However, the term is intended to mean a “disability,” which is defined in statute. The two terms have the same meaning. Substituting the defined and understood term for the undefined term with the same meaning it is not a substantive change.

Regulation **.05A(3)(d)**: The language defining the time limit for the IEPs was confusing. The revision clarifies that time limit.

Regulation **.07A(3)**: The child care regulations have been changed to move the relevant provisions to the regulations cited in the proposed LISS regulations. As the substance of the child care regulations has not changed, the correction to the citations is not a substantive change.

**.03 Definitions.**

A. (proposed text unchanged)

B. Terms Defined.

(1)—(3) (proposed text unchanged)

(4) “*Child care*” means the care or supervision for an individual, younger than 21 years old, who has a [[disabling condition]] disability or other emotional, developmental, physical, educational, or medical need necessitating child care when the individual’s parent or legal guardian gives the individual’s care over to another for some portion of a 24-hour day as a supplement to the parent’s or guardian’s primary care of the child.

(5) “*Day care*” means the care provided to an individual 21 years old or older, who has a [[disabling condition]] disability or other emotional, developmental, physical, educational, or medical need necessitating care from an adult day care center.

(6) “*Eligible [[diagnosis]] disability*” means the individual has a severe chronic disability that:

(a)—(b) (proposed text unchanged)

(7)—(17) (proposed text unchanged)

**.05 Application and Eligibility.**

A. An individual shall submit to the Department:

(1) (proposed text unchanged)

(2) For applicants younger than 21 years old, one of the following, demonstrating that the applicant meets the eligibility requirements for LISS:

(a) A finalized Individual Educational Program (IEP) from the current calendar year that identifies an eligible [[diagnosis]] disability and that is in effect as of the date of the LISS application; or

(b) A statement written by a licensed physician, confirming that the individual has an eligible [[diagnosis]] disability;

(3) For applicants 21 years old or older, one of the following, demonstrating that the applicant meets the eligibility requirements for LISS:

(a) A statement written by a licensed physician within the last 3 years, confirming that the individual has an eligible [[diagnosis]] disability;

(b) A psychological evaluation completed by a licensed professional within the last 3 years, confirming that the individual has an eligible [[diagnosis]] disability;

(c) An evaluation completed by an Occupational Therapist, a Division of Rehabilitation Services evaluator, or another licensed professional within the last 3 years, confirming that the individual has an eligible [[diagnosis]] disability; or

(d) A finalized IEP dated [[no later than]] within 3 years after the date on which the applicant [[left]] exited the school system, confirming that the individual has an eligible [[diagnosis]] disability; and

(4) (proposed text unchanged)

B.—C. (proposed text unchanged)

**.07 Covered Services.**

A. Services include supports involving:

(1)—(2) (proposed text unchanged)

(3) Child care that is provided in accordance with [[COMAR 13A.16.01.02 and COMAR 13A.14.02]] COMAR 13A.15, 13A.16, and 13A.18;

(4)—(22) (proposed text unchanged)

B.—E. (proposed text unchanged)

VAN T. MITCHELL  
Secretary of Health and Mental Hygiene

## Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

### 10.29.01 Hearing Procedures

Authority: Health Occupations Article, §§1-606, 7-205(a)(1) and (c), 7-316, and 7-604, Annotated Code of Maryland

#### Notice of Final Action

[15-396-F]

On October 4, 2016, the Secretary of Health and Mental Hygiene adopted the repeal of existing Regulation .01, new Regulations .01 and .10, and the recodification of existing Regulations .10—.12 to be Regulations .11—.13 under **COMAR 10.29.01 Hearing Procedures**. This action, which was proposed for adoption in 42:25 Md. R. 1552—1556 (December 11, 2015), has been adopted as proposed.

**Effective Date: October 24, 2016.**

VAN T. MITCHELL  
Secretary of Health and Mental Hygiene

## Title 11 DEPARTMENT OF TRANSPORTATION

### Subtitle 15 MOTOR VEHICLE ADMINISTRATION—VEHICLE REGISTRATION

#### 11.15.06 Historic Motor Vehicles

Authority: Transportation Article, §§12-104(b) and 13-936, Annotated Code of Maryland

#### Notice of Final Action

[16-212-F]

On October 4, 2016, the Administrator of the Motor Vehicle Administration adopted the repeal of Regulations .01—.06 under **COMAR 11.15.06 Historic Motor Vehicles**. This action, which was proposed for adoption in 43:17 Md. R. 979—980 (August 19, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

CHRISTINE NIZER  
Administrator

**Subtitle 21 MOTOR VEHICLE  
ADMINISTRATION—COMMERCIAL  
MOTOR VEHICLES**

**11.21.01 Motor Carrier Safety**

Authority: Transportation Article, §§12-104(b), 16-820, 25-111, and 25-111.1(a), Annotated Code of Maryland

**Notice of Final Action**

[16-213-F]

On October 4, 2016, the Administrator of the Motor Vehicle Administration adopted the repeal of Regulation .05 under **COMAR 11.21.01 Motor Carrier Safety**. This action, which was proposed for adoption in 43:17 Md. R. 980 (August 19, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

CHRISTINE NIZER  
Administrator

**Title 12  
DEPARTMENT OF PUBLIC  
SAFETY AND  
CORRECTIONAL SERVICES**

**Subtitle 08 PAROLE COMMISSION**

**12.08.01 General Regulations**

Authority: Correctional Services Article, §7-207, Annotated Code of Maryland

**Notice of Final Action**

[16-197-F]

On September 25, 2016, the Secretary of Public Safety and Correctional Services, in cooperation with the Parole Commission, adopted amendments to Regulations .17 and .18 under **COMAR 12.08.01 General Regulations**. This action, which was proposed for adoption in 43:16 Md. R. 924—925 (August 5, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

STEPHEN T. MOYER  
Secretary

**Title 13A  
STATE BOARD OF  
EDUCATION**

**Subtitle 04 SPECIFIC SUBJECTS**

**13A.04.11 Programs in World Languages**

Authority: Education Article, §§2-205(h) and 4-111, Annotated Code of Maryland

**Notice of Final Action**

[16-176-F]

On September 27, 2016, the Maryland State Board of Education adopted amendments to Regulation .01 under **COMAR 13A.04.11 Programs in World Languages**. This action, which was proposed for adoption in 43:14 Md. R. 787—788 (July 8, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

KAREN B. SALMON, Ph.D.  
State Superintendent of Schools

**Subtitle 05 SPECIAL INSTRUCTIONAL  
PROGRAMS**

**13A.05.07 Programs for English Learners**

Authority: Education Article, §§2-205 and 4-111, Annotated Code of Maryland

**Notice of Final Action**

[16-193-F]

On September 27, 2016, the Maryland State Board of Education adopted amendments to Regulations .01—.05 under **COMAR 13A.05.07 Programs for English Learners**. This action, which was proposed for adoption in 43:16 Md. R. 925—926 (August 5, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

KAREN B. SALMON, Ph.D.  
State Superintendent of Schools

# Title 14

## INDEPENDENT AGENCIES

### Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY

#### Notice of Final Action

[16-216-F]

On October 4, 2016, the Maryland State Commission on Criminal Sentencing Policy adopted amendments to:

- (1) Regulations **.01**, **.02**, and **.10** under **COMAR 14.22.01 General Regulations**; and
- (2) Regulations **.01** and **.02** under **COMAR 14.22.02 Criminal Offenses and Seriousness Categories**.

This action, which was proposed for adoption in 43:17 Md. R. 981—992 (August 19, 2016), has been adopted as proposed.

**Effective Date: November 1, 2016.**

DAVID SOULE  
Executive Director

# Title 31

## MARYLAND INSURANCE ADMINISTRATION

### Subtitle 09 LIFE INSURANCE AND ANNUITIES

#### 31.09.06 Notice of Nonforfeiture Provisions in Lapsed Life Policies

Authority: Insurance Article, §2-109 and Title 16, Subtitle 3, Annotated Code of Maryland

#### Notice of Final Action

[16-191-F]

On September 30, 2016, the Insurance Commissioner adopted amendments to Regulation **.01** under **COMAR 31.09.06 Notice of Nonforfeiture Provisions in Lapsed Life Policies**. This action, which was proposed for adoption in 43:16 Md. R. 931 (August 5, 2016), has been adopted as proposed.

**Effective Date: October 24, 2016.**

ALFRED W. REDMER, JR.  
Insurance Commissioner

# Proposed Action on Regulations

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

## Symbol Key

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

## Promulgation of Regulations

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

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

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

## Title 09

# DEPARTMENT OF LABOR, LICENSING, AND REGULATION

## Subtitle 35 ELEVATOR SAFETY REVIEW BOARD

### 09.35.02 Qualifications

Authority: Public Safety Article, §§ 12-823(4), 12-826, and 12-827(c),  
Annotated Code of Maryland

#### Notice of Proposed Action

[16-264-P]

The Elevator Safety Review Board proposes to amend Regulations .02 and .03 under **COMAR 09.35.02 Qualifications**. This action was considered at a public meeting of the Board held on June 24, 2016, notice of which was given by publication on the Elevator Safety Review Board website <http://www.dllr.state.md.us/license/elev/> from May 23, 2016, through June 24, 2016, pursuant to General Provisions Article, §3-302, Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to eliminate the grandfathering provisions for licensure that expired in January of 2013; define the number of years of experience and education required for licensure as an elevator renovator mechanic; increase the number of years of experience and education for an elevator renovator contractor license; and eliminate an exam provision requirement for licensure as an elevator renovator contractor.

#### 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 Robin Bailey, Executive Director, Elevator Safety Review Board, 500 N. Calvert Street, Baltimore, MD 21202, or call 410-230-6160, or email to [robin.bailey@maryland.gov](mailto:robin.bailey@maryland.gov), or fax to 410-244-0977. Comments will be accepted through November 14, 2016. A public hearing has not been scheduled.

#### .02 Qualifications for an Elevator Renovator Mechanic's License.

[A. An applicant who applies for an elevator renovator mechanic's license on or before January 1, 2013, shall demonstrate to the Board a minimum of 3 years of relevant work experience in elevator renovation that is acceptable to the Board.

B.] An applicant who applies for an elevator renovator mechanic's license [after January 1, 2013,] shall:

[(1)] A. Demonstrate to the Board an acceptable combination of 3 years relevant work experience and education; and

[(2)] B. (text unchanged)

#### .03 Qualifications for an Elevator Renovator Contractor's License.

[A.] An applicant who applies for an elevator renovator contractor's license [on or before January 1, 2013,] shall demonstrate to the Board a minimum of [3] 5 years of relevant work experience in elevator renovation that is acceptable to the Board.

[B. An applicant who applies for an elevator renovator contractor's license pursuant to §A of this regulation, shall have until January 1, 2013, to have at least one of its employees or responsible management personnel pass an exam approved by the Board.

C. An applicant who applies for an elevator renovator contractor's license after January 1, 2013, shall:

(1) Demonstrate to the Board an acceptable combination of relevant work experience and education; and



(2) Pass an exam approved by the Board.]

ED M. HORD  
Chairman  
Elevator Safety Review Board

# Title 15 DEPARTMENT OF AGRICULTURE

## Subtitle 06 PLANT PEST CONTROL

### 15.06.04 Regulation of Invasive Plants

Authority: Agriculture Article, §9.5-301, Annotated Code of Maryland

#### Notice of Proposed Action

[16-260-P]

The Secretary of Agriculture proposes to amend Regulation .06 under COMAR 15.06.04 Regulation of Invasive Plants.

#### Statement of Purpose

The purpose of this action is to include two plants to the existing list of tier 1 invasive plants and two to the list of tier 2 invasive plants in accordance with the risk assessment protocol. This action further defines the procedure for the classification or the declassification of a tier 1 invasive plant or a tier 2 invasive plant. This action also clarifies that landscapers who plant or supply for planting a tier 2 invasive plant must provide their customers a list of tier 2 invasive plants.

#### 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 Kimberly Rice, Program Manager, Plant Protection and Weed Management, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, MD 21401, or call (410) 841-5920, or email to kimberly.rice@maryland.gov, or fax to (410) 841-5835. Comments will be accepted through November 14, 2016. A public hearing has not been scheduled.

#### .06 Tier 1 and Tier 2 Invasive Plants.

A. The following plants are classified as Tier 1 invasive plants upon adoption of this regulation (see Department’s website for adoption date [<http://mda.maryland.gov/Pages/Proposed-Regulations.aspx>]) [http://mda.maryland.gov/plants-pests/Pages/maryland invasive plants prevention and control.aspx](http://mda.maryland.gov/plants-pests/Pages/maryland%20invasive%20plants%20prevention%20and%20control.aspx):

- (1) (text unchanged)
- (2) Geranium lucidum (shining cranesbill); [and]
- (3) Iris pseudacorus (yellow flag iris)[.];
- (4)Euonymus fortune (wintercreeper); and
- (5) Lonicera maackii (Amur honeysuckle).

B. (text unchanged)

C. The following plants are classified as Tier 2 invasive plants upon adoption of this regulation (see Department’s website for adoption date [<http://mda.maryland.gov/Pages/Proposed-Regulations.aspx>]) [http://mda.maryland.gov/plants-pests/Pages/maryland invasive plants prevention and control.aspx](http://mda.maryland.gov/plants-pests/Pages/maryland%20invasive%20plants%20prevention%20and%20control.aspx):

- (1) — (3) (text unchanged)
- (4) Wisteria floribunda (Japanese wisteria); [and]
- (5) [Wisteria] Wisteria xormosa (floribunda x sinensis hybrids)[.];
- (6) Cytisus scoparius, (Scotch broom); and
- (7) Nandina domestica (heavenly bamboo).

D. (text unchanged)

E. Procedures for Classification or Declassification of an Invasive Plant as a Tier 1 Invasive Plant or Tier 2 Invasive Plant.

(1) A person who requests the classification or declassification of a plant as a Tier 1 or Tier 2 invasive plant, shall submit a written request to the Secretary that includes the name of the requestor, contact information, scientific name of the plant, and a justification for the request.

(2) Upon receipt of the request the Secretary, in consultation with the Invasive Plant Advisory Committee, shall make a determination, considering:

(a) Whether the plant is or could potentially be sold or marketed in the State;

(b) If the plant has already been assessed pursuant to Regulation .03 of this chapter, whether new, science-based information is available that could change the species’ tier ranking; and

(c) If the plant has not been assessed pursuant to Regulation .03 of this chapter, whether the justification for the request, including documented scientific evidence of economic, ecological, or environmental harm, or harm to human health, necessitates formal weed risk assessment.

(3) The Secretary shall notify the requestor of the final decision regarding the request.

F. Distribution of the List of Tier 2 Invasive Plants [by the Department to Licensed Nurseries, Plant Dealers, and Plant Brokers on an Annual Basis].

(1) — (2) (text unchanged)

(3) A person in the business of providing landscaping services who plants or supplies for planting a Tier 2 invasive plant shall provide to the customer requesting the service the list of Tier 2 invasive plants.

G. (text unchanged)

JOSEPH BARTENFELDER  
Secretary of Agriculture

# Title 21 STATE PROCUREMENT REGULATIONS

## Notice of Proposed Action [16-261-P]

The Board of Public Works proposes to:

- (1) Amend Regulation .01 under **COMAR 21.01.02 Terminology**;
- (2) Amend Regulation .04 under **COMAR 21.02.01 Board of Public Works**;
- (3) Amend Regulations .02 and .03 under **COMAR 21.02.03 Department of Budget and Management**;
- (4) Amend Regulation .03 under **COMAR 21.04.01 General Policies**;
- (5) Amend Regulation .01 under **COMAR 21.05.01 General Provisions**;
- (6) Amend Regulation .04 under **COMAR 21.05.05 Sole Source Procurement**;
- (7) Amend Regulations .04, .07, and .08 under **COMAR 21.05.08 Mandatory Written Solicitation Requirements**;
- (8) Adopt new Regulations .01—.07 under a new chapter, **COMAR 21.05.12 Procurement of Human, Social, Cultural, and Educational Services**.
- (9) Amend Regulations .09 and .10 under **COMAR 21.06.07 Bid and Contract Security/Bonds**;
- (10) Adopt new Regulations .01—.06 under a new chapter, **COMAR 21.06.09 Invoicing, Payment, and Interest on Late Payments**;
- (11) Amend Regulations .08, .18, .20, .25, and .26 under **COMAR 21.07.01 Mandatory Contract Provisions—All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03)**;
- (12) Amend Regulation .04 under **COMAR 21.07.02 Mandatory Construction Contract Clauses**;
- (13) Amend Regulation .09 under **COMAR 21.11.03 Minority Business Enterprise Policies**;
- (14) Amend Regulations .01 and .02 under **COMAR 21.11.09 Vending Facilities on Property Controlled by Department of General Services**;
- (15) Amend Regulations .02 and .04 under **COMAR 21.11.13 Veteran Owned Small Business Enterprises**;
- (16) Amend Regulations .10 and .10-1 under **COMAR 21.12.04 Department of General Services; A/E Services Exceeding \$200,000**;
- (17) Amend Regulation .01 under **COMAR 21.12.05 Department of General Services; A/E Services \$200,000 or Less**; and
- (18) Repeal existing Regulations .01—.07 under **COMAR 21.14.01 General Regulations**.

This action was considered at a Board of Public Works meeting held on July 27, 2016.

### Statement of Purpose

The purpose of this action is to: make corrections to outdated or invalid terminology, references, and typographical errors; clarify the scope or requirements of specific regulations to prevent inconsistent interpretations or applications of those regulations; make revisions to coincide with recent statutory changes; move the chapter for Procurement of Human, Social, Cultural, and Educational Services under Subtitle 5, Procurement Methods and Project Delivery Methods; standardize practices for power of attorney with respect to

bid bonds; clarify the counting of vendors certified as both Veteran-owned Small Business Enterprises (VSBE) and Minority Business Enterprises (MBE) towards MBE and VSBE goals; and the implement regulations for contract invoicing, payment, and interest on late payments.

### 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 Gabriel Gnall, Procurement Advisor, Board of Public Works, 80 Calvert Street, Annapolis, MD 21401, or call 410-260-7335, or email to gabriel.gnall@maryland.gov, or fax to 410-974-5240. Comments will be accepted through November 14, 2016. A public hearing has not been scheduled.

## Subtitle 01 GENERAL PROVISIONS

### 21.01.02 Terminology

Authority: State Finance and Procurement Article, §§11-101 and 12-101, Annotated Code of Maryland

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (34) (text unchanged)

(35) “Educational services” means services procured by the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing, and Regulation, [or] Juvenile [Justice] *Services*, [the Office for Individuals with] Disabilities, or [the Office on] Aging in order to provide training directly to third-party clients under a contract the primary purpose of which is the direct provision of educational services.

(36) — (46) (text unchanged)

(47) “Human services” means services procured by the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing, and Regulation, Juvenile [Justice] *Services*, *Disabilities*, or [the Office on] Aging in order to provide support, care, or shelter directly to third-party clients under a contract the primary purpose of which is the direct provision of these services.

(47-1) — (81) (text unchanged)

(82) “Social services” means services procured by the Departments of Health and Mental Hygiene, Human Resources, Labor, Licensing, and Regulation, Juvenile [Justice] *Services*, [the Office for Individuals with] Disabilities, or [the Office on] Aging in order to provide support, care, or shelter directly to third-party clients under a contract the primary purpose of which is the direct provision of social services.

(83) — (98) (text unchanged)

**Subtitle 02 STATE PROCUREMENT ORGANIZATION**

**21.02.01 Board of Public Works**

Authority: State Finance and Procurement Article, §§12-101, 12-107, 12-202, 12-203, 12-204, and 13-108; Education Article, §§14-204, 14-205, and 14-405; Article 41, §§4-104.1 and 4-104.2; Annotated Code of Maryland; Chapter 471, 1991 Laws of Maryland; Chapter 608, Acts of 1999

**.04 Delegation of Procurement and Contracting Authority.**

A. (text unchanged)

(1) The Board hereby delegates authority to the Secretary of Budget and Management for approval of the award of the following procurement contracts within the Department’s jurisdiction:

(a) — (b) (text unchanged)

(c) Contracts in the amount of \$100,000 or less resulting from sole source procurements submitted by using agencies, as permitted by Department of Budget and Management regulations approved by the Board; [and]

(d) Contracts in the amount of \$50,000 or less resulting from competitive procurement in which only one bid or offer was received[.]; and

(e) *Contracts in the amount of \$200,000 or less for rental vehicles supplied to using agencies, in accordance with COMAR 21.02.03.04*

(2) (text unchanged)

B. The Department of General Services. The Board hereby delegates authority to the Secretary of General Services for the approval and award of the following procurement contracts within the Department’s jurisdiction:

(1) — (7) (text unchanged)

(8) All [Contracts] *contracts* for the purchase of [all] commodities and supplies, except for contracts for single items of equipment or single equipment leases in an amount over \$200,000;

(9) — (10) (text unchanged)

C. — J. (text unchanged)

**21.02.03 Department of Budget and Management**

Authority: State Finance and Procurement Article, §§3-405, 3-502, 12-101, 12-107, 13-103, 13-104, 13-107.1, and 13-111, Annotated Code of Maryland

**.02 Review and Approval of Solicitations and Contracts for Services [and Information Technology].**

A. Purpose. This regulation sets forth general requirements for the review and approval by the Department of Budget and Management of State agency procurements of services [or information technology].

B. Application.

(1) Except as provided in §B(3) of this regulation, this chapter applies to solicitations, contracts, and contract modifications to existing contracts issued by State agencies funded from any source (including nonbudgeted funds and reimbursable funds), which may be used to subsidize, purchase, lease, or otherwise procure contractual services [and information technology].

(2) The Secretary or the Secretary’s designee may specifically approve sole source contracts for services [and information technology] in the amount of \$100,000 or less when the:

(a) — (b) (text unchanged)

(3) — (4) (text unchanged)

(5) These regulations apply to all actions of State agencies to procure any services [or information technology].

(6) (text unchanged)

C. Policies and Procedures—Service Contracts and Information Technology Contracts.

(1) In accordance with statute and this chapter, State agencies may issue solicitations and enter into contracts with a value of \$100,000 or less without prior concurrence of the Department of Budget and Management, if all of the following conditions are met:

(a) (text unchanged)

[(b) For technology requests, the agency has filed an annual information technology project request (ITPR), or other documents or procedures as may be prescribed by DBM, to obtain information technology equipment, software, peripherals, and associated services;]

[(c)] (b)— [(h)] (g) (text unchanged)

(2) — (8) (text unchanged)

D. (text unchanged)

**.03 Procurement, Repair, and Maintenance of State-Owned Motor Vehicles.**

A. (text unchanged)

B. Policies and Procedures

(1) Acquisition of Vehicles.

(a) — (c) (text unchanged)

(d) [Except as provided in COMAR 21.02.01.04D(6)(a)(i), prior] *Prior* to purchase, each vehicle acquisition shall be reviewed and approved by the Secretary or designee for certification of funding authorization and for compliance with standards. Actual purchase shall be made by the Department of General Services.

(2) — (3) (text unchanged)

**Subtitle 04 SPECIFICATIONS**

**21.04.01 General Policies**

Authority: State Finance and Procurement Article, §§12-101 and 13-205, Annotated Code of Maryland

**.03 Responsibility for Preparation.**

The using agency is responsible for preparing the specifications. The procuring agency shall require contractor compliance with State [Government Article, §15-508] *Finance and Procurement Article §13-212.1*, Annotated Code of Maryland. To the extent practicable, functional or performance criteria shall be emphasized while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State.

**Subtitle 05 PROCUREMENT**

**METHODS AND PROJECT DELIVERY METHODS**

**21.05.01 General Provisions**

Authority: State Finance and Procurement Article, §§11-201, 11-205, 12-101, 13-102, 13-110, 13-202, and 14-401, Annotated Code of Maryland; Ch. 216, Acts of 2009

**.01 Methods of Source Selection.**

Unless otherwise authorized by law, all State procurement contracts shall be awarded by one of the following methods:

A. — E. (text unchanged)

F. Noncompetitive negotiated procurement under COMAR [21.14.01.04] *21.05.12.04*; or

G. (text unchanged)

**21.05.05 Sole Source Procurement**

Authority: State Finance and Procurement Article, §§12-101 and 13-107, Annotated Code of Maryland

**.04 Record of Sole Source Procurement.**

A. Notice of award shall be published in eMaryland Marketplace by the procurement agency not more than 30 days after the execution and approval of the contract. *This requirement does not apply to sole source procurements that fall within the small procurement regulations set forth in COMAR 21.05.07.*

B. — C. (text unchanged)

**21.05.08 Mandatory Written Solicitation Requirements**

Authority: : State Finance and Procurement Article, §§3-412, 11-206, 12-101, 13-207, 13-218, 13-221, 13-317, 14-303, 14-308, 14-406, 16-102, 16-202, 16-203, 17-401—17-402, and Title 19; Election Law Article, §§14-101—14-108; Annotated Code of Maryland; Ch. 293, Acts of 2009

**.04 Minority Business Enterprise Subcontract Participation Goal.**

Any solicitation containing an MBE subcontract participation goal, except small procurements made under COMAR 21.05.07, shall include a clause the same as or similar to the following:

A. “An overall MBE subcontract participation goal of \_\_\_ percent of the total contract dollar amount, *including all renewal option terms, if any,* has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror [agrees that this dollar amount of the contract will be performed] *acknowledges the overall MBE subcontractor participation goal, and commits to achieving the goal by utilizing certified minority business enterprises[“;”]; or requests a full or partial waiver of the goal.”; or*

B. “An overall MBE subcontract participation goal of \_\_\_ percent of the total contract dollar amount, *including all renewal option terms, if any,* has been established for this procurement. [This dollar amount includes sub-goals of \_\_\_ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified by the certification agency as women-owned businesses and \_\_\_ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified by the certification agency as African American-owned businesses]. *The overall MBE subcontract participation goal includes the following subgoals, which have been established for this procurement:*

- \_\_\_%for African-American MBEs,
- \_\_\_%for Asian-American MBEs,
- \_\_\_%for Hispanic-American MBEs, and
- \_\_\_%for Woman-Owned MBEs.

By submitting a response to this solicitation, the bidder or offeror [agrees that these dollar amounts of the contract shall be performed] *acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, [including the MBE classifications specified herein] or requests a full or partial waiver of the overall goal and subgoals.”*

**.07 Bid/Proposal Affidavit.**

- A. — B. (text unchanged)
- BID/PROPOSAL AFFIDAVIT
- A. (text unchanged)
- B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in

“discrimination” as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, *sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test,* [or on the basis of] disability, or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

C. — N. (text unchanged)

**.08 Conflict of Interest.**

A. (text unchanged)

B. A solicitation that will result in the selection of a contractor who will assist a unit in the formation, evaluation, selection, award, or execution of a State contract shall provide notice of the requirements of State [Government Article, §15-508] *Finance and Procurement §13-212.1,* Annotated Code of Maryland, and this regulation.

C— G. (text unchanged)

**21.05.12 Procurement of Human, Social, Cultural, and Educational Services**

Authority: State Finance and Procurement Article, §§12-101, 13-102, 13-104, 13-106, 13-108, and 13-109, Annotated Code of Maryland

**.01 Scope.**

*This chapter applies to procurements of human, social, cultural, and educational services.*

**.02 Notice of Certain Contracts.**

A. *Locally Funded Contracts.*

(1) *This section applies to a solicitation for a contract to provide human, social, cultural, or educational services if the contract is to be funded in part by a county or by Baltimore City under a legislative mandate or prior agreement.*

(2) *Not later than the date the solicitation is publicly available, the procurement officer shall send a copy of it to the chief elected official, or designee, of the funding jurisdiction for review and comment. The procurement officer shall request the funding jurisdiction to provide its written comments within 30 days.*

(3) *The procurement officer may not award the contract without considering timely funding jurisdiction comments, if any, submitted pursuant to §A(2) of this regulation. The procurement officer shall make a determination with respect to any timely funding jurisdiction comments that are not to be implemented.*

*B. Contracts with Government Entities.*

(1) This section applies to any award, renewal, or extension of a human, social, or educational services contract with a State agency, a political subdivision of the State, or other government, that results in a total contract price of more than \$25,000.

(2) The procurement agency shall give notice in eMaryland Marketplace of the contract award, extension, or renewal, not more than 30 days after the approval and execution of the contract, extension, or renewal.

**.03 Procurement Methods.**

A. Competitive sealed proposals under COMAR 21.05.03 is the preferred method for procuring human, social, cultural, and educational services.

B. Human, social, cultural, and educational services may be procured in accordance with the competitive sealed bidding procurement method, COMAR 21.05.02.

C. Human, social, cultural, and educational services of \$25,000 or less may be procured in accordance with the small procurement method, COMAR 21.05.07.

D. Human, social, cultural, and educational services may be procured in accordance with the sole source procurement method, COMAR 21.05.05, for the purpose of a demonstration project, or in accordance with COMAR 21.05.05.02A or Regulation .06C of this chapter.

E. Human, social, cultural, and educational services may be procured in accordance with the emergency procurement method, COMAR 21.05.06, for the reasons specified in COMAR 21.05.06.02, or when an unforeseeable condition that seriously threatens the health, safety, or general welfare of third-party clients causes an immediate and serious need that cannot be met through other procurement methods.

F. Human, social, and educational services may be procured in accordance with the noncompetitive negotiation procurement method, Regulation .04 of this chapter.

**.04 Noncompetitive Negotiated Procurement of Human, Social, or Educational Services.**

A. Only human, social, or educational services may be procured by this method.

B. The noncompetitive negotiated procurement method may be used if:

(1) The procurement officer, with the approval of the agency head, determines that two or more sources for the services are available but that, because of the absence of effective competition, it is unreasonable to expect those sources to respond to an invitation for bids under COMAR 21.05.02 or request for proposals under COMAR 21.05.03.

(2) The procurement is to obtain one of the following services:

(a) An employer in a program of on the job training for employment and training purposes;

(b) Group foster care services for children or adults under a negotiated rate system adopted by regulation; or

(c) The following services for the mentally ill:

(i) Residential rehabilitation services,

(ii) Community rehabilitation services (psychosocial), or

(iii) Therapeutic group home services for children and adolescents.

*C. Public Notice.*

(1) At least 10 days before general expressions of interest are due, the procurement agency shall give public notice of its general requirements for services and request interested service providers to respond with written general expressions of interest.

(2) Public notice of any request for expressions of interest shall:

(a) Be sent to known potential providers; and

(b) Be sent to interested advocacy organizations.

(3) If the procurement agency expects that any contract may exceed \$25,000, the request for general expressions of interest shall so state and shall be published in eMaryland Marketplace.

D. As a need for the services arises, the procurement officer may:

(1) Conduct discussions with one or more responsible service providers that previously submitted an expression of interest; and

(2) Award a contract to a provider if the procurement agency head, on the basis of discussions or past experience with the provider, determines that an award will be in the State's best interest.

E. As far as practicable in the course of a particular noncompetitive negotiated procurement, the procurement officer shall give responsible service providers that submitted acceptable or potentially acceptable expressions of interest fair and equal treatment with respect to discussions.

F. Notice of any award, regardless of amount, under this regulation shall be published in eMaryland Marketplace.

**.05 Solicitation Requirements for Human and Social Services.**

A. This regulation applies to solicitations for human and social services by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the Department of Disabilities, and the Department of Aging.

B. The solicitation shall:

(1) Explicitly refer to any applicable program standards adopted by the Department of Health and Mental Hygiene, the Department of Human Resources, the Department of Juvenile Services, the Department of Disabilities, or the Department of Aging;

(2) Require each offering provider to indicate how it has or will meet these standards; and

(3) Indicate that the contractor shall meet these standards before it provides any services under the contract.

C. Solicitation selection criteria shall include, as applicable, minimum qualifications of providers, minimum qualifications of program staff, minimum facility standards, past performance, and general program and fiscal accountability standards.

D. The solicitation shall, where relevant, request information concerning providers' proposals for easing any transition for third-party clients from the former provider to the offering provider and from the offering provider to a later provider.

**.06 Multi-Year and Sole Source Human and Social Services Contracts—Assurance of Continuity of Third-Party Client Care.**

A. This regulation applies to contracts for human and social services and, in addition to other regulations, authorizes multi-year and sole source contracts.

B. Multi-Year Contracts.

(1) In order to assure continuity of human or social services care, a procurement agency may enter a multi-year contract for human or social services when:

(a) The conditions in COMAR 21.06.03.09 are met; or

(b) The procurement officer, with the approval of the agency head, determines that it is not reasonable to expect that a contract for a single fiscal year will be sufficient to alleviate the conditions for which a group of third-party clients will receive the services.

(2) The procurement officer shall follow the procedures required by COMAR 21.06.03.09D.

(3) A multi-year contract, including any option periods, may extend for more than 3 years only with the prior express approval of the Board of Public Works.

*C. Sole Source Contracts.*

(1) In order to provide continuity of human or social services care to current third-party clients, the procurement officer shall, before the contract with the current provider expires, attempt to negotiate a sole source contract with the current provider if:

(a) A sole source contract with the current provider is authorized under COMAR 21.05.05.02A; or

(b) Based on an assessment by a licensed or certified health practitioner, the head of a funding unit determines that a change in the human or social services provider would have a detrimental impact on those clients currently being served by the provider. The licensed or certified health practitioner shall be a psychologist, social worker, physician, nurse, or qualified developmental disabilities professional (QDDP), as defined in COMAR 10.22.03.01B(25), and:

(i) May be employed by the procurement agency; but

(ii) May not be employed by the provider that has the human or social services contract with the procurement agency for the third-party clients.

(2) Before issuing a solicitation for services to be provided to current third-party clients, the procurement officer shall:

(a) Decide whether a sole source contract will be negotiated for any of these current clients under §C(1) of this regulation;

(b) Exclude from the solicitation any current third-party client for whom a sole source contract has been negotiated; and

(c) Include in the solicitation a notice of any current sole source contract negotiations for current third-party clients, and a statement that these clients might not be included in any contract resulting from the solicitation.

**.07 Approvals.**

A. Pursuant to COMAR 21.02.01.05A(1), the Board of Public Works shall review and approve an award of a human, social, cultural, or educational services contract for more than \$200,000 before the contract is executed, unless the contract results from an emergency procurement.

B. Pursuant to COMAR 21.02.01.04A, the Department of Budget and Management shall review and approve an award of a human, social, cultural, or educational services contract for \$200,000 or less before the contract is executed, unless the contract results from an emergency procurement, a procurement under COMAR 21.02.03.02C, or a small procurement.

C. A human, social, cultural, or educational services contract resulting from an emergency or COMAR 21.02.03.02C procurement shall be reported as provided in COMAR 21.02.01.05A(3)(a) or .05B, as applicable.

**Subtitle 06 CONTRACT FORMATION AND AWARD**

**21.06.07 Bid and Contract Security/Bonds**

Authority: State Finance and Procurement Article, §§12-101, 13-207—13-209, 13-216, and 17-102—17-109, Annotated Code of Maryland

**.09 Bid Security.**

A. — C. (text unchanged)

D. Forms of Bid Bonds.

(1) — (3) (text unchanged)

(4) *Authenticity and Enforceability of Powers of Attorney.*

(a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.

(b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.

(c) For purposes of this section, verified electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.

(d) The procurement officer shall:

(i) Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and

(ii) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.

(e) If the procurement officer contacts the surety to validate the power of attorney, the contracting officer shall document the file providing, at a minimum, the following information:

(i) Name of person contacted;

(ii) Date and time of contact; and

(iii) Response of the surety.

(f) If, upon investigation, the surety declares the power of attorney to have been valid at the time of bid opening, the procurement officer may require correction of any technical error with the power of attorney.

(g) If, upon investigation, the surety declares the power of attorney to have been invalid, the procurement officer shall determine the bid to be nonresponsive and not allow the bidder to substitute a replacement power of attorney or a replacement surety.

**.10 Performance and Payment Bonds.**

A. Performance Bonds

(1) General. A performance bond is required for all construction contracts in excess of \$100,000 in the amount equal to at least 100 percent of the contract price. A performance bond may be required for a contract for services, supplies, maintenance, or construction-related services expected to exceed \$50,000, as determined by the procurement officer. The performance bond shall be delivered by the contractor to the State not later than the time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder.

(2) (text unchanged)

B. — C. (text unchanged)

**21.06.09 Invoicing, Payment, and Interest on Late Payments**

Authority: State Finance and Procurement Article, §§15-101, 15-102, 15-103, 15-104, 15-105

**.01 Definitions.**

For the purposes of this chapter:

A. "Late payment" means any amount that is due and payable by law under a written procurement contract, without deferral, delay, or set-off under COMAR 21.02.07.03, and remains unpaid more than 45 days after an agency receives a Proper Invoice.

B. "Payment" includes all required processing and authorization by the Comptroller of the Treasury, as provided under COMAR 21.02.07, and may be deferred, delayed, or set-off as applicable under COMAR 21.02.07.03.

C. "Proper invoice" means a bill, written document, or electronic transmission, readable by the agency, provided by a vendor requesting an amount that is due and payable by law under a written

procurement contract for property received or services rendered that meets the requirements of Regulation .02 of this chapter.

**.02 Required Invoice Documentation.**

A Proper invoice, required as payment documentation, must include the following information, without error:

- A. The contractor’s federal employer’s identification number or Social Security number;
- B. The procurement contract or purchase order number or another adequate description of the procurement contract; and
- C. Any documentation required by regulation or the procurement contract.

**.03 Receipt of Invoices.**

For the purposes of determining a payment due date and the date on which interest will begin to accrue if a payment is late, an invoice shall be deemed to be received:

- A. For invoices that are mailed, when a proper invoice is received by the agency, as of the date the agency annotates the invoice with the date and time of receipt; or
- B. For invoices electronically transmitted, on the date the transmission is received by the agency, or the next business day if received after 5 p.m. Eastern Time.

**.04 Review of Invoices.**

Upon receipt of an invoice, an agency shall use the following procedures:

- A. Each invoice will be reviewed by the agency as soon as practicable after receipt, but no later than 5 business days after receipt, to determine whether the invoice is a proper invoice as defined in Regulation .01 of this chapter.
- B. When the agency receives the invoice, the agency shall mark the invoice with the date the invoice was received.
- C. Once the agency determines the invoice is proper, the agency shall submit the invoice to the Comptroller for payment within one business day after the determination.
- D. If an agency determines the invoice is not a proper invoice, the agency shall notify the vendor of all defects that prevent processing and specify all reasons why the invoice is not proper within two business days after the determination. It is the responsibility of the vendor to submit a corrected invoice.
- E. Media which produce tangible recordings of information may be used by agencies to expedite the payment process, rather than delaying the process by requiring original paper documents. Agencies shall provide adequate safeguards and controls to ensure the integrity of the data and to prevent duplicate processing.
- F. Failure to comply with this regulation does not constitute a late payment as that term is defined in this chapter.

**.05 Payment Period.**

A. Unless payment is deferred, delayed, or set-off under COMAR 21.02.07.03, payment under a procurement contract shall be made within 30 days:

- (1) After the day on which the payment becomes due under the procurement contract; or
- (2) If later, after the day on which the agency receives a proper invoice.

B. Payment will be considered to be made on the settlement date for an electronic funds transfer payment or the mailing date of the check for a check payment.

C. Payments falling due on a weekend, State holiday, or federal holiday may be made on the following business day without incurring late payment interest penalties.

**.06 Interest on Late Payments.**

A. The State shall pay interest on late payments as defined in Regulation .01 of this chapter at the rate of 9 percent per annum if:

- (1) The vendor submits an invoice for the late payment interest within 30 days after the date of the State’s payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

B. The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest.

**Subtitle 07 CONTRACT TERMS AND CONDITIONS**

**21.07.01 Mandatory Contract Provisions — All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03)**

Authority: State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 16-202, 17-401, 17-402, and 19-114; Election Law Article, §§14-101—14-108; and State Government Article, §§15-502 and 15-503; Annotated Code of Maryland

**.08 Nondiscrimination in Employment.**

Mandatory provision for all contracts. The following clause is preferred:

“The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, *sexual orientation, gender identification*, marital status, national origin, ancestry *genetic information or any otherwise unlawful use of characteristics*, or disability of a qualified individual with a disability *unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual’s refusal to submit to a genetic test or make available the results of a genetic test*; (b) to include a provision similar to that contained in subsection (a), above, in any *underlying* subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.”

**.18 Payment of State Obligations.**

Mandatory provision for all contracts. The following clause is preferred:

“Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State’s receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State’s payment of the amount on which the interest accrued; and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest.

Charges for late payment of invoices are authorized only[, other than] as prescribed by Title 15, Subtitle 1, of the State Finance and

Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable[, are prohibited].”

**.20 Political Contribution Disclosure.**

Mandatory provision for all contracts:

“The Contractor shall comply with [Election Law Article, §§14-101—14-108, Annotated Code of Maryland] *Election Law Article, Title 14, Annotated Code of Maryland*, which requires that every person that enters into [contracts, leases, or other agreements] *a procurement contract* with the State, a county, or [an incorporated municipality] *a municipal corporation, or other political subdivision of the State*, [or their agencies,] during a calendar year in which the person receives *a contract with a governmental entity* in the [aggregate] *amount of [\$100,000] \$200,000* or more, shall file with the State Board of Elections [a] statements disclosing: *(a) any contributions [in excess of \$500] made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period.* The statement shall be filed with the State Board of Elections: [(1)] *(a) before [a purchase or] execution of a [lease or] contract by the State, a county, [an incorporated municipality, or their agencies] a municipal corporation, or other political subdivision of the State, and shall cover the [preceding two calendar years] 24 months prior to when a contract was awarded; and [(2)] (b) if the contribution is made after the execution of a [lease or] contract, then twice a year, throughout the contract term, on or before: [(a)] (i) [February 5] May 31, to cover the [6-] six (6) month period ending [January 31] April 30; and [(b)] (ii) [August 5] November 30, to cover the [6-] six (6) month period ending [July 31] October 31. Additional information is available on the State Board of Election website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).”*

**.25 Contract Affidavit.**

A. — C. (text unchanged)

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, [§§14-101—14-108] *Title 14, Annotated Code of Maryland*, which requires that every person that enters into [contracts, leases, or other agreements] *a procurement contract* with the State [of Maryland, including its agencies or a political subdivision of the State], *a county, a municipal corporation, or other political subdivision of the State*, during a calendar year in which the person receives *a contract with a governmental entity* in the [aggregate] *amount of [\$100,000] \$200,000* or more shall file with the State Board of Elections [a] statements disclosing: *(a) any contributions [in excess of \$500] made during the reporting period to a candidate for elective office in any primary or general election[.]; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.*

**.26 Commercial Nondiscrimination Clause.**

A. The following provision is mandatory for all State contracts and subcontracts: “As a condition of entering into this Agreement,

Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, *sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test or on the basis of* disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. (text unchanged)

**21.07.02 Mandatory Construction Contract Clauses**

Authority: State Finance and Procurement Article, §§12-101, 13-216, 13-218, and 13-225, Annotated Code of Maryland

**.04 Suspension of Work.**

Mandatory provision for all construction contracts:

“Suspension of Work

“(1) (text unchanged)

“(2) If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault [of] *or* negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this contract.

“(3) (text unchanged)

**Subtitle 11 SOCIOECONOMIC POLICIES**

**21.11.03 Minority Business Enterprise Policies**

Authority: State Finance and Procurement Article, §§12-101 and 14-301—14-308, Annotated Code of Maryland; Ch. 268, 283, 293, 328, and 715, Acts of 2009; Ch. 619, Acts of 2010; Chs. 252, 253, and 254, Acts of 2011; Ch. 154, Acts of 2012

**.09 Procurement Solicitations.**

A. To attain the overall and specific MBE goals under Regulation .01C of this chapter, procurement agencies shall set, where appropriate, an overall certified MBE participation goal, expressed as



a percentage of the dollar value of the contract, and subgoals to facilitate the participation of certain groups as prescribed under Regulation .01C(2) of this chapter, unless:

(1) The procurement is a construction contract having an estimated value of less than \$50,000; or

(2) The contract has been designated as a procurement to be made without any certified MBE participation goals [pursuant to Regulation .01F of this chapter].

B. — G. (text unchanged)

**21.11.09 Vending Facilities on Property Controlled by Department of General Services**

Authority: State Finance and Procurement Article, §14-109; Education Article, §§21-301—21-303; Annotated Code of Maryland

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) “Cost of Goods Sold” means the inventory cost of the products sold.

[(2)] (3) — [(7)] (8) (text unchanged)

(9) “Reasonable services and maintenance costs in accordance with customary business practices” means personnel and repair costs, including equipment and transportation costs, taxes, overhead and administration costs and commercial vendor profits.

(10) “Receipts” means payments made to the program by a commercial vending company which operates services and maintains vending machines on property controlled by the property managing agency

[(8)] (11) — [(9)] (12) (text unchanged)

[(10)] (13) “Vending machine income” means: [commissions paid by a commercial vending concern which operates, services, and maintains vending machines on property controlled by the Department] receipts, other than those of a licensed blind vendor, from vending machine operations on property controlled by the Department after deducting costs of goods sold, including reasonable service and maintenance costs in accordance with customary business practices.

**.02 Priority.**

A. – B. (text unchanged)

[C. If a property controlled by the Department already has vending facilities which are not operated by the Program, the priority in §B of this regulation is waived until the earlier of:

(1) The first expiration of a contract between the operator of the vending facility and the Department or any of its occupants; or

(2) June 1, 1994.]

**21.11.13 Veteran-Owned Small Business Enterprises**

Authority: Chs. 507 and 508, Acts of 2010

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) “Directory” means the veteran small business directory maintained by the Center for [Veterans Enterprise] Verification and Evaluation of the United States Department of Veterans Affairs.

(2) “Veteran-Owned Small Business Enterprise (VSBE)” means a business that is verified by the Center for [Veterans Enterprise] Verification and Evaluation of the United States Department of Veterans Affairs as a veteran-owned small business.

**.05 Procurement Solicitations.**

A. — B. (text unchanged)

C. VSBE Subcontracting Provisions.

(1) (text unchanged)

(2) *If a solicitation contains an MBE goal and a VSBE goal, participation by a subcontractor dually-certified as an MBE and a VSBE may be counted toward meeting both the MBE and VSBE contract goals to the extent its participation meets the cumulative MBE and VSBE contract goals, or portions thereof that it is committed to perform.*

(3) *Participation by a dually-certified subcontractor may be counted toward the agency’s overall MBE and VSBE goals.*

[(3)] (4) On forms provided by the procurement agency, a bidder or offeror shall submit with its bid or proposal:

(a) A completed VSBE utilization affidavit including either an agreement to meet the certified VSBE participation goal or a request for a full or partial waiver; and

(b) A completed VSBE participation schedule that identifies the veteran-owned small business that the bidder or offeror agrees to utilize in the performance of the contract and the percentage of contract value attributed to each VSBE.

[(4)] (5) The VSBE participation schedule shall:

(a) Include the name of each VSBE that will participate in the project; and

(b) Include the percentage of the contract to be paid to each VSBE for the work or supply.

[(5)] (6)— [(8)] (9) Each prime contractor given solicitation documents as part of a procurement with an VSBE goal shall be given the web address for the electronic version of the directory for purposes of soliciting subcontract quotations, bids, or offers from VSBEs.

D. *Counting Prime Participation Toward Overall and Contract Goals.*

(1) *A procurement agency may count a prime contractor dually-certified as an MBE and a VSBE toward the agency’s overall VSBE and MBE goals.*

(2) *A procurement agency may count the distinct, clearly defined portion of the work of the contract that a VSBE certified prime performs with its own work force toward meeting up to 100 percent of the contract’s VSBE goal.*

[D.] (E.) — [F.] (G.) (text unchanged)

**Subtitle 12 PROCUREMENT OF ARCHITECTURAL SERVICES AND ENGINEERING SERVICES**

**21.12.04 Department of General Services; A/E Services Exceeding \$200,000**

Authority: State Finance and Procurement Article, §§13-304 and 13-314, Annotated Code of Maryland

**.10 Solicitation of Interest for Individual Projects.**

A. — B. (text unchanged)

C. Request for Qualifications and Technical Proposals.

(1) The Administrator shall establish a list of all responses to the solicitation of interest and shall verify that every architectural or engineering firm on the list has on file with the Department a current U.S. Government Standard Form [254] 330, [Architect/Engineer and Related Services Questionnaire] *Architect-Engineer Qualifications [(SF-254)] (SF-330)*, that reflects accurately the ownership, corporate structure, officers, members, and qualifications of the architectural/engineering firm.

(2) The Administrator shall mail each architectural/engineering firm on the list that has met the requirements of §C(1) of this regulation, the following:

(a) (text unchanged)

(b) A request for U.S. Government Standard Form [255] 330, Architect-Engineer *Qualifications* [and Related Services Questionnaire for Specific Project (SF-255)] (SF-330).

(c) — (f) (text unchanged)

**.10-1 Solicitation of Interest for Indefinite Quantity Contracts.**

A. — B. (text unchanged)

C. Request for Qualifications and Technical Proposals.

(1) The Administrator shall establish a list of all responses to the solicitation of interest and shall verify that every architectural or engineering firm on the list has on file with the Department a current U.S. Government Standard Form [254] 330, [Architect/Engineer and Related Services Questionnaire (SF-254)] *Architect-Engineer Qualifications* (SF-330), that reflects accurately the ownership, corporate structure, officers, members, and qualifications of the architectural/engineering firm.

(2) The Administrator shall mail each architectural/engineering firm on the list that has met the requirements of §C(1) of this regulation the following:

(a) (text unchanged)

(b) A request for U.S. Government Standard Form [255, Architect/Engineer and Related Services Questionnaire for Specific Project (SF-255)] 330, *Architect-Engineer Qualifications* (SF-330);

(c) — (f) (text unchanged)

D. (text unchanged)

**21.12.05 Department of General Services A/E Services [\$100,000] \$200,000 or Less**

Authority: State Finance and Procurement Article, §13-304, Annotated Code of Maryland

**.01 General.**

Architectural and engineering service contracts costing [\$100,000] \$200,000 or less awarded through the Department of General Services result from solicitations made by the Director, Office of Engineering and Construction, in the Department of General Services. The firms to be included on the candidate list shall be determined by the Department of General Services Qualification Committee, which shall consider information on each firm's SF-[254] 330 and supplement to the SF-[254]330, recommendations from the using agency requesting the services, and letter of interest submitted by architects and engineers. The Director, Office of Engineering and Construction, shall review the candidate list, modify it as necessary to provide opportunity for minority businesses to participate in the solicitation, and determine the firms to be included on the reduced candidate list. The Director of the Office of Engineering and Construction shall solicit price proposals and, when appropriate, technical proposals from the firms on the reduced candidate list. The proposals submitted by the solicited firms shall be reviewed by staff designated by the Director, Office of Engineering and Construction. The staff shall make an appointment recommendation to the Director, Office of Engineering and Construction, who shall make a recommendation for appointment to the Secretary, Department of General Services. If the Secretary concurs with the recommendation, [he] *the Secretary* shall approve the award of the contract and report that action in accordance with COMAR 21.02.01.04B(3) and 21.02.01.05B(1).

SHEILA McDONALD  
Executive Secretary

**Title 36  
MARYLAND STATE  
LOTTERY AND GAMING  
CONTROL AGENCY**

**Subtitle 07 INSTANT BINGO  
MACHINES IN ANNE ARUNDEL AND  
CALVERT COUNTIES**

**36.07.01 General**

Authority: Criminal Law Article, §§12-301.1 and 12-308; State Government Article, §9-110; Annotated Code of Maryland

**Notice of Proposed Action**

[16-263-P]

The Maryland State Lottery and Gaming Control Agency proposes to amend Regulation .03 under **COMAR 36.07.01 General**. This action was considered at the Maryland Lottery and Gaming Control Commission open meeting held on August 17, 2016, notice of which was given pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to provide details on the process to request a repair or replacement of instant bingo machines.

**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 James B. Butler, Director of Legislative and Policy Affairs, Maryland Lottery and Gaming Control Agency, 1800 Washington Blvd., Suite 330, Baltimore, MD 21230, or call (410) 230-8781, or email to jbutler@maryland.gov, or fax to (410) 230-8727. Comments will be accepted through November 14, 2016. A public hearing has not been scheduled.

**.03 Repair and Replacement.**

A. A facility license holder may repair and replace its *instant* bingo machines provided *that documentation has been submitted to the Commission that evidences, to the satisfaction of the Commission, that:*

[A.] (1) The machines operate in the same manner as [those] any that were in operation by that licensee on February 28, 2008; and

[B.] (2) The licensee does not operate more than the number of instant bingo machines the licensee had in operation on February 28, 2008.

B. *Documentation submitted under §A of this regulation may consist of:*

(1) *Manufacturer invoices;*

(2) *Independent testing laboratory reports;*

(3) *Records from county licensing authorities; or*

*(4) Other records deemed acceptable by the Commission.*

*C. A determination by the Commission on the sufficiency of documentation provided under §B of this regulation is final and not appealable.*

*D. Instant bingo machines that are repaired or serve as a replacement shall comply with the technical standards as provided under COMAR 36.07.06.*

*E. An instant bingo machine serving as a replacement under §A of this regulation may operate in the same manner as any instant bingo machine that was in operation by the licensee on February 28, 2008.*

GORDON MEDENICA  
Director

# Errata

## COMAR 13A.05.01

At 43:20 Md. R. 1138 (September 30, 2016), column 2, line 14  
from the bottom:

For: [15-259-P]

Read: [16-259-P]

[16-21-21]

## COMAR 30.03.06.05

At 43:15 Md. R. 872 (July 22, 2016), column 2, line 11 from the  
top:

For: B. (text unchanged)

Read: [B.] C. (text unchanged)

[16-21-22]

# Special Documents

## DEPARTMENT OF THE ENVIRONMENT SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATES: July 1-31, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; e-mail: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR §806.22(f) for the time period specified above:

#### Approvals By Rule Issued Under 18 CFR 806.22(f):

Chesapeake Appalachia, LLC, Pad ID: Rossi, ABR-201111011.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chesapeake Appalachia, LLC, Pad ID: Williamson, ABR-201111019.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chesapeake Appalachia, LLC, Pad ID: Edger, ABR-201112020.R1, Smithfield and Ulster Townships, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chesapeake Appalachia, LLC, Pad ID: RGB, ABR-201112021.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chesapeake Appalachia, LLC, Pad ID: Yost, ABR-201112022.R1, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chesapeake Appalachia, LLC, Pad ID: Wildonger, ABR-201112026.R1, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chesapeake Appalachia, LLC, Pad ID: Sharidan, ABR-201112027.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 13, 2016.

Chief Oil & Gas LLC, Pad ID: Kingsley B Drilling Pad #1, ABR-201112009.R1, Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.

Chief Oil & Gas LLC, Pad ID: Kaufmann Drilling Pad #1, ABR-201201001.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.

Chief Oil & Gas LLC, Pad ID: Yoder Drilling Pad #1, ABR-201201003.R1, Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.

Chief Oil & Gas LLC, Pad ID: Bailey Drilling Pad #1, ABR-201201013.R1, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 13, 2016.

EOG Resources, Inc., Pad ID: FAY 1H Pad, ABR-201107019.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 13, 2016.

SWN Production Company, LLC, Pad ID: Van Order Pad, ABR-201107042.R1, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: July 13, 2016.

Warren Marcellus, LLC, Pad ID: Reimiller 1, ABR-201110001.R1, Meshoppen and Washington Townships, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 13, 2016.

Warren Marcellus, LLC, Pad ID: Mattocks 1, ABR-201110002.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 13, 2016.

Warren Marcellus, LLC, Pad ID: McConnell 1, ABR-201110003.R1, Tunkhannock Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 13, 2016.

Chief Oil & Gas LLC, Pad ID: Hemlock Hunting Club B Drilling Pad #1, ABR-201607001, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 15, 2016.

Chief Oil & Gas LLC, Pad ID: Jacobson Unit Pad, ABR-201607002, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 15, 2016.

SWEPI LP, Pad ID: Wood 626, ABR-201106006.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 20, 2016.

Chief Oil & Gas LLC, Pad ID: Lucarino Drilling Pad #1, ABR-201112010.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 20, 2016.

Talisman Energy USA Inc., Pad ID: 02 010 DCNR 587, ABR-201108002.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 20, 2016.

Talisman Energy USA Inc., Pad ID: 03 113 Vanblarcom, ABR-201108003.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2016.

Talisman Energy USA Inc., Pad ID: 03 111 Stephani, ABR-201108009.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2016.

Talisman Energy USA Inc., Pad ID: 05 229 Acres, ABR-201108010.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2016.

Talisman Energy USA Inc., Pad ID: 05 164 Bennett, ABR-201107049.R1, Stevens Township, Bradford County and Rush

Township, Susquehanna County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 25, 2016.

Talisman Energy USA Inc., Pad ID: 02 153 Mountain Run Hunting Club, ABR-201107050.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 25, 2016.

Seneca Resources Corporation, Pad ID: DCNR 007 Pad K, ABR-201112018.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 25, 2016.

Chesapeake Appalachia, LLC, Pad ID: Raimo, ABR-201201005.R1, Monroe and Overton Townships, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2016.

Chesapeake Appalachia, LLC, Pad ID: Kathryn, ABR-201201006.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2016.

Chesapeake Appalachia, LLC, Pad ID: Ridenour, ABR-201201008.R1, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 26, 2016.

Talisman Energy USA Inc., Pad ID: 05 008 Michnich, ABR-201108026.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2016.

Talisman Energy USA Inc., Pad ID: 03 074 Haralambous, ABR-201108037.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2016.

Talisman Energy USA Inc., Pad ID: 05 104 Rennekamp R, ABR-201108044.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2016.

Chesapeake Appalachia, LLC, Pad ID: Redbone, ABR-201201004.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.

Chesapeake Appalachia, LLC, Pad ID: Elwell, ABR-201201009.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.

Chesapeake Appalachia, LLC, Pad ID: Calmitch, ABR-201201029.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.

Chesapeake Appalachia, LLC, Pad ID: Manahan, ABR-201201036.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.

Chesapeake Appalachia, LLC, Pad ID: Messersmith, ABR-201201037.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 28, 2016.

Pennsylvania General Energy Co. LLC, Pad ID: COP Tract 356 Pad J, ABR-201201014.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 29, 2016.

Chief Oil & Gas LLC, Pad ID: Yonkin B Drilling Pad, ABR-201607003, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: July 29, 2016.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: September 19, 2016.

STEPHANIE L. RICHARDSON  
Secretary to the Commission

[16-21-14]

## SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATES: August 1-31, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; e-mail: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR §806.22(f) for the time period specified above:

#### Approvals By Rule Issued Under 18 CFR 806.22(f):

Carrizo (Marcellus), LLC, Pad ID: Henninger Pad, ABR-201110017.R1, Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: August 5, 2016.

Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C-17H, ABR-20110816.R1, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 5, 2016.

JKLM Energy, LLC, Pad ID: Headwaters 145, ABR-201608001, Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 3.1250 mgd; Approval Date: August 9, 2016.

SWEPI LP, Pad ID: Youst 405, ABR-201106026.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 9, 2016.

SWEPI LP, Pad ID: Watkins 820, ABR-201106011.R1, Chatham Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 10, 2016.

Talisman Energy USA Inc., Pad ID: 05 235 Rogers H, ABR-201108051.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 10, 2016.

Chesapeake Appalachia, LLC, Pad ID: Dewolf, ABR-201608002, Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 11, 2016.

Chesapeake Appalachia, LLC, Pad ID: Cook, ABR-201111001.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 11, 2016.

Chesapeake Appalachia, LLC, Pad ID: Richard, ABR-201111010.R1, Rush Township, Susquehanna County, Pa.;

- Consumptive Use of Up to 7.5000 mgd; Approval Date: August 11, 2016.
- SWN Production Company, LLC, Pad ID: Clark Pad, ABR-201107043.R1, Orwell and Herrick Townships, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 11, 2016.
- Talisman Energy USA Inc., Pad ID: 02 109 Frederick L, ABR-201108046.R1, Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 12, 2016.
- Talisman Energy USA Inc., Pad ID: 05 174 Carlsen C, ABR-201108052.R1, Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 12, 2016.
- Chief Oil & Gas LLC, Pad ID: Myers Unit Drilling Pad #1, ABR-201201039.R1, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 18, 2016.
- Chief Oil & Gas LLC, Pad ID: Crandall Drilling Pad #1, ABR-201202013.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 18, 2016.
- Chesapeake Appalachia, LLC, Pad ID: Burkhart, ABR-201201028.R1, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
- Chesapeake Appalachia, LLC, Pad ID: Warburton, ABR-201201033.R1, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
- Chesapeake Appalachia, LLC, Pad ID: Makayla, ABR-201202008.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
- Chesapeake Appalachia, LLC, Pad ID: Yadpad, ABR-201202020.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2016.
- Chief Oil & Gas LLC, Pad ID: Hurley Drilling Pad #1, ABR-201201040.R1, Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2016.
- Chief Oil & Gas LLC, Pad ID: Wright A Drilling Pad #1, ABR-201202004.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2016.
- Chief Oil & Gas LLC, Pad ID: Castle A Drilling Pad #1, ABR-201202012.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 19, 2016.
- Warren Marcellus, LLC, Pad ID: Macialek 1 Pad, ABR-201201010.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 19, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad C, ABR-201109003.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: COP Tract 731 Pad C, ABR-201109016.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: COP Tract 731 Pad D, ABR-201109017.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: COP Tract 731 Pad E, ABR-201109021.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: COP Tract 685 Pad B, ABR-201109022.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad A, ABR-201109023.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Anadarko E&P Onshore, LLC, Pad ID: Lycoming H&FC Pad D, ABR-201109024.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 23, 2016.
- Cabot Oil & Gas Corporation, Pad ID: HeitzenroderA P1, ABR-201109025.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: August 23, 2016.
- Cabot Oil & Gas Corporation, Pad ID: BurtsL P1, ABR-201109026.R1, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: August 23, 2016.
- Cabot Oil & Gas Corporation, Pad ID: FrystakC P1, ABR-201109027.R1, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: August 23, 2016.
- Chesapeake Appalachia, LLC, Pad ID: Fox, ABR-201201007.R1, Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 23, 2016.
- Chesapeake Appalachia, LLC, Pad ID: Ferraro, ABR-201202007.R1, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 23, 2016.
- Carrizo (Marcellus), LLC, Pad ID: Karthaus CK-19, ABR-201112012.R1, Covington Township, Clearfield County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: August 29, 2016.
- SWN Production Company, LLC, Pad ID: Bernstein Pad, ABR-201107052.R1, Clifford and Lenox Townships, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: August 31, 2016.

AUTHORITY: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: September 20, 2016.

STEPHANIE L. RICHARDSON  
Secretary to the Commission  
[16-21-25]

## SUSQUEHANNA RIVER BASIN COMMISSION

### Actions Taken at September 8, 2016, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 8, 2016, in Cooperstown, New York, the Commission took the following actions: 1) approved or tabled the applications of

certain water resources projects; and 2) took additional actions, as set forth in the Supplementary Information below.

**DATES:** The business meeting was held on September 8, 2016. Please refer to the notice published in 81 FR 64812, September 21, 2016, for additional information on the proposed rulemaking, including public hearing dates and locations. Comments on the proposed consumptive use mitigation policy may be submitted to the Commission on or before January 6, 2017.

**ADDRESSES:** Comments may be mailed to : Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or submitted electronically at <http://www.srb.net/pubinfo/publicparticipation/PublicComments.aspx?type=5&cat=20>.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; e-mail: [joyler@srb.net](mailto:joyler@srb.net). Regular mail inquiries may be sent to the above address. See also Commission website at [www.srb.net](http://www.srb.net).

**SUPPLEMENTARY INFORMATION:** In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: 1) rescission of the Commission's Information Technology Services Fee; 2) approval/ratification of a contract and several grants; 3) release of proposed rulemaking to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions, and release of a consumptive use mitigation policy; 4) a report on delegated settlements with the following project sponsors, pursuant to SRBC Resolution 2014-15: Lackawanna Energy Center, in the amount of \$2,000; and Troy Borough Municipal Authority, in the amount of \$5,000.; 5) approval to extend the term of an emergency certificate with Furman Foods, Inc. to November 30, 2016; and 6) continuance of the Show Cause proceeding granted to Montage Mountain Resorts, LP, to the December 2016 Commission meeting.

Project Applications Approved:

The Commission approved the following project applications:

- Project Sponsor and Facility: Bloomfield Borough Water Authority, Centre Township, Perry County, Pa. Groundwater withdrawal of up to 0.180 mgd (30-day average) from Well 3.
- Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20120904).
- Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, Pa. Groundwater withdrawal of up to 0.201 mgd (30-day average) from Well 1.
- Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.106 mgd (30-day average) from Well 3.
- Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, Pa. Groundwater withdrawal of up to 0.130 mgd (30-day average) from Well 4.
- Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.187 mgd (30-day average) from Well 8.
- Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, Pa. Groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 9.

Project Sponsor and Facility: Geisinger Health System, Mahoning Township, Montour County, Pa. Modification to increase consumptive water use by an additional 0.319 mgd (peak day), for a total consumptive water use of up to 0.499 mgd (peak day) (Docket No. 19910103).

Project Sponsor: Pennsylvania American Water Company. Project Facility: Nittany Water System, Walker Township, Centre County, Pa. Groundwater withdrawal of up to 0.262 mgd (30-day average) from Nittany Well 1.

Project Sponsor and Facility: Republic Services of Pennsylvania, LLC, Windsor and Lower Windsor Townships, York County, Pa. Renewal of groundwater withdrawal of up to 0.350 mgd (30-day average) from groundwater remediation wells (Docket No. 19860903).

Project Sponsor and Facility: SWN Production Company, LLC, Herrick Township, Bradford County, Pa. Groundwater withdrawal of up to 0.101 mgd (30-day average) from the Fields Supply Well.

Project Sponsor and Facility: Talisman Energy USA Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20120912).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Chiques Creek), West Hempfield Township, Lancaster County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, Pa. Surface water withdrawal of up to 0.360 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, Pa. Surface water withdrawal of up to 0.360 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Deep Creek), Hegins Township, Schuylkill County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Fishing Creek), Sugarloaf Township, Columbia County, Pa. Surface water withdrawal of up to 2.592 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Pequea Creek), Martic Township, Lancaster County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Roaring Creek), Franklin Township, Columbia County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, Pa. Surface water withdrawal of up to 2.592 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, Pa. Consumptive water use of up to 0.100 mgd (peak day).



## SUSQUEHANNA RIVER BASIN COMMISSION

### Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold four public hearings to hear testimony on a proposed consumptive water use mitigation policy as described in the Supplementary Information section of this notice. This policy was released in conjunction with the proposed rulemaking published in 81 FR 64812, September 21, 2016.

DATES: In addition, the Commission will be holding two informational webinars explaining the proposed policy, in conjunction with the proposed rulemaking, on October 11, 2016, and October 17, 2016. Instructions for registration for the webinars will be posted on the Commission's website. Comments on the proposed policy may be submitted to the Commission on or before January 6, 2017. The Commission has scheduled four public hearings on the proposed policy:

November 3, 2016, 2 p.m. to 5 p.m. or at the conclusion of public testimony, whichever is sooner; Harrisburg, PA.

November 9, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Binghamton, NY.

November 10, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Williamsport, PA.

December 8, 2016, 1 p.m. to 3 p.m. or at the conclusion of public testimony, whichever is sooner; Annapolis, MD.

The locations of the public hearings are listed in the ADDRESSES section of this document.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or submitted electronically through [www.srbc.net/pubinfo/publicparticipation.htm](http://www.srbc.net/pubinfo/publicparticipation.htm). The public hearings locations are:

Harrisburg – Pennsylvania State Capitol (East Wing, Room 8E-B), Commonwealth Avenue, Harrisburg, PA 17120.

Binghamton – DoubleTree by Hilton Hotel Binghamton (South Riverside Room), 225 Water Street, Binghamton, NY 13901.

Williamsport – Holiday Inn Williamsport (Gallery Room), 100 Pine Street, Williamsport, PA 17701.

Annapolis – Loews Annapolis Hotel (Powerhouse-Point Lookout), 126 West Street, Annapolis, MD 21401.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given above.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436. For more information on the proposed policy, visit the Commission's website at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION: The Commission established regulatory requirements for consumptive water use at Part 806, including general provisions, application procedures, standards for review and terms of approval. The regulations provide for mitigation by project sponsors for their consumptive water use during low flow periods, and identify several options for such mitigation while reserving discretion for the Commission to determine if the manner of mitigation proposed is acceptable. In consideration that

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, Pa. Surface water withdrawal of up to 0.360 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, Pa. Consumptive water use of up to 0.100 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Swatara Creek), East Hanover Township, Lebanon County, Pa. Surface water withdrawal of up to 2.880 mgd (peak day).

#### Project Applications Tabled:

The Commission tabled action on the following project applications:

Project Sponsor: Exelon Generation Company, LLC. Project Facility: Muddy Run Pumped Storage Project, Drumore and Martic Townships, Lancaster County, Pa. Application for an existing hydroelectric facility.

Project Sponsor and Facility: Gilberton Power Company, West Mahanoy Township, Schuylkill County, Pa. Application for renewal of consumptive water use of up to 1.510 mgd (peak day) (Docket No. 19851202).

Project Sponsor and Facility: Gilberton Power Company, West Mahanoy Township, Schuylkill County, Pa. Application for groundwater withdrawal of up to 1.870 mgd (30-day average) from the Gilberton Mine Pool.

Project Sponsor and Facility: Manbel Devco I, LP, Manheim Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 4.320 mgd (30-day average) from the Belmont Quarry.

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, Pa. Application for surface water withdrawal of up to 2.880 mgd (peak day).

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, Pa. Application for consumptive water use of up to 0.100 mgd (peak day).

Project Sponsor and Facility: Village of Windsor, Broome County, N.Y. Application for groundwater withdrawal of up to 0.380 mgd (30-day average) from Well 2.

Project Sponsor and Facility: West Manchester Township Authority, West Manchester Township, York County, Pa. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 7.

#### Project Application Withdrawn by Project Sponsor:

The following project sponsor withdrew its project application:

Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Little Fishing Creek), Mount Pleasant Township, Columbia County, Pa. Application for surface water withdrawal of up to 2.880 mgd (peak day).

AUTHORITY: Pub.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: September 27, 2016.

STEPHANIE L. RICHARDSON  
Secretary to the Commission

[16-21-26]

mitigation is based on the elimination of manmade impacts caused by consumptive water use during low flows and the return to natural flow conditions, and recent work in quantifying and characterizing consumptive water use and mitigation requirements in the basin, the Commission has refined its strategy for meeting mitigation needs. This policy, as posted on the SRBC Public Participation Center webpage at [www.srbc.net/pubinfo/publicparticipation.htm](http://www.srbc.net/pubinfo/publicparticipation.htm), introduces the Commission's consumptive water use mitigation strategy and procedures that should be followed both by the agency and project sponsors.

The proposed policy is intended to provide insight regarding the determination of an acceptable manner of mitigation to be provided by project sponsors for regulated consumptive water use. It also describes contemporary consumptive water use mitigation principles and the criteria utilized by the Commission in its review of proposed mitigation plans submitted as part of a consumptive water use application.

The proposed policy applies to the review of all consumptive water use applications filed with the Commission, including applications for new projects, project modifications proposing to increase consumptive water use, project renewals, and pre-compact consumptive water use if located in a water critical area. It is also applicable on a case by case basis in limited circumstances. It has been developed to provide insight to the regulated community and also to the Commission's Project Review Program, and any other staff involved in regulatory requirements of the Commission. It may also be used by the public to gain information and insight on the Commission's approach to consumptive water use mitigation.

#### Opportunity to Appear and Comment:

Interested parties may appear at the hearings to offer comments to the Commission on the proposed policy. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearings. Guidelines for public hearings will be posted on the Commission's website, [www.srbc.net](http://www.srbc.net), prior to the hearings for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearings. Comments mailed or electronically submitted must be received by the Commission on or before January 7, 2017, to be considered.

**AUTHORITY:** Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: September 28, 2016.

STEPHANIE L. RICHARDSON  
Secretary to the Commission  
[16-21-27]

## SUSQUEHANNA RIVER BASIN COMMISSION

### 18 CFR Parts 806 and 808 Review and Approval of Projects

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice of proposed rulemaking; notice of public hearings.

**SUMMARY:** This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of

consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. These rules are designed to enhance the Commission's existing authorities to manage the water resources of the basin and add regulatory clarity.

**DATES:** In addition, the Commission will be holding two informational webinars explaining the proposed rulemaking on October 11, 2016, and October 17, 2016. Instructions for registration for the webinars will be posted on the Commission's website.

Comments on the proposed rulemaking may be submitted to the Commission on or before January 30, 2017. The Commission has scheduled four public hearings on the proposed rulemaking:

November 3, 2016, 2 p.m. to 5 p.m. or at the conclusion of public testimony, whichever is sooner; Harrisburg, PA.

November 9, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Binghamton, NY.

November 10, 2016, 7 p.m. to 9 p.m. or at the conclusion of public testimony, whichever is sooner; Williamsport, PA.

December 8, 2016, 1 p.m. to 3 p.m. or at the conclusion of public testimony, whichever is sooner; Annapolis, MD.

The locations of the public hearings are listed in the ADDRESSES section of this document.

**ADDRESSES:** Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to [regcomments@srbc.net](mailto:regcomments@srbc.net). The public hearings locations are:

Harrisburg – Pennsylvania State Capitol (East Wing, Room 8E-B), Commonwealth Avenue, Harrisburg, PA 17120.

Binghamton – DoubleTree by Hilton Hotel Binghamton (South Riverside Room), 225 Water Street, Binghamton, NY 13901.

Williamsport – Holiday Inn Williamsport (Gallery Room), 100 Pine Street, Williamsport, PA 17701.

Annapolis – Loews Annapolis Hotel (Powerhouse-Point Lookout), 126 West Street, Annapolis, MD 21401.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: [joyler@srbc.net](mailto:joyler@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's website at <http://www.srbc.net>.

#### SUPPLEMENTARY INFORMATION:

The Commission's regulations have not undergone a thorough review since the last comprehensive rulemaking in 2006. Many of these regulations remain unchanged. However, since initial implementation, the Commission recognizes the need for clarity in some sections and statement of procedure in others. These changes are designed to bring clarity and certainty to the regulated community. This rulemaking reflects the efforts of a comprehensive internal review by the Commission staff and review by the Commission's member jurisdictions. The rulemaking centers on a few key areas of the regulations: project review, consumptive use mitigation, registration of grandfathered projects, and administrative procedures. The Commission proposed this rulemaking to clarify application requirements and standards for review of projects, amend the rules dealing with the mitigation of consumptive uses, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. Because the concept is a new addition to the regulations, the Commission believes that an explanation for the rationale for the

proposed rules relating to the registration of grandfathered projects would be helpful for the public.

### **Sources and Activities That Predate Regulations**

The Commission's regulations provide that certain withdrawals and pre-compact consumptive uses that are in excess of the Commission's regulatory thresholds do not require Commission approval under § 806.4(a) if those sources predated regulations, provided there is no environmental harm. This exemption from review and approval is commonly referred to as "grandfathering." Generally, pre-compact consumptive uses initiated prior to January 23, 1971, groundwater withdrawals initiated prior to July 13, 1978, and surface water withdrawals initiated prior to November 11, 1995, are considered "grandfathered" and do not need to apply for a regulatory approval by the Commission. The Commission's current regulations provide several mechanisms by which a grandfathered project must apply for regulatory approval, including a change in the nature of the use, change of ownership, an increase in the quantity of the withdrawal or use, or adding a new source.

However, in enacting the Compact that created the Commission, Congress and the participating states declared that...

the conservation, utilization, development, management and control of the water resources of the Susquehanna River Basin **under comprehensive multiple purpose planning** will produce the greatest benefits and produce the most efficient service in the public interest. Compact Preamble Sect 1 – emphasis added.

The Commission's "Comprehensive Plan for the Water Resources of the Susquehanna Basin" contains an objective to wisely manage the water resources of the Basin to assure short-term resource availability and long-term balance between healthy ecosystems and economic viability (SRBC Comprehensive Plan, 2013). The desired result of one of the key water resource needs, identified as Sustainable Water Development, is to regulate and plan for water resources development in a manner that maintains economic viability, protects instream users, and ensures ecological diversity; and meets immediate and future needs of the people of the basin for domestic, municipal, commercial, agricultural and industrial water supply and recreational activities.

As part of this objective, the Commission recently completed a major effort to characterize water use and availability for the Susquehanna River Basin. The Cumulative Water Use and Availability Study (CWUAS) represents the most comprehensive analysis to date regarding water availability. The Commission is increasingly concerned about the availability of water to meet immediate and future needs as water is needed to satisfy the continuing prospect of growing population and increasing demands for drinking water, freshwater inflow to the Chesapeake Bay, power generation, industrial activity, commercial uses, recreation and ecological diversity. Water resources are neither limitless nor equally distributed across the basin, and in some areas the demand for and use of water resources may be approaching or exceeding the sustainable limit.

As part of the CWUAS, the Commission developed a comprehensive water use database by integrating water use records from the Commission, and its member jurisdictions of New York, Pennsylvania, and Maryland in an unprecedented compilation effort. Compiling accurate water use data is a common challenge for water resource agencies, even recognizing advances in accessing data records through electronic reporting for both the Commission and our member states. The study shows water availability in nearly 1 in 10 watersheds is sufficiently compromised to warrant additional analysis and improved knowledge of patterns of withdrawal and use.

The CWUAS also reveals the limitations of the currently available water use data. While these data include records of regulated public

water supply withdrawals for all states, withdrawals for the remaining variety of self-supplied uses are commonly lacking with the exception of those projects regulated by the Commission. Coverage for unregulated withdrawals, including grandfathered projects, is provided through state registration programs and varies widely in data quality and completeness among the member jurisdictions. For the most part, data for consumptive use not regulated by the Commission are absent altogether.

At the time of its formation and adoption of its initial regulations, neither the Commission nor its member jurisdictions conducted any inventory of existing water users, their sources or the quantity of existing water use. Grandfathered water withdrawals and use are clearly factors in the determination of sustainable water availability. The Commission's analysis estimates a total of 760 grandfathered projects with an estimated water use of 970 million gallons per day, which is approximately equal to the total existing regulated consumptive use approved by the Commission. With such large water quantities in question, it is obvious that some of the grandfathered projects are among the largest users of basin waters. Therefore, appropriate regulation and comprehensive planning for the use of the water resources are seriously hampered without accurate and reliable data regarding the quantity of the grandfathered uses and withdrawals. This is even more critical for areas identified as potentially stressed, water challenged or otherwise having limited water availability.

While our member jurisdictions have made efforts to collect water withdrawal data, and the Commission uses that data as available, our member jurisdictions do not comprehensively register consumptive water use. In addition, they do not have comprehensive historic data for legacy water users to effectively determine the quantity of water withdrawn prior to 1995 or the water consumptively used prior to 1971. This lack of comprehensive and reliable data hampers the Commission by creating significant gaps in our knowledge and data of water withdrawals and water use in the basin, which in turn hinders our ability to comprehensively manage the water resources of the basin and fulfill our regulatory and planning functions.

It is, therefore, appropriate for the Commission to act to address this knowledge gap as no other jurisdiction is solely capable of insuring the effectuation of the comprehensive plan. In these regulations the Commission is proposing a mechanism for acquiring accurate water use and withdrawal information for grandfathered projects through a required registration program. It is imperative that we have no misrepresentations about the sustainability of our water supply so that sound water resource decisions can be made for the benefit of all the basin's users. Grandfathered uses and withdrawals represent a longstanding gap in knowledge and, as such, have increasingly become a water management issue in the Commission's regulation and planning for water resources development.

Registration of grandfathered uses and withdrawals will definitively answer questions about the number of grandfathered projects, the locations of their sources, how much water they are withdrawing and from which water bodies and aquifers, and how much of that water they are using consumptively. In short, it will allow water resource decisions to be made with more certainty and confidence. The registration requirements proposed do not require review and approval of dockets under § 806.4 and do not add any new pathways for a grandfathered project to be subject to review and approval if it registers in accordance with the proposed regulation.

The Commission expects the registration of grandfathered uses will achieve a number of crucial goals to allow better management of basin resources. The Commission will receive more consistent and complete data than what can be obtained through voluntary registration programs, such as peak quantities, patterns of usage and accurate locational data for withdrawals and uses. The data required for registration is more easily attainable data from the most recent

five years, as opposed to historical data. This data will be more recent and based on more accurate and reliable metering and measurement devices. Registration will eliminate legacy issues by closing the knowledge gap about grandfathered withdrawals from and usage of the water resources of the basin. The information obtained through the registration will allow the Commission staff to conduct thorough water availability analyses.

Registration will also provide more direct benefits to the grandfathered projects by providing the Commission with complete, contemporary withdrawal and usage data that can be utilized by the Commission in evaluating new withdrawals or consumptive uses in the watersheds where the grandfathered projects operate and allow the Commission to better prevent impacts and interference to the operations of grandfathered projects by newer projects. Registration will also provide unambiguous determinations concerning pre-regulation quantities of withdrawals and consumptive uses in the basin for both project sponsors and the Commission, providing much more certainty with regards to how a grandfathered project may operate and retain their existing exempt status and avoid the full project review and approval process. As such, project sponsors can plan and anticipate when they might fall under the Commission's jurisdiction and avoid situations where they unknowingly could fall into noncompliance, as currently happens.

Registration also should provide for ongoing information concerning contemporary water withdrawals and uses at grandfathered projects, to meet Commission management goals of the Comprehensive Plan, including:

- Supporting water conservation measures through monitoring and reporting data;
- Making informed regulatory decisions about cumulative effect on other uses/ withdrawals, including analyses for low flow protection (passby flows) and consumptive use mitigation;
- Projecting future water availability to support and inform development decisions, including siting of new facilities critical for water supply, energy development and industrial needs; and
- Identifying critical water planning areas where potential shortages due to drought are projected or intense competition among water users exists.

Registration of grandfathered projects allows the Commission to continue to allow those projects to receive the exemption from the Commission's review and approval under § 806.4 but also fulfills the Commission's need to have accurate, current and reliable data on the amount of the water withdrawals and consumptive use of grandfathered projects to use in the Commission's management decisions for the water resources of the basin. Registration is a one-time event that allows a grandfathered project to continue to operate under the exemption from the Commission's regulations for review and approval of projects, and the only ongoing obligation of project registration is to periodically report withdrawal and usage data. Registration is not review and approval of the project and the proposed rulemaking does not eliminate the grandfathering exemption for projects that register. This means a grandfathered project will not need to meet the requirements and standards set forth in part 806, subparts A through D, which include making an application to Commission, conducting an aquifer test for groundwater withdrawals, evaluation for the sustainability of water withdrawals, evaluation of impact on surface water features, wetlands, other water supplies and wells, establishment of passby flows to protect surface waters, imposition of mitigation for withdrawals or consumptive use, or imposition of conditions or limits on the grandfathered withdrawal or consumptive use. In addition, the Commission has designed the registration to be as simple and accessible as possible to greatly minimize costs, and/or eliminate the

need for a grandfathered project to engage a consultant to complete the registration process.

#### **New subpart E and revisions to 18 CFR § 806.4 –Registration of Grandfathered Projects.**

New subpart E sets forth the rules related to registration of grandfathered projects.

Section 806.40 defines the grandfathered projects within the scope of the regulations and registration requirement.

Section 806.41 provides that grandfathered projects must register within a two-year window or they become subject to review and approval by the Commission in accordance with the Commission's project review regulations and standards. The proposal also contains corresponding changes in § 806.4(a)(1)(iii) and (a)(2)(iv) to clearly provide when a project with some grandfathered aspect or element is subject to review and approval.

The proposed regulations in §§ 806.40(b) and 806.41(c) do not protect grandfathered projects that can be shown to have clearly lost grandfathered status under the regulations in effect at the time the relevant action took place. For example, a grandfathered project that underwent a change of ownership, but did not seek review and approval as required by the §§ 806.4 and 806.6, is not eligible to register and will be required to submit an application for review and approval of the project.

Other projects that have a grandfathered aspect, but that do not withdraw or use water at a jurisdictional threshold to qualify as a grandfathered project under § 806.40, are not eligible to register and will be subject to review and approval if those projects ever withdraw or consumptively use water above the jurisdictional thresholds, pursuant to §§ 806.4(a)(1)(iii)(B), 806.4(a)(2)(iv)(B), and 806.40(c).

Paragraph 806.41(e) provides that the Commission may establish fees in accordance with § 806.35. The Commission will establish any registration fee simultaneously at the time of the adoption of a final rule. Because the amount of any fee will likely be of interest to the public, the Commission, in conjunction with this proposed rulemaking, is proposing a staggered fee for registration. Section 806.41(a) establishes a two-year window during which grandfathered projects must register. The Commission proposes that project sponsors that submit their registration within the first 6 months of that two-year registration period will pay no fee. During the next 6 months of the registration period, the fee will be \$500. During the last year of the registration period, the fee will be \$1,000. The registration fee is a one-time fee. By providing a no fee option during the first six months of the registration period, the Commission intends to provide relief for project sponsors that may be concerned about payment of a registration fee and to incentivize project sponsors to register sooner which will lead to an earlier submission of the data that the Commission is seeking through the registration process.

Section 806.42 outlines the primary information needs of the Commission for registration of withdrawals and consumptive uses. Because of the problems frequently encountered with producing reliable historical data, paragraph 806.42(a)(6) requests the most recent five years of quantity data for a project's withdrawals and consumptive use for at least the past five calendar years.

Section 806.43 provides that the Commission shall review the project's current metering and monitoring for its grandfathered withdrawals and consumptive uses. The Commission may require the project to follow a metering and monitoring plan to ensure that withdrawal and use quantities are accurate and reliable. This section also provides for ongoing reporting of quantities for grandfathered withdrawals and consumptive uses. The Commission may accept quantities reported under the requirements of the applicable member jurisdiction in lieu of additional monitoring data. This information is vital to the Commission in its ongoing evaluation of the water

resources of the basin and will be used in revising the Commission's Comprehensive Plan, in its ongoing evaluation of cumulative water use in the basin and to provide data to assess and evaluate impacts of new projects seeking review and approval by the Commission.

Sections 806.44 and 806.45 provide a process for the determination of grandfathered quantities for withdrawals and consumptive uses. This determination will be made by the Executive Director taking into account the most reliable data. An increase above this amount would require review and approval under §§ 806.4(a)(1)(iii)(A) and 806.4(a)(2)(iv)(A). A project will be able to appeal this determination to the Commission. Any hearing conducted will be done in accordance with the Commission's appeal procedures in Part 808.

#### **Project Review Application Procedures—18 CFR Subpart B**

Section 806.11 is revised to include a specific reference to § 801.12(c)(2), noting that preliminary consultations, or pre-application meetings, are encouraged but not mandatory except for electric power generation projects.

Section 806.12 is revised to clarify when project sponsors will perform a constant-rate aquifer test and to clarify that reviews of aquifer test plan submittals are subject to termination of review under § 806.16.

Section 806.14 detailing the contents of applications to the Commission is rewritten. The new section as proposed better aligns to the actual items sought in the Commission's applications, as well as provides required items specific to each type of approval (i.e., groundwater withdrawal, surface water withdrawal, consumptive use). The proposed regulation includes new requirements specific to projects such as mine and construction dewatering, water resources remediation, and gravity-drained acid mine drainage (AMD) remediation facilities to align with the newly proposed standards for these types of projects under § 806.23(b)(5). The proposal also includes specific requirements for renewal applications.

This section as rewritten retains the requirement for an alternatives analysis for new projects, if prompted by a request from the Commission. However, for new surface water withdrawal projects, an alternatives analysis *must* be performed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality.

Section 806.15 regarding notice requirements for applications is revised to provide notice to appropriate county agencies, removing the specific reference to county planning agencies. Appropriate county agencies include the county governing body, county planning agencies and county conservation districts. Section 806.15(b)(3) is added to allow the Commission or Executive Director to allow notification of property owners by other means where the property is served by a public water supply.

#### **Standards for Review and Approval—18 CFR Subpart C**

Section 806.21 is revised to mention that a project must be "feasible" to align it with the standard presently used for projects during review to determine that they are feasible from both a financial and engineering perspective.

Section 806.22 regarding standards for the consumptive use of water is revised. The proposed revisions lower the 90-day standard for consumptive use mitigation to 45 days and require a mitigation plan that can have several elements and encourages blended mitigation options. The purpose of these changes is to reduce the barriers to project sponsors finding their own mitigation and to correspondingly reduce the number of projects paying the consumptive use mitigation fee. Analysis of the past 100 plus years of river flow records show that the overwhelming majority of low flow/drought events in the Basin are adequately covered by a 45-day consumptive use mitigation standard.

Section 806.22(b) is also revised to clarify that when a project is subject to review and approval and also has an element of pre-compact consumptive use, the project sponsor will be required to provide mitigation going forward for this consumptive use if the project is located in a water critical area. The location of a project in a water critical area will also be a factor used by the Commission in determining the manner of acceptable mitigation under paragraph (c). A definition of water critical area is included in § 806.3 that will rely on both the existing member jurisdiction designations and the ongoing efforts by the Commission to identify areas where water resources are limited or the demand for water has exceeded or is close to exceeding the sustainable supply. Any action to identify a water critical area will be taken by a separate action of the Commission and may be subject to a public hearing under the revisions to § 808.1(b)(4).

Paragraph 806.22(e)(1) is amended to allow a project sourced by more than one public water supply to be eligible for an Approval by Rule for consumptive use as long as the public water supplies are the sole source of water for the project. New § 806.22(e)(2) and (3) were added so both the Approvals by Rule in paragraph (e) and (f) had matching procedures. The time frame for making notice was extended to 20 days in § 806.22(f)(3) to match the changes previously made to § 806.15, related to notice, during the last Commission rulemaking.

Section 806.23 related to standards for withdrawals is amended to include elements that presently form the basis of conditions to approvals for withdrawals. The proposal clarifies that the Commission can establish conditions based on the project's effect on groundwater and surface water availability, including cumulative uses and effects on wetlands. This section is clarified to expressly include the Commission's practice of establishing and requiring a total system limit on projects.

A new § 806.23(b)(5) is added to provide special review provisions for projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD facilities. Because the nature of these types of facilities is fundamentally different from the other withdrawal projects that come before the Commission and because they are heavily regulated by our member jurisdictions, the Commission may appropriately limit consideration of adverse impacts of these projects on groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels.

#### **Hearings and Enforcement Actions—Part 808**

Section 808.1 is revised. The revised section in paragraph (a) identifies those actions that must have a public hearing pursuant to the Susquehanna River Basin Compact. Paragraph (b) outlines all other instances when the Commission may hold a hearing. No changes are contemplated to how the Commission currently conducts its hearings. Paragraphs (c) through (h) are revised to both update the regulations and also to reflect the Commission's current public hearing procedures.

Section 808.2 is revised to amend the scope and procedure for administrative appeals to the Commission. The non-mandatory appeal language is removed and paragraph (a) is revised to provide a mandatory appeal to the Commission of a final action or decision made by the Executive Director, including a non-exclusive list of appealable actions. Where the Commission itself takes a final action, including actions or decisions it makes on appeal of Executive Director actions, those decisions *must* be appealed to the appropriate federal district court in accordance with the provisions of section 3.10 of the Compact. This section also clarifies that the Commission will determine the manner in which it will hear an appeal, including whether a hearing is granted or whether the issue will be decided through submission of briefs.

Section 808.11 is revised to expressly recognize directives issued from Commission staff.

Section 808.14 is revised to provide the Executive Director broader authority to issue compliance orders. These orders would be appealable to the Commission. Paragraph (e) is added to expressly recognize Consent Orders and Agreements in the regulations. These agreements are vital to the Commission in fulfilling its compliance and enforcement obligations under the Compact and allow for a constructive resolution of most enforcement actions.

Section 808.15 is revised to allow the Executive Director to determine the appropriateness of a civil penalty in the first instance in a show cause proceeding. Any decision of the Executive Director is appealable to the Commission. Paragraph (c) is added to reflect the Commission's intent that any finding regarding the imposition of a civil penalty by the Executive Director shall be based on the relevant policies and guidelines adopted by the Commission, as well as the relevant law and facts and information presented as a part of the show cause proceeding.

Section 808.16 regarding civil penalty criteria is revised to be consistent with other changes in this proposed rulemaking, as well as add a new factor regarding the punitive effect of a civil penalty on a violator.

Section 808.17 is revised to be consistent with other changes in the proposed rulemaking.

Section 808.18 is revised to allow the Executive Director to enter into settlement agreements to resolve enforcement actions. Currently all settlement agreements must be brought to the Commission for approval at the Commission's quarterly meeting with the exception of settlements under \$10,000 pursuant to Commission Resolution 2014-15. The revision provides greater authority for the Executive Director to approve settlement agreements, but retains the ability of the Commission to require certain types of settlements to be submitted for the Commission's approval through adoption of a Resolution.

#### Miscellaneous Changes

Section 806.1 is revised to include diversions within the scope of Part 806, which was an omission. The address of the Commission is also updated.

Section 806.3 related to definitions is revised. The definition of facility is revised to include consumptive use, which was an omission. The definition of production fluids is revised to include other fluids associated with the development of natural gas resources. The Commission routinely receives questions regarding other fluids, such as stormwater captured and stored in a drilling rig apparatus, and what rules apply to such water. The Commission is electing to treat all such water as a production fluid to ensure it is accounted for. A definition of wetland is added that mirrors the definition used by the U.S. Army Corps of Engineers for its regulatory program.

Section 806.4 related to projects requiring review and approval is revised, in addition to the changes discussed regarding new subpart E. Paragraph (a) is revised to clarify that aquifer testing pursuant to § 806.12 is not a project governed by § 806.4. Paragraph (a)(2), related to the regulation of withdrawals, is revised to clarify that a project includes all of its sources and to include a reference to the general project review standards in § 806.21.

A new paragraph (a)(3)(vii) is added to allow flowback and production fluids into the basin for in-basin treatment or disposal. The Commission does not want its regulations to be a disincentive to treatment of flowback where the activity is conducted in accordance with the environmental standards and requirements of its member jurisdictions.

Section 806.30 related to monitoring is revised and clarified. The revisions provide that measuring, metering or monitoring devices must be installed per the specifications and recommendations of the

device's manufacturer. The revisions clarify that the Commission may require measurement of groundwater levels in wells other than production wells and may require other monitoring for environmental impacts.

Section 806.31 related to the term of approvals is revised to provide that if a project sponsor submits an application one month prior to the expiration of an ABR or NOI approval, the project sponsor may continue to operate under the expired approval while the Commission reviews the application. In the Commission's experience, the six month time frame currently in the regulation and still applicable to existing Commission docket approvals is longer than necessary for ABR approvals.

#### Transition Issues

The Commission is contemplating that all changes proposed in this rulemaking will take effect immediately upon publication in the Federal Register, with the exception of the adoption of Subpart E (related to registration of grandfathered projects) and the corresponding changes to § 806.4(a)(1)(iii) and (a)(2)(iv), which would be effective six months after the date of publication in the Federal Register.

#### **List of Subjects in 18 CFR Parts 806 and 808**

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR parts 806 and 808 as follows:

#### **PART 806—REVIEW AND APPROVAL OF PROJECTS**

1. The authority citation for part 806 continues to read as follows: Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. Amend § 806.1 by revising paragraphs (a) and (f) to read as follows:

##### **§ 806.1 Scope.**

(a) This part establishes the scope and procedures for review and approval of projects under section 3.10 of the Susquehanna River Basin Compact, Public Law 91-575, 84 Stat. 1509 et seq., (the compact) and establishes special standards under section 3.4(2) of the compact governing water withdrawals, the consumptive use of water, and diversions. The special standards established pursuant to section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under section 3.10. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

\* \* \* \* \*

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 4423 North Front Street, Harrisburg, PA 17110, or from the Commission's website at <http://www.srb.net>.

3. In § 806.3:

a. Revise the definitions for "Facility" and "Production fluids"; and

b. Add, in alphabetical order, definitions for "Water critical area" and "Wetland".

The revisions and additions read as follows:

##### **§ 806.3 Definitions.**

\* \* \* \* \*

*Facility.* Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the

control, collection, storage, withdrawal, diversion, consumptive use, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

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*Production fluids.* Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a byproduct of the production activity or other fluids associated with the development of natural gas resources.

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*Water critical area.* A watershed or sub-watershed identified by the Commission where there are significantly limited water resources, where existing or future demand for water exceeds or has the potential to exceed the safe yield of available surface water and/or groundwater resources, or where the area has been identified or designated by a member jurisdiction as requiring more intensive water planning.

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*Wetlands.* Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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4. Amend § 806.4 by revising paragraphs (a) introductory text, paragraph (a)(1)(iii), (a)(2) introductory text, and paragraph (a)(2)(iv), and adding paragraph (a)(3)(vii) to read as follows:

**§ 806.4 Projects requiring review and approval.**

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) \*\*\*

(iii) With respect to projects that existed prior to January 23, 1971, any project:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its consumptive use in accordance with subpart E of this part.

\*\*\*\*\*

(2) *Withdrawals.* Any project, including all of its sources, described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or part 801 of this chapter. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

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(iv) With respect to groundwater projects that existed prior to July 13, 1978, surface water projects that existed prior to November 11, 1995, or projects that existed prior to January 1, 2007, with multiple sources involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more that did not require Commission review and approval, any project:

(A) Registered in accordance with Subpart E that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or cumulatively from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its withdrawals in accordance with subpart E.

\*\*\*\*\*

(3) \*\*\*

(vii) The diversion of any flowback or production fluids from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

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5. Amend § 806.11 by revising paragraph (b) to read as follows:

**§ 806.11 Preliminary consultations.**

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(b) Except for project sponsors of electric power generation projects under § 801.12(c)(2) of this chapter, preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans under § 806.12) but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

6. Amend § 806.12 by revising paragraph (a) and adding paragraph (f) to read as follows:

**§ 806.12 Constant-rate aquifer testing.**

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform a constant-rate aquifer test in accordance with this section.

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(f) Review of submittals under § 806.12 may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

7. Revise § 806.14 to read as follows:

**§ 806.14 Contents of application.**

(a) Applications for a new project or a major modification to an existing approved project shall include, but not be limited to, the following information and, where applicable, shall be subject to the requirements in paragraph (b) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and identification of all water sources related to the project including location and date of initiation of each source.

(4) Anticipated impact of the project, including impacts on existing water withdrawals, nearby surface waters, and threatened or endangered species and its habitats.

(5) The reasonably foreseeable need for the proposed quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(6) A metering plan that adheres to § 806.30.

(7) Evidence of coordination and compliance with member jurisdictions regarding all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project.

(8) Project estimated completion date and estimated construction schedule.

(9) Draft notices required by § 806.15.

(10) The Commission may also require the following information as deemed necessary:

(i) Engineering feasibility;

(ii) Ability of the project sponsor to fund the project.

(b) Additional information is required for a new project or a major modification to an existing approved project as follows.

(1) *Surface water.* (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) Alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater*—(i) *Constant-rate aquifer tests.* With the exception of mining related withdrawals solely for the purpose of dewatering; construction dewatering withdrawals and withdrawals for the sole purpose of groundwater or below water table remediation generally which are addressed in paragraph (b)(6) of this section, the project sponsor shall provide an interpretative report that includes all monitoring and results of a constant-rate aquifer test consistent with § 806.12 and an updated groundwater availability estimate if changed from the aquifer test plan. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use.* (i) Consumptive use calculations, and a mitigation plan consistent with § 806.22(b).

(ii) Water conservation methods, design or technology proposed or considered

(iii) Alternatives analysis as required by the Commission.

(4) *Into basin diversions.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) *Out of basin diversions.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(b).

(ii) Project setting.

(6) Other projects, including without limitation, mine dewatering, construction dewatering, water resources remediation projects, and gravity-drained AMD remediation facilities.

(i) In lieu of aquifer testing, report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the proposed project and effects on local water availability.

(c) All applications for renewal of expiring approved projects shall include, but not be limited to, the following information, and, where applicable, shall be subject to the requirements in paragraph (d) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, identification of all water sources related to the project including location and date of initiation of each source, and any proposed project modifications.

(4) The reasonably foreseeable need for the requested renewal of the quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(5) An as-built and approved metering plan.

(6) Copies of permits from member jurisdictions regarding all necessary permits or approvals obtained for the project from other federal, state or local government agencies having jurisdiction over the project.

(7) Copy of any approved mitigation or monitoring plan and any related as-built for the expiring project.

(8) Demonstration of registration of all withdrawals or consumptive uses in accordance with the applicable state requirements.

(9) Draft notices required by § 806.15.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water.* (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(2) *Groundwater*—(i) *Constant-rate aquifer tests.* The project sponsor shall provide an interpretative report that includes all monitoring and results of any constant-rate aquifer testing previously completed or submitted to support the original approval. In lieu of a testing report, historic operational data pumping and elevation data may be considered. Those projects that did not have constant-rate aquifer testing completed for the original approval that was consistent with § 806.12 or sufficient historic operational pumping and groundwater elevation data may be required to complete constant-rate aquifer testing consistent with § 806.12, prepare and submit an interpretative report that includes all monitoring and results of any constant-rate aquifer test.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed hydro report.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year recurrence interval under



the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(3) *Consumptive use.* (i) Consumptive use calculations, and a copy of the approved plan or method for mitigation consistent with § 806.22.

(ii) Changes to the facility design;

(iii) Any proposed changes to the previously authorized purpose;

(4) *Into basin diversion.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) *Out of basin diversion.* (i) Historic water use quantities and timing of use;

(ii) Changes to stream flow or quality during the term of the expiring approval;

(iii) Changes to the facility design;

(iv) Any proposed changes to the previously authorized purpose;

(6) Other projects, including without limitation, mine dewatering, water resources remediation projects, and gravity-drained AMD facilities

(i) Copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i).

(iii) Demonstration of continued need for expiring approved water source and quantity.

(e) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

(f) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

(1) Description of the project;

(2) Description of all sources, consumptive uses and diversions related to the project;

(3) Description of the requested modification;

(4) Statement of the need for the requested modification; and

(5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin;

(g) For any applications, the Executive Director or Commission may require other information not otherwise listed in this section.

8. Amend § 806.15 by revising paragraph (a), adding paragraph (b)(3) and revising paragraph (g) to read as follows:

**§ 806.15 Notice of application.**

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of

submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission

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(b) \*\*\*

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property is served by a public water supply.

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(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and appropriate county agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

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9. Amend § 806.21 by revising paragraphs (a) and (c)(1) to read as follows:

**§ 806.21 General standards.**

(a) A project shall be feasible and not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

\*\*\*\*\*

(c) \*\*\*

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated application by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

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10. Revise § 806.22 to read as follows:

**§ 806.22 Standards for consumptive use of water.**

(a) The project sponsors of all consumptive water uses subject to review and approval under § 806.4, § 806.5, or § 806.6 of this part shall comply with this section.

(b) *Mitigation.* All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, § 806.5, §

806.6, or § 806.17 of this part shall mitigate such consumptive use, including any pre-compact consumptive use if located in a water critical area. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. The Commission shall require mitigation in accordance with an approved mitigation plan. The proposed mitigation plan shall include the method or combination of the following methods of mitigation:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 days without impact.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 days without impact.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (b)(3) of this section for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for all water consumptively used over the course of a year, in an amount and manner prescribed by the Commission.

(4) Implement other alternatives approved by the Commission.

(c) *Determination of manner of mitigation.* The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, including whether the project is located in a water critical area, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) *Quality of water released for mitigation.* The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 806.2, as applicable.

(e) *Approval by rule for consumptive uses.* (1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project who is solely supplied water for consumptive use by public water supply may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

(2) *Notification of intent.* Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the

project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) *Metering, daily use monitoring, and quarterly reporting.* The project sponsor shall comply with metering, daily use monitoring, and quarterly reporting as specified in § 806.30.

(5) *Standard conditions.* The standard conditions set forth in § 806.21 shall apply to projects approved by rule.

(6) *Mitigation.* The project sponsor shall comply with mitigation in accordance with § 806.22 (b)(2) or (3).

(7) *Compliance with other laws.* The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(8) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(9) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) *Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development.* (1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under § 806.4, 806.5, or 806.6, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(2) *Notification of intent.* Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state, or local government agencies having jurisdiction over the project. The

Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

(10) Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire five years from the date of such notification, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

- (i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.
- (ii) Precipitation or stormwater collected on the drilling pad site, provided it is used only for drilling or hydrofracture stimulation.
- (iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.
- (iv) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section, provided it is used only for the purposes authorized therein, and in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the

Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize water obtained from a hydrocarbon water storage facility that is not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director and are constructed and maintained in compliance with all standards and requirements of the applicable member jurisdiction. The owner or operator of any such facility shall submit a request for approval on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(15) The project sponsor shall provide a copy of any registration or source approval issued pursuant to this section to the appropriate agency of the applicable member jurisdiction. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered or approved hereunder. Any source approval issued hereunder shall also be subject to such monitoring and reporting requirements as may be contained in such approval or otherwise required by this part.

11. Amend § 806.23 by revising paragraphs (b)(2) and (b)(3)(i) and adding paragraph (b)(5) to read as follows:

**§ 806.23 Standards for water withdrawals.**

\* \* \* \* \*

(b) \* \* \*

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; groundwater and surface water availability, including cumulative uses; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; affecting wetlands; or affecting low flow of perennial or intermittent streams.

(3) \* \* \*

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown, including requiring a total system limit.

\* \* \* \* \*

(5) For projects consisting of mine dewatering, water resources remediation, and gravity-drained AMD facilities, review of adverse impacts will have limited consideration of groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels provided these projects are operated in accordance with the laws and regulations of the member jurisdictions.

12. Amend § 806.30 by revising the introductory text and revising paragraph (a)(4) and adding paragraph (a)(8) to read as follows:

**§ 806.30 Monitoring.**

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, and installed per the specifications and recommendations of the manufacturer of the device, and shall be subject to inspection by the Commission at any time.

(a) \* \* \*

(4) Measure groundwater levels in all approved production and other wells, as specified by the Commission.

\* \* \* \* \*

(8) Perform other monitoring for impacts to water quantity, water quality and aquatic biological communities, as specified by the Commission.

\* \* \* \* \*

13. Amend § 806.31 by revising paragraphs (d) and (e) to read as follows:

**§ 806.31 Term of approvals.**

\* \* \* \* \*

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may revoke the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission docket approval or no later than one month prior to the expiration of its existing ABR or NOI approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provides otherwise.

14. Add subpart E to read as follows:

**Subpart E- Registration of Grandfathered Projects**

Sec.

806.40 Applicability.

806.41 Registration and eligibility.

806.42 Registration requirements.

806.43 Metering and monitoring requirements.

806.44 Determination of grandfathered quantities.

806.45 Appeal of determination.

**§ 806.40 Applicability.**

(a) This subpart is applicable to the following projects, which shall be known as grandfathered projects:

(1) The project has an associated average consumptive use of 20,000 gpd or more in any consecutive 30-day period all or part of which is a pre-compact consumptive use that has not been approved by the Commission pursuant to § 806.4.

(2) The project has an associated groundwater withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to July 13, 1978, that has not been approved by the Commission pursuant to § 806.4.

(3) The project has an associated surface water withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to November 11, 1995, that has not been approved by the Commission pursuant to § 806.4.

(4) The project (or an element of the project) has been approved by the Commission but has an associated consumptive use or water withdrawal that has not been approved by the Commission pursuant to § 806.4.

(5) Any project not included in paragraphs (a)(2) through (4) of this section that has a total withdrawal average of 100,000 gpd or more in any consecutive 30-day average from any combination of sources which was initiated prior to January 1, 2007, that has not been approved by the Commission pursuant to § 806.4.

(6) Any source associated with a project included in paragraphs (a)(2) through (5) of this section regardless of quantity.

(b) A project, including any source of the project, that can be determined to have been required to seek Commission review and approval under the pertinent regulations in place at the time is not eligible for registration as a grandfathered project.

**§ 806.41 Registration and eligibility.**

(a) Projects sponsors of grandfathered projects identified in § 806.40 shall submit a registration to the Commission, on a form and in a manner prescribed by the Commission, within two years of the effective date of this regulation.

(b) Any grandfathered project that fails to register under paragraph (a) of this section shall be subject to Commission's review and approval under § 806.4.

(c) Any project that is not eligible to register under paragraph (a) of this section shall be subject to Commission's review and approval under § 806.4.

(d) The Commission may establish fees for obtaining and maintaining registration in accordance with § 806.35.

(e) A registration under this subpart may be transferred pursuant to § 806.6.

**§ 806.42 Registration requirements.**

(a) Registrations shall include the following information:

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of the project and site in terms of:

(i) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters.

(ii) Project purpose.

(3) Identification of all sources of water, including the date the source was put into service, each source location (including latitude and longitude coordinates in decimal degrees accurate to within 10 meters), and if applicable, any approved docket numbers.

(4) Identification of current metering and monitoring methods for water withdrawal and consumptive use.

(5) Identification of current groundwater level or elevation monitoring methods at groundwater sources.

(6) All quantity data for water withdrawals and consumptive use for a minimum of the previous five calendar years. If quantity data are not available, any information available upon which a determination of quantity could be made.

(7) For consumptive use, description of processes that use water, identification of water returned to the Basin, history of the use, including process changes, expansions and other actions that would have an impact on the amount of water consumptively used during the past five calendar years.

(8) Based on the data provided, the quantity of withdrawal for each individual source and consumptive use the project sponsor requests to be grandfathered by the Commission.

(9) Any ownership or name changes to the project since January 1, 2007.

(b) The Commission may require any other information it deems necessary for the registration process.

**§ 806.43 Metering and monitoring requirements.**

(a) As a part of the registration process, the Commission shall review the current metering and monitoring for grandfathered withdrawals and consumptive uses.

(b) The Commission may require a metering and monitoring plan for the project sponsor to follow.

(c) Project sponsors, as an ongoing obligation of their registration, shall report to the Commission all information specified in the grandfathering determination under § 806.44 in a form and manner determined by the Commission. If quantity reporting is required by the member jurisdiction where the project is located, the Commission may accept that reported quantity to satisfy the requirements of this paragraph.

**§ 806.44 Determination of grandfathered quantities.**

(a) For each registration submitted, the Executive Director shall determine the grandfathered quantity for each withdrawal source and consumptive use.

(b) In making a determination, the following factors should be considered:

- (1) The most recent withdrawal and use data;
- (2) The reliability and accuracy of the data and/or the meters or measuring devices;
- (3) Determination of reasonable and genuine usage of the project, including any anomalies in the usage; and
- (4) Other relevant factors.

**§ 806.45 Appeal of determination.**

(a) A final determination of the grandfathered quantity by the Executive Director must be appealed to the Commission within 30 days from actual notice of the determination.

(b) The Commission shall appoint a hearing officer to preside over appeals under this section. Hearings shall be governed by the procedures set forth in part 808 of this chapter.

**PART 808—HEARINGS AND ENFORCEMENT ACTIONS**

15. The authority citation for part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

16. Revise § 808.1 to read as follows:

**§ 808.1 Public hearings.**

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by section 14.1 of the compact.

(2) Review and approval of diversions.

(3) Imposition or modification of rates and charges.

(4) Determination of protected areas.

(5) Drought emergency declarations.

(6) Hearing requested by a member jurisdiction.

(7) As otherwise required by sections 3.5(4), 4.4, 5.2(e), 6.2(a), 8.4, and 10.4 of the compact.

(b) A public hearing may be conducted by the Commission or the Executive Director in any form or style chosen by the Commission or Executive Director in the following instances:

(1) Proposed rulemaking.

(2) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(3) Adoption of policies and technical guidance documents.

(4) Identification of a water critical area.

(5) When it is determined that a hearing is necessary to give adequate consideration to issues related to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information on a matter before the Commission.

(c) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. In all other cases, at least 20 days prior to the hearing, notice shall be posted on the Commission Web site, sent to the parties who, to the Commission's knowledge, will participate in the hearing, and sent to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, hearing notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register and the Federal Register, and it is sufficient that this notice appear in the Federal Register at least 20 days prior to the hearing and in each

individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.* (1) Hearings shall be open to the public. Participants may be any person, including a project sponsor, wishing to appear at the hearing and make an oral or written statement. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within 10 days or a reasonable time thereafter as may be specified by the presiding officer.

(2) Participants are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection, consistent with the Commission's Access to Records Policy, all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission or Executive Director. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

17. Revise § 808.2 to read as follows:

**§ 808.2 Administrative appeals.**

(a) A project sponsor or other person aggrieved by a final action or decision of the Executive Director shall file a written appeal with the Commission within 30 days of the receipt of actual notice by the project sponsor or within 30 days of publication of the action on the Commission's website or in the Federal Register. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal. The following is a non-exclusive list of actions by the Executive Director that are subject to an appeal to the Commission:

(1) A determination that a project requires review and approval under § 806.5 of this chapter;

(2) An approval or denial of an application for transfer under § 806.6 of this chapter;

(3) An approval of a Notice of Intent under a general permit under § 806.17 of this chapter.

(4) An approval of a minor modification under § 806.18 of this chapter; and

(5) A determination regarding an approval by rule under § 806.22(e) or (f) of this chapter;

(6) A determination regarding an emergency certificate under § 806.34 of this chapter;

(7) Enforcement orders issued under § 808.14;

(8) A finding regarding a civil penalty under § 808.15(c);

(9) A determination of grandfathered quantity under § 806.44 of this chapter;

(10) A decision to modify, suspend or revoke a previously granted approval;

(11) A records access determination made pursuant to Commission policy;

(b) The appeal shall identify the specific action or decision being appealed, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) The Commission will determine the manner in which it will hear the appeal. If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the Federal Register. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule. If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(g) If a hearing is not granted, the Commission may set a briefing schedule and decide the appeal based on the record before it. The Commission may, in its discretion, schedule and hear oral argument on an appeal.

(h) *Intervention.* (1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the Federal Register. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

(i) Where a request for an appeal is made, the 90-day appeal period set forth in section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

18. Revise § 808.11 to read as follows:

**§ 808.11 Duty to comply.**

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, staff directives or any other requirement of the Commission.

19. Revise § 808.14 to read as follows:

**§ 808.14 Orders.**

(a) Whether or not an NOV has been issued, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket or other approval, the commissioners or Executive Director may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners or Executive Director may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

(e) The Commission or Executive Director may enter into a Consent Order and Agreement with an alleged violator to resolve non-compliant operations and enforcement proceedings in conjunction with or separately from settlement agreements under § 808.18.

20. Revise § 808.15 to read as follows:

**§ 808.15 Show cause proceeding.**

(a) The Executive Director may issue an order requiring an alleged violator to show cause why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date by which the alleged violator must provide a written response to the order.

(3) Identify the civil penalty recommended by Commission staff.

(b) The written response by the project sponsor should include the following:

(1) A statement whether the project sponsor contests that the violations outlined in the Order occurred;

(2) If the project sponsor contests the violations, then a statement of the relevant facts and/or law providing the basis for the project sponsor's position;

(3) Any mitigating factors or explanation regarding the violations outlined in the Order;

(4) A statement explaining what the appropriate civil penalty, if any, should be utilizing the factors at § 808.16.

(c) Based on the information presented and any relevant policies, guidelines or law, the Executive Director shall make a written finding affirming or modifying the civil penalty recommended by Commission staff.

21. Amend § 808.16 by revising paragraph (a) introductory text and paragraph (a)(7), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

**§ 808.16 Civil penalty criteria.**

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission and Executive Director shall consider:

\* \* \* \* \*

(7) The length of time over which the violation occurred and the amount of water used, diverted or withdrawn during that time period.

(8) The punitive effect of a civil penalty.

(b) The Commission and/or Executive Director retains the right to waive any penalty or reduce the amount of the penalty recommended by the Commission staff under § 808.15(a)(3) should it be determined, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

22. Revise § 808.17 to read as follows:

**§ 808.17 Enforcement of penalties, abatement or remedial orders.**

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with this part shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to section 15.17 of the compact.

23. Revise § 808.18 to read as follows:

**§ 808.18 Settlement by agreement.**

(a) An alleged violator may offer to settle an enforcement action by agreement. The Executive Director may enter into settlement agreements to resolve an enforcement action. The Commission may, by Resolution, require certain types of enforcement actions or settlements to be submitted to the Commission for action or approval.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission or Executive Director may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: September 19, 2016.

STEPHANIE L. RICHARDSON  
Secretary to the Commission

[16-21-15]

# 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.

### ATHLETIC COMMISSION

**Subject:** Public Meeting  
**Date and Time:** October 27, 2016, 2 — 5 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Board Rm., Baltimore, MD  
**Contact:** Patrick Pannella (410) 230-6223  
 [16-21-07]

### ATHLETIC COMMISSION

**Subject:** Public Meeting  
**Date and Time:** November 16, 2016, 2 — 5 p.m.  
**Place:** 500 North Calvert St., 3rd Fl. Boardroom, Baltimore, MD  
**Contact:** Patrick Pannella (410) 230-6223  
 [16-21-08]

### COMPTROLLER OF THE TREASURY

**Subject:** Notice of Interest Rate on Refunds and Moneys Owed to the State  
**Add'l. Info:** Pursuant to Tax-General Article, §13-604, Annotated Code of Maryland, the Comptroller is required to set the annual interest rate on refunds and moneys owed to the State. For the 2017 calendar year, the annual interest rate on refunds and moneys owed to the State will be 12 percent.  
**Contact:** Sharonne Bonardi (410) 260-7806  
 [16-21-29]

### DEPARTMENT OF THE ENVIRONMENT/AIR AND RADIATION MANAGEMENT ADMINISTRATION

**Subject:** Public Hearing  
**Date and Time:** November 3, 2016, 10 — 11 a.m.  
**Place:** Dept. of the Environment, 1800 Washington Blvd., Baltimore, MD  
**Add'l. Info:** The Maryland Department of the Environment (MDE) gives notice of a public hearing concerning State of Maryland Regional Haze Implementation Plan Revision Alternative BART for the VERSO Luke Paper Mill. The public hearing will be held as required by federal law (Clean Air Act at 42 U.S.C. 7410(a) and 40 CFR 51.102). Interested persons are invited to attend and express their views.

After the Department considers the comments received, and revises the proposal if necessary, all related items will be submitted to the U.S. Environmental Protection Agency. An electronic copy of the proposed revision will be available on the Maryland Department of the Environment's website at [http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air\\_planning/index.aspx](http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air_planning/index.aspx). Note: the public library systems in Maryland can be used for Internet access to view the document.

An electronic copy of the document can also be obtained via email by writing to Alexandra Brun at [alexandra.brun@maryland.gov](mailto:alexandra.brun@maryland.gov).

Copies of the document can also be viewed at the Maryland Department of the Environment Main Office, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland.

For a hard copy, contact: Alexandra Brun.

Written comments may be presented at the hearing, faxed to 410-537-4223, emailed to [alexandra.brun@maryland.gov](mailto:alexandra.brun@maryland.gov), or mailed to Alexandra Brun, MDE ARMA, 1800 Washington Boulevard, Suite 730, Baltimore, MD, 21230. Comments must be received before 5 p.m. on November 3, 2016.

Anyone needing special accommodations at a public hearing should contact the Department's Fair Practices Office at (410) 537-3964 at least five (5) business days in advance of the hearing. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

For more information, contact Alexandra Brun at (410) 537-3252. Toll free in Maryland call 1-(800) 633-6101, ext. 3234, Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Ste. 730, Baltimore, Maryland 21230.

**Contact:** Alexandra Brun (410) 537-3252  
 [16-21-19]

### DEPARTMENT OF THE ENVIRONMENT/AIR AND RADIATION MANAGEMENT ADMINISTRATION

**Subject:** Public Hearing  
**Date and Time:** November 18, 2016, 2 — 3 p.m.  
**Place:** Cecil Co. Health Dept., 401 Bow St., Elkton, MD  
**Add'l. Info:** The Maryland Department of the Environment (MDE) gives notice of a Public Hearing concerning the 2011 Base Year Emissions Inventory for the Philadelphia-Wilmington, Atlantic City, PA-DE-NJ, 2008 Ozone NAAQS Nonattainment Area, State Implementation Plan (SIP). The plan addresses the National Ambient Air Quality Standard (NAAQS).

A public hearing will be held on: November 18, 2016, at the Cecil County Health Department, 401 Bow Street, Elkton, Maryland 21921— First Floor Auditorium — 2:00 p.m. The public hearing will be held as required by federal law (Clean Air Act at 42 U.S.C. 7410(a) and 40 CFR 51.102). Interested persons are invited to attend and express their views.

After the Department considers the comments received, and revises the proposal if necessary, all related items will be submitted to the U.S. Environmental Protection Agency.

An electronic copy of the proposed revision will be available on the Maryland Department of the Environment's website at [http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air\\_planning/index.aspx](http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air_planning/index.aspx). Note: the public library systems in Maryland can be used for Internet access to view the document. An electronic copy of the document can also be obtained via email by writing to Tim Wallace at [Timothy.Wallace@Maryland.gov](mailto:Timothy.Wallace@Maryland.gov).

Copies of the document can also be viewed at the Maryland Department of the Environment Main Office, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland.

For a hard copy, contact: Tim Wallace.  
 Written comments may be presented at the hearing, faxed to 410-537-4223, emailed to [Timothy.Wallace@Maryland.gov](mailto:Timothy.Wallace@Maryland.gov), or mailed to Timothy Wallace, MDE ARMA, 1800 Washington Boulevard, Suite 730, Baltimore,



## GENERAL NOTICES

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MD, 21230. Comments must be received before 5 p.m. on November 18, 2016.

Anyone needing special accommodations at a public hearing should contact the Department's Fair Practices Office at (410) 537-3964 at least five (5) business days in advance of the hearing. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

For more information, contact Timothy Wallace, Regulatory and Compliance Engineer, at (410) 537-3890. Toll free in Maryland call 1-(800) 633-6101, ext. 4180, Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Ste. 730, Baltimore, Maryland 21230.

**Contact:** Timothy Wallace (410) 537-3890

[16-21-32]

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE

**Subject:** Public Meeting

**Date and Time:** November 2, 2016, 4:30 — 5:30 p.m.

**Place:** Anne Arundel Community College, 101 College Pkwy., Arnold, MD

**Contact:** Meghan Ames (410) 767-5079

[16-21-09]

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MEDICAID PHARMACY AND THERAPEUTICS COMMITTEE

**Subject:** Public Hearing

**Date and Time:** November 3, 2016, 9 a.m. — 12 p.m.

**Place:** UMBC Research and Technology Park—South Campus, 1450 S. Rolling Rd., Halethorpe, MD

**Add'l. Info:** Meeting of the Maryland Medicaid Pharmacy Program's Pharmacy and Therapeutics Committee (Preferred Drug List). As soon as available, classes of drugs to be reviewed will be posted on the Maryland Pharmacy Program website at <https://mmcp.dhmf.maryland.gov/pap/SitePages/Public%20Meeting%20Announcement%20and%20Procedures%20for%20Public%20Testimony.aspx>.

**Contact:** Shawn Singh (410) 767-6896

[16-21-06]

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

**Subject:** State Transition Plan Update

**Date and Time:** September 30, 2016

**Add'l. Info:** The Centers for Medicaid and Medicare (CMS) requires that each state create a State Transition Plan (STP) in order to ensure residential and facility based Medicaid providers comply with the federal community settings rule. Maryland's State Transition Plan has been updated. DHMH is accepting new public comments until October 31, 2016. Please direct your comments to: Office of Health Services, Department of Health and Mental Hygiene, 201 W. Preston Street, Baltimore, Maryland 21201, 410-767-5783, or to [dhmh.hcbsetting@maryland.gov](mailto:dhmh.hcbsetting@maryland.gov).

Please visit the following link in order to view the full updated version of Maryland's State Transition Plan (STP): <https://dhmh.maryland.gov/waiverprograms/Pages/Community-Settings-Final-Rule.aspx>

**Contact:** Rebecca Oliver (410) 767-4902

[16-21-12]

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

**Subject:** Public Notice for Opioid Treatment Program Reimbursement Re-bundling Initiative

**Add'l. Info:** Following extensive stakeholder input, the Department is proposing to change the methadone reimbursement methodology to better align services delivered with payment. The proposal includes a new comprehensive rate specifically for medication assisted treatment services and a separate reimbursement for Level 1 counseling services when delivered by appropriately licensed professionals. Opioid Treatment Programs may separately bill for services including an induction service of the selected medication (methadone or buprenorphine), periodic medication management visits, and guest dosing services.

The projected fiscal impact is zero dollars. The Department currently reimburses a bundled rate for Opioid Treatment Program methadone and buprenorphine related services. The proposed change isolates Level 1 counseling services, currently required and included in the bundled rate, to be reimbursed separately. The proposed effective date is March 1, 2017.

To view the full initiative and a more detailed summary of changes, please see

the documents posted on the Behavioral Health Integration webpage: <http://dhmh.maryland.gov/bhd/Pages/Integration-Efforts.aspx>.

Written comments may be sent to Elaine Hall, Office of Health Services, DHMH 201 W. Preston St., Rm. 213a, Baltimore, MD 21201, or emailed to [dhmh.mabehavioralhealth@maryland.gov](mailto:dhmh.mabehavioralhealth@maryland.gov). Comments will be accepted through November 14, 2016.

**Contact:** Elaine Hall (410) 767-1998

[16-21-18]

### MARYLAND INSURANCE ADMINISTRATION

**Subject:** Public Hearing

**Date and Time:** October 27, 2016, 1 — 4 p.m.

**Place:** Baltimore Co. Public Library — Perry Hall, 9685 Honeygo Blvd., Perry Hall, MD

**Add'l. Info:** The Maryland Insurance Administration will conduct a public hearing on specific rate increase requests being made by certain long-term care insurance carriers operating in Maryland. The rate increase requests are from Genworth Insurance Company, John Hancock Insurance Company, Metropolitan Life Insurance Company, Principal Life Insurance Company, The Prudential Insurance Company of America, Transamerica Life Insurance Company, UNUM Life Insurance Company of America, and MedAmerica Insurance Company. The purpose of the hearing is for insurance company officials to explain their reasons for rate increases. If you plan on attending, please RSVP to Adam Zimmerman. Please indicate if you plan on testifying. Interested parties may also submit written comments.

Written comments and RSVPs should be sent to Adam Zimmerman by October 27, 2016, either by email to [Adam.Zimmerman@maryland.gov](mailto:Adam.Zimmerman@maryland.gov) or by mail to 200 St. Paul Place, Suite 2700, Baltimore, MD 21202, or by fax to 410-468-2020

**Contact:** Adam Zimmerman (410) 468-2048

[16-21-17]

## GENERAL NOTICES

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### HB 1634 TASK FORCE TO STUDY RESTRAINTS, SEARCHES AND NEEDS OF CHILDREN IN THE JUVENILE JUSTICE SYSTEM

**Subject:** Public Meeting

**Date and Time:** November 3, 2016, 10 a.m. — 12 p.m.

**Place:** Lowe House Office Bldg., 6 Bladen St., Rm. 180, Annapolis, MD

**Add'l. Info:** Agenda:

- Public Testimony on Juvenile Strip Searches and/or Shackling
- Recommendations and Task Force Vote Finalized

**Contact:** Ricardo Flores (240) 388-1561  
[16-21-31]

### MARYLAND STATE LOTTERY AND GAMING CONTROL COMMISSION

**Subject:** Public Meeting

**Date and Time:** October 27, 2016, 10 a.m. — 12 p.m.

**Place:** Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD

**Contact:** Marie A. Torosino (410) 230-8790

[16-21-24]

### MARYLAND HEALTH CARE COMMISSION

**Subject:** Public Meeting

**Date and Time:** October 20, 2016, 1 — 4 p.m.

**Place:** 4160 Patterson Ave., Rm. 100, Baltimore, MD

**Contact:** Valerie Wooding (410) 764-3460  
[16-21-04]

### MARYLAND HEALTH CARE COMMISSION

**Subject:** Public Meeting

**Date and Time:** November 17, 2016, 1 — 4 p.m.

**Place:** 4160 Patterson Ave., Rm. 100, Baltimore, MD

**Contact:** Valerie Wooding (410) 764-3460  
[16-20-05]

### MARYLAND HEALTH CARE COMMISSION

**Subject:** Formal Start of Review

**Add'l. Info:** The Maryland Health Care Commission (MHCC) hereby gives notice of docketing of the following application for Certificate of Need:

Anne Arundel Medical Center Mental Health Hospital — Docket No. 16-02-2375 — Construction of a 16-bed mental health hospital for adults to be located at Riva Road and Harry S. Truman Parkway, Annapolis; Proposed Cost: \$16,998,237.

MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, COMAR 10.24.01, and the applicable State Health Plan standards.

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.

Persons desiring to become interested parties in the Commission's review of the above-referenced application must meet the requirements of COMAR 10.24.01.01B(2) and (20) and must also submit written comments to the Commission no later than close of business November 14, 2016. These comments must state with particularity the State Health Plan standards or review criteria that you believe have not been met by the applicant as stated in COMAR 10.24.01.08F.

Please refer to the Matter/Docket Number listed above in any correspondence on the application(s). Copies of the application are available for review in the office of MHCC during regular business hours by appointment. All correspondence should be addressed to Paul E. Parker, Director, Center for Health Care Facilities Planning & Development, Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, Maryland 21215.

**Contact:** Ruby Potter (410) 764-3276  
[16-21-28]

### MARYLAND HEALTH CARE COMMISSION

**Subject:** Receipt of Application

**Add'l. Info:** On September 23, 2015, the MHCC received a Letter of Intent from Suburban Hospital to establish a liver transplant program at the hospital. Pursuant to COMAR 10.24.01.08A(3) the Commission hereby initiates a 30-day period in which additional Letters of Intent to apply for a Certificate of Need may be submitted to establish Liver Transplant Program. Suburban Hospital located in Montgomery County is included in The Washington Regional Transplant Consortium which includes, Montgomery, Prince George's and Charles Counties. Additional Letters of Intent for Liver Transplant Program's should be submitted to the MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215 and are due by the close of business, November 16, 2016.

**Contact:** Ruby Potter (410) 764-3276  
[16-21-34]

### MARYLAND PUBLIC TELEVISION

**Subject:** Public Meeting

**Date and Time:** November 22, 2016, 8:30 a.m.

**Place:** Maryland Public Television, Owings Mills, MD

**Contact:** Laura Taylor (410) 581-4141  
[16-21-01]

### MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION AUTHORITY

**Subject:** Public Meeting

**Date and Time:** November 2, 2016, 9 a.m. — 12 p.m.

**Place:** 7223 Parkway Dr., Ste. 103, Hanover, MD

**Contact:** Susan Ann Mary Stroud (410) 782-2103

[16-21-02]

### TASK FORCE TO STUDY MATERNAL MENTAL HEALTH

**Subject:** Public Meeting

**Date and Time:** November 15, 2016, 1 — 3 p.m.

**Place:** Spring Grove Hospital Center, Dix Bldg., 55 Wade Ave., Basement Conf. Rm., Catonsville, MD

**Contact:** Dan Martin (410) 978-8865  
[16-21-10]

### DEPARTMENT OF NATURAL RESOURCES

**Subject:** Maryland Long-term Electricity Report 2016

**Add'l. Info:** Pursuant to Executive Order 01.01.2010.16, notice is hereby given that the Maryland Long-term Electricity Report 2016 (LTER) is available for public inspection and comment until November 4th, 2016. The LTER reviews the current and historical electricity markets, and energy and economic forecasts, to evaluate potential future electricity scenarios in Maryland.

This report may be reviewed online at <http://pprp.info> or by appointment at the Maryland Department of Natural Resources Power Plant Research Program Division (PPRP), Tawes State Office Building, B-3, 580 Taylor Avenue, Annapolis, Maryland, 21401-2397. Information and appointments may be obtained by contacting Susan Gray, Deputy Division Director, Power Plant Assessment Division, at 410-260-8661 or by email at [susan.gray@maryland.gov](mailto:susan.gray@maryland.gov).

PPRP welcomes feedback from all interested stakeholders, including natural gas pipeline suppliers and large electricity consumers, such as commercial and institutional customers.

There will be three public meetings to present the report:

- October 24th at 1 p.m. at the Tawes Building at 580 Taylor Avenue, Annapolis, 21401;
- October 24th at 7 p.m. at Chesapeake College at 1000 College Cir, Wye Mills, 21679 - Health Professionals and Athletic Center Room Number 127; and
- October 25th at 7 p.m. at Frederick Community College at 7932 Opossumtown Pike, Frederick, 21702 – Conference Center (E Building), Room E126AB.

Interested parties may submit comments to Susan Gray, by email to [susan.gray@maryland.gov](mailto:susan.gray@maryland.gov), or by mail to Tawes State Office Building, B-3, 580 Taylor Avenue, Annapolis, Maryland, 21401-2397, with the subject “Long-Term Electricity Report 2016” specifying the Executive Order. Comments must be received no later than November 4, 2016, at 11:59 p.m.

**Contact:** Susan Gray (410) 260-8661  
[16-21-23]

**MARYLAND COLLEGE  
COLLABORATION FOR STUDENT  
VETERANS COMMISSION**

**Subject:** Public Meeting

**Date and Time:** October 24, 2016, 11 a.m. — 12 p.m.

**Place:** 16 Francis St., Annapolis, MD

**Contact:** Denise Nooe (410) 260-3840  
[16-21-11]

**WORKERS' COMPENSATION  
COMMISSION**

**Subject:** Public Meeting

**Date and Time:** November 10, 2016, 9:30 — 11:30 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) 864-5300  
[16-21-03]

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- 01 Procedures
- 02 Division of Reimbursements
- 03 Health Statistics
- 04 Fiscal
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- 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
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- 15 Food
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- 17 Swimming Pools and Spas
- 18 Human Immunodeficiency Virus (HIV) Infection and Acquired Immunodeficiency Syndrome (AIDS)
- 19 Dangerous Devices and Substances
- 20 Kidney Disease Program
- 21 Mental Hygiene Regulations
- 22 Developmental Disabilities

### Part 4

- 23 Advance Directive Registry
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- 25 Maryland Health Care Commission
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- 27 Board of Nursing
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- 34 Board of Pharmacy
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- 62 Natalie Laprade Medical Marijuana Commission
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- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
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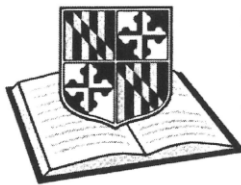
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