


Maryland Register

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Volume 39 • Issue 22 • Pages 1417—1474

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before October 15, 2012, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of October 15, 2012.

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



Information About the Maryland Register and COMAR

MARYLAND REGISTER

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

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

The following information is also published regularly in the Register:

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

CITATION TO THE MARYLAND REGISTER

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

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

CODE OF MARYLAND REGULATIONS (COMAR)

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

CITATION TO COMAR REGULATIONS

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

DOCUMENTS INCORPORATED BY REFERENCE

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

HOW TO RESEARCH REGULATIONS

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

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

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

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

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COMAR Online

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

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

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

Availability of Monthly List of Maryland Documents

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

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

CLOSING DATES AND ISSUE DATES through JULY 26, 2013

Issue Date	Emergency and Proposed Regulations 5:00 p.m.*	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
November 16	October 29	November 7	November 5
November 30**	November 9	November 16	November 15
December 14	November 26	December 5	December 3
December 28**	December 10	December 17	December 14
January 11**	December 20	January 2	December 27
January 25	January 7	January 16	January 14
February 8**	January 18	January 30	January 28
February 22	February 4	February 13	February 11
March 8**	February 15	February 27	February 25
March 22	March 4	March 13	March 11
April 5	March 18	March 27	March 25
April 19	April 1	April 10	April 8
May 3	April 15	April 24	April 22
May 17	April 29	May 8	May 6
May 31**	May 13	May 21	May 20
June 14**	May 23	June 5	June 3
June 28	June 10	June 19	June 17
July 12**	June 24	July 2	June 28
July 26	July 8	July 17	July 15

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

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

** Note closing date changes

The regular closing date for Proposals and Emergencies is Monday.

REGULATIONS CODIFICATION SYSTEM

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

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

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

Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed

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

Table of Pending Proposals

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

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- 12.15.01.02—.20 • 39:8 Md. R. 559 (4-20-12)
- 12.15.02.01—.13 • 39:8 Md. R. 559 (4-20-12)
- 12.15.03.01—.11 • 39:8 Md. R. 559 (4-20-12)
- 12.15.04.01,.03—.06,.08,.09 • 39:8 Md. R. 559 (4-20-12)
- 12.15.05.02—.09 • 39:8 Md. R. 559 (4-20-12)

13A STATE BOARD OF EDUCATION

- 13A.01.05.07,.08 • 39:18 Md. R. 1213 (9-7-12)
- 13A.03.02.09 • 39:22 Md. R. 1455 (11-2-12)
- 13A.08.01.11,.12,.15,.21 • 39:22 Md. R. 1456 (11-2-12)
- 13A.11.01.03-1,.15 • 39:20 Md. R. 1340 (10-5-12)
- 13A.11.02.06 • 39:20 Md. R. 1340 (10-5-12)
- 13A.11.06.16 • 39:20 Md. R. 1340 (10-5-12)
- 13A.11.08.05,.12,.14 • 39:20 Md. R. 1340 (10-5-12)
- 13A.12.01.02,.06,.11 • 39:22 Md. R. 1458 (11-2-12)

13B MARYLAND HIGHER EDUCATION COMMISSION

- 13B.05.01.01—.11 • 39:17 Md. R. 1167 (8-24-12)

14 INDEPENDENT AGENCIES

- 14.01.10.18 • 39:18 Md. R. 1213 (9-7-12)
- 14.01.12.04 • 39:18 Md. R. 1213 (9-7-12)
- 14.01.14.04,.08,.37,.38,.45,.50 • 39:20 Md. R. 1343 (10-5-12)
- 14.30.07.04 • 39:6 Md. R. 448 (3-23-12)
- 14.30.11.12 • 39:6 Md. R. 448 (3-23-12)
- 14.34.02.04 • 39:8 Md. R. 578 (4-20-12)

15 DEPARTMENT OF AGRICULTURE

- 15.01.05.02,.09,.10 • 39:21 Md. R. 1397 (10-19-12)
- 15.07.01.08,.09 • 39:21 Md. R. 1398 (10-19-12)
- 15.07.02.01—.09 • 39:21 Md. R. 1398 (10-19-12)
- 15.08.05.11 • 39:22 Md. R. 1460 (11-2-12)

17 DEPARTMENT OF BUDGET AND MANAGEMENT

- 17.04.04.04 • 39:20 Md. R. 1345 (10-5-12)

20 PUBLIC SERVICE COMMISSION

- 20.52.03.01—.04 • 39:21 Md. R. 1399 (10-19-12)

21 STATE PROCUREMENT REGULATIONS

- 21.11.11.02 • 39:19 Md. R. 1284 (9-21-12)

23 BOARD OF PUBLIC WORKS

23.02.04.15 • 39:22 Md. R. 1460 (11-2-12)

26 DEPARTMENT OF THE ENVIRONMENT

Subtitles 01—07 (Part 1)

26.02.03.01 — .05 • 39:22 Md. R. 1462 (11-2-12)

Subtitles 08—12 (Part 2)

26.09.01.02 • 39:22 Md. R. 1463 (11-2-12)
26.09.02.03, .06— .09 • 39:22 Md. R. 1463 (11-2-12)
26.11.02.09 • 39:16 Md. R. 1118 (8-10-12)
26.11.08.08-2 • 39:16 Md. R. 1119 (8-10-12)
26.11.09.08 • 39:16 Md. R. 1120 (8-10-12)
39:16 Md. R. 1122 (8-10-12)
26.11.14.06— .08 • 39:16 Md. R. 1120 (8-10-12)
26.11.29 • 39:17 Md. R. 1177 (8-24-12) (err)
26.11.29.01— .05 • 39:16 Md. R. 1124 (8-10-12)
26.11.30.01— .08 • 39:16 Md. R. 1122 (8-10-12)

Subtitles 19—27 (Part 4)

26.24.01.02 • 39:21 Md. R. 1400 (10-19-12)
26.24.04.01— .01-4 • 39:21 Md. R. 1400 (10-19-12)

29 DEPARTMENT OF STATE POLICE

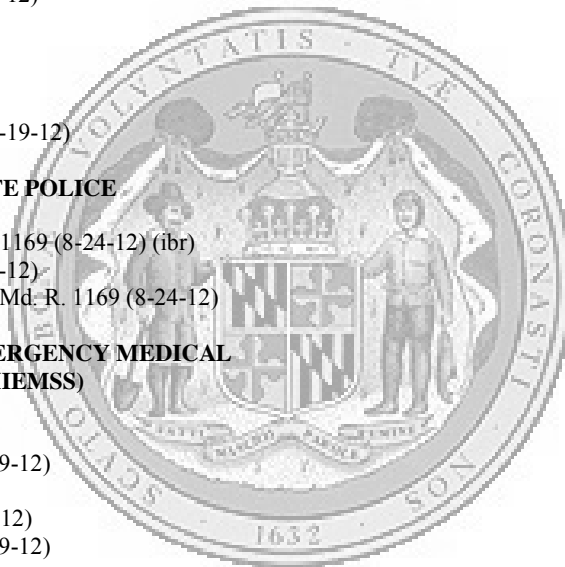
29.06.01.02, .06— .10, .12, .14 • 39:17 Md. R. 1169 (8-24-12) (ibr)
29.06.03.01— .04 • 39:17 Md. R. 1169 (8-24-12)
29.06.07.03— .05, .07— .12, .14— .16 • 39:17 Md. R. 1169 (8-24-12)

30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

30.06.01.01 • 39:21 Md. R. 1404 (10-19-12)
30.06.02.01— .08 • 39:21 Md. R. 1404 (10-19-12)
30.06.03.01 • 39:21 Md. R. 1404 (10-19-12)
30.06.04.01, .02 • 39:21 Md. R. 1404 (10-19-12)
30.06.05.01— .04 • 39:21 Md. R. 1404 (10-19-12)

31 MARYLAND INSURANCE ADMINISTRATION

31.08.05.02, .03 • 39:20 Md. R. 1345 (10-5-12)
31.08.12.02— .06 • 39:20 Md. R. 1346 (10-5-12)
31.16.11.01— .03 • 39:20 Md. R. 1348 (10-5-12)
31.17.03.02, .10 • 39:17 Md. R. 1175 (8-24-12)



The Governor

EXECUTIVE ORDER 01.01.2012.18

Maryland's Open Data Initiative

WHEREAS, The State of Maryland is committed to the principle of open government and continues to look for ways to improve the transparency and accountability of government operations;

WHEREAS, Since 2007, the State of Maryland has utilized StateStat, a performance-measurement and management tool, in order to optimize the performance of State government through a process of continually analyzing data, monitoring trends, and developing new strategies to improve performance;

WHEREAS, A key tenet of StateStat is that when accurate and timely intelligence is shared by all, more ideas and effective strategies will emerge for how the State of Maryland can improve the lives of its citizens;

WHEREAS, New technologies enable the State of Maryland to continue stretching the boundaries of citizen communication, collaboration, and engagement in order to achieve the best possible outcomes for the State; and

WHEREAS, In order to continue down the current path of progress, the State of Maryland should formalize a program of data collection and dissemination that will permit greater public review and analysis of information, increase collaboration between the public and State officials, and optimize progress toward the strategic policy goals of the State.

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

A. An Open Data Working Group shall be established to implement the policies established in this Executive Order. The Open Data Working Group shall include representation from each of the principal departments of the Executive Branch that participates in the StateStat process, as well as the Department of Budget and Management and the Department of Assessments and Taxation. The Governor's Chief Innovation Officer will lead the Open Data Working Group and may require additional agencies to participate.

B. Within 30 days from the effective date of this Order, participating departments shall designate an employee to serve as Open Data Officer. The Open Data Officers shall coordinate the implementation of this Order within their respective departments and shall serve as their department's primary representative to the Open Data Working Group.

C. Within 60 days from the effective date of this Order, the Open Data Working Group shall create an open data portal at <http://data.maryland.gov>. This portal shall contain information on the State of Maryland's open government efforts and shall include a dynamic data catalog that lists all of the data sets that have been released by State departments.

D. The State's open data portal shall include a mechanism for the public to give feedback on published information and provide input on other data sets that should be prioritized for publication.

E. The Open Data Working Group shall hold regular meetings to report progress and to discuss ways to advance Maryland's Open Data Initiative.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 1st Day of October, 2012.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[12-22-45]

EXECUTIVE ORDER 01.01.2012.19

Executive Order Regarding Hurricane Sandy

WHEREAS, The State of Maryland is subject to a variety of hazards or disasters including but not limited to severe storms, significant winter weather, tropical storm systems, hurricanes, and other weather related events;

WHEREAS, Having been advised and informed by the Maryland Emergency Management Agency that as a result of the impending impact of Hurricane Sandy and associated high winds, severe rain, and other significant hazards, there is a need for special preparedness and response for which resources may be requested;

WHEREAS, Hurricane Sandy is currently a category two hurricane moving towards the east coast of the United States forecasted by the National Hurricane Center to impact the State of Maryland;

WHEREAS, The precise path of Hurricane Sandy remains uncertain, the entire State of Maryland must take steps to prepared for potential destruction and minimize the threat to public safety and the lives of all Marylanders who may find themselves in the path of the storm;

WHEREAS, There is a need to take protective actions to protect the lives and property of citizens expected to be impacted by the potentially disastrous effects of Hurricane Sandy;

WHEREAS, Because of Hurricane Sandy's potential impacts on the State of Maryland and preparations for all contingencies and emergency exists in all counties;

WHEREAS, Resources may be requested due to the intense and powerful wind, heavy rains, flooding, tidal flooding and the severe storms affecting the State of Maryland including widespread wind damage, power outages, coastal and in-land flooding;

WHEREAS, Transportation, water utility, and other critical infrastructure may be negatively affected by said power outages, wind damage, and flooding;

WHEREAS, State and Local government agencies will require additional resources and support in order to implement protective actions and meet the public safety and welfare needs of citizens affected by the storm, heavy winds, flooding, and power outages;

THE GOVERNOR

1424

WHEREAS, The citizens of Maryland may require direct assistance in repairing damaged homes and businesses and in order to return to their normal, daily lives;

WHEREAS, The Federal Emergency Management Agency has urged all residents to take steps now to prepare their families and businesses for hurricanes, severe weather, flooding, and other disasters;

WHEREAS, In order to waive certain regulations related to commercial vehicles;

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

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

WHEREAS, In order to implement the emergency powers of the Governor, an executive order of the Governor is appropriate.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, DECLARE THAT A STATE OF EMERGENCY EXISTS IN ALL COUNTIES, I CALL THE MARYLAND NATIONAL GUARD INTO STATE SERVICE AND HEREBY AUTHORIZE THE MARYLAND EMERGENCY MANAGEMENT AGENCY OR OTHER APPROPRIATE STATE AUTHORITY, DURING THIS EMERGENCY PERIOD, TO ENGAGE, DEPLOY AND COORDINATE AVAILABLE RESOURCES.

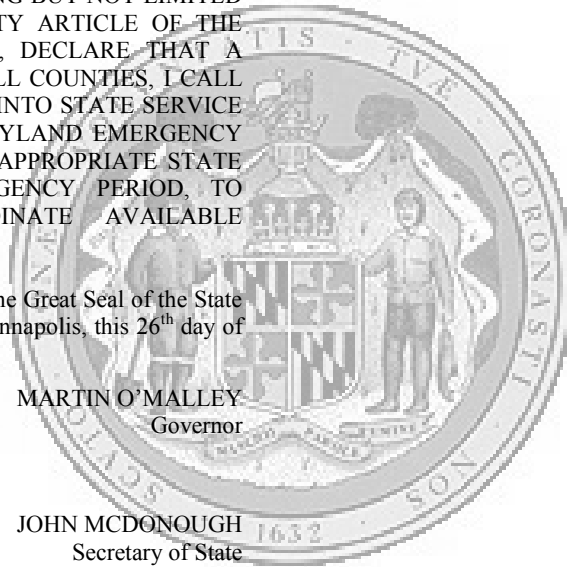
Given Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 26th day of October, 2012.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN MCDONOUGH
Secretary of State

[12-22-46]



The Judiciary

COURT OF APPEALS OF MARYLAND

SCHEDULE

Thursday, November 29, 2012
Bar Admissions

- Misc. 8 Andre Bourgeois, Individually and on behalf of a class of others similarly situated v. Live Nation Entertainment, Inc., et al.
- No. 24 Transcare Maryland, Inc., et al. v. Bryson Murray, et al.
- No. 33 Kent Island, LLC v. Michael A. Dinapoli, et al.
- No. 35 B. Marie Green, Supervisor of Assessments of Montgomery County v. Church of Jesus Christ of Latter-Day Saints

Friday, November 30, 2012

- AG 27 Attorney Grievance Commission of Maryland v. Robert Weston Mance, III
- Misc. 10 Gladys Gardner, Individually on Behalf of All Persons Similarly Situated v. Ally Financial Incorporated, f/k/a GMAC Incorporated
- *****
Randolph Scott, Individually and on Behalf of All Persons Similarly Situated v. Nuvel National Auto Finance, LLC d/b/a Nuvel National Auto Finance; NUVELL FINANCIAL SERVICES
- No. 13 William M. Bailey v. State of Maryland

Monday, December 3, 2012

- AG 1 Attorney Grievance Commission of Maryland v. Mark Edward Hunt
- Misc. 7 Travco Insurance Company v. Crystal Williams
- No. 32 Daryl Jones v. Anne Arundel County, Maryland, et al.

Tuesday, December 4, 2012

- AG 70 Attorney Grievance Commission of Maryland v. Alfred (2011 T) Amos Page, Jr.
- No. 31 Big Louie Bail Bonds, LLC v. State of Maryland, et al.
- No. 34 CSX Transportation, Inc. v. Edward L. Pitts, Sr.

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

After December 4, 2012, the Court will recess until January 3, 2013.

BESSIE M. DECKER
Clerk

[12-22-38]

DISCIPLINARY PROCEEDINGS

This is to certify that by an Order of this Court dated September 11, 2012, **DENISE LEONA BELLAMY**, P. O. Box 1816, Upper Marlboro, Maryland 20773, has been suspended for ninety (90) days by consent, effective October 11, 2012, from the further practice of law in this State and her name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

* * * * *

This is to certify that by an Order of this Court dated September 12, 2012, **WAYNE THOMAS PREM**, 110 West Road, Suite 435, Towson, Maryland 21204, has been disbarred by consent, effective October 12, 2012, from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

* * * * *

This is to certify that by an Order of this Court dated October 5, 2012, **JOHN KIRBY BURKHARDT**, 28 Allegheny Avenue, Suite 500, Towson, Maryland 21204, has been indefinitely suspended by consent from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

* * * * *

This is to certify that by an Order of this Court dated October 9, 2012, **ALLISON ELIZABETH NOVELLI**, 7 Powellton Avenue, Berlin, Maryland 21811, has been disbarred by consent from the further practice of law in this State and her name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

* * * * *

This is to certify that by an Order of this Court dated October 16, 2012, **TERRI LYNN JUANA SNEIDER**, 29 Wilelinor Drive, Edgewater, Maryland 21037, has been placed on inactive status by consent, effective immediately, from the further practice of law in this State and her name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

* * * * *

This is to certify that by an Order of this Court dated October 17, 2012, **CARREN SUSAN OLER**, 216 North Adams Street, Rockville, Maryland 20850, has been indefinitely suspended by consent, effective immediately, from the further practice of law in this State and her name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

* * * * *

This is to certify that by an Order of this Court dated October 18, 2012, **MICHAEL KENNETH DECKER**, 7360 S.W. 165 Street, Palmetto Bay, Florida 33157, has been disbarred 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 16-772(d)).

[12-22-39]

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Notice of Open Meeting

The Standing Committee on Rules of Practice and Procedure will hold an open meeting on Friday, November 16, 2012, in the Judiciary Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland, commencing at 9:30 a.m., to consider any questions relating to rules changes as may be brought before the meeting.

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

[12-22-31]

Emergency Action on Regulations

Symbol Key

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

Emergency Regulations

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

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.05 [Licensure by Waiver of Practical Clinical Examination for Dentists] *Licensure for Dentists Licensed in Another State*

Authority: Health Occupations Article, §§4-303.1(d) and 4-306, Annotated Code of Maryland

Notice of Emergency Action [12-250-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of existing Regulations .01 — .05 under COMAR 10.44.05 **Licensure by Waiver of Practical Clinical Examination for Dentists** and to new Regulations .01 — .06 under COMAR 10.44.05 **Licensure for Dentists Licensed in Another State**.

Emergency status began: October 1, 2012.
Emergency status expires: March 30, 2013.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:19 Md. R. 1271 — 1272 (September 21, 2012), referenced as [12-250-P].

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

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.09 [Licensure by Waiver of Practical Clinical Examination for Dental Hygienists] *Licensure for Dental Hygienists Licensed in Another State*

Authority: Health Occupations Article, §§4-303.1(d) and 4-306, Annotated Code of Maryland

Notice of Emergency Action [12-251-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of existing Regulations .01—05 under COMAR 10.44.09 **Licensure by Waiver of Practical Clinical Examination for Dental Hygienists** and to new Regulations .01—06 under COMAR 10.44.09 **Licensure for Dental Hygienists Licensed in Another State**.

Emergency status began: October 1, 2012.
Emergency status expires: March 30, 2013.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:19 Md. R. 1272 — 1274 (September 21, 2012), referenced as [12-251-P].

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

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.15 [Examination for Licensure] *Dentists and Dental Hygienists — Licensure by Examination*

Authority: Health Occupations Article, §§4-302 [and], 4-303.1(d), 4-305, and 4-306, Annotated Code of Maryland

Notice of Emergency Action

[12-246-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of existing Regulations .01 — .08 under COMAR 10.44.15 Examination for Licensure and to new Regulations .01 — .09 under COMAR 10.44.15 Dentists and Dental Hygienists — Licensure by Examination.

Emergency status began: October 1, 2012.

Emergency status expires: March 30, 2013.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:19 Md. R. 1274—1275 (September 21, 2012), referenced as [12-246-P].

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

Subtitle 52 PREVENTIVE MEDICINE

10.52.15 *Screening for Critical Congenital Heart Disease (CCHD) in Newborns*

Authority: Health-General Article, §§13-109, 13-111, and 18-107(a), Annotated Code of Maryland

Notice of Emergency Action

[12-252-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulations .01—08 under a new chapter, COMAR 10.52.15 Screening for Critical Congenital Heart Disease (CCHD) in Newborns.

Emergency status began: October 5, 2012.

Emergency status expires: February 27, 2013.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:19 Md. R. 1275—1278 (September 21, 2012), referenced as [12-252-P].

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

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

10.54.03 Retail Food and Pharmacy Vendors

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

Notice of Emergency Action

[12-283-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amend Regulations .04, .09-1, .10, .11, .13—16, and .19 under COMAR 10.54.03 Retail Food and Pharmacy Vendors.

Emergency status began: October 1, 2012.

Emergency status expires: March 30, 2013.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:21 Md. R. 1393—1397 (October 19, 2012), referenced as [12-283-P].

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

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 03

COMPTROLLER OF THE TREASURY

Subtitle 10 MISCELLANEOUS ADMINISTRATION

03.10.01 Slot Machines for Nonprofit Organizations

Authority: Criminal Law Article, §12-304, Annotated Code of Maryland; Ch. 315, Acts of 2011, and Chs. 8 and 9, Acts of 2012

Notice of Final Action

[12-219-F]

On October 17, 2012, the Comptroller of Maryland adopted new Regulations .01 — .06 under COMAR 03.10.01 Slot Machines for Nonprofit Organizations, under a new subtitle, Subtitle 10 Miscellaneous Administration. This action, which was proposed for adoption in 39:17 Md. R. 1150—1152 (August 24, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

RHEA R. REED
Director
Revenue Administration Division

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.05 Fish

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

Notice of Final Action

[12-233-F]

On October 23, 2012, the Secretary of Natural Resources adopted amendments to Regulation .21 under COMAR 08.02.05 Fish. This action, which was proposed for adoption in 39:18 Md. R. 1199—1202 (September 7, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 06 DISEASES

10.06.04 School Health Services and Required Immunizations Before Entry into School

Authority: Education Article, §7-403, Annotated Code of Maryland

Notice of Final Action

[12-232-F]

On October 10, 2012, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .03 under COMAR 10.06.04 School Health Services and Required Immunizations Before Entry into School. This action, which was proposed for adoption in 39:17 Md. R. 1157—1159 (August 24, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

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

Subtitle 10 LABORATORIES

10.10.03 Medical Laboratories — Licenses

Authority: Health-General Article, §17-205, Annotated Code of Maryland

Notice of Final Action

[12-216-F]

On October 18, 2012, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .02 under COMAR 10.10.03 Medical Laboratories — Licenses. This action, which was proposed for adoption in 39:17 Md. R. 1159 (August 24, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

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

**Subtitle 24 MARYLAND HEALTH
CARE COMMISSION**

10.24.11 State Health Plan for Facilities and Services: General Surgical Services

Authority: Health-General Article, §§19-109(a)(1) and 19-118, Annotated Code of Maryland

Notice of Final Action
[12-193-F-I]

On October 18, 2012, the Maryland Health Care Commission adopted amendments to Regulation .01 under **COMAR 10.24.11 State Health Plan for Facilities and Services: General Surgical Services**. This action was considered by the Commission at an open meeting held on October 18, 2012, notice of which was given through publication in the Maryland Register pursuant to State Government Article, §10-506(c), Annotated Code of Maryland. This action, which was proposed for adoption in 39:15 Md. R. 980 (July 27, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

GARY P. TANIO, M.D.
Chair
Maryland Health Care Commission

**Title 12
DEPARTMENT OF PUBLIC
SAFETY AND
CORRECTIONAL SERVICES
Subtitle 04 POLICE TRAINING
COMMISSION**

12.04.01 General Regulations

Authority: Correctional Services Article, §2-109; Public Safety Article, §3-208(a); Annotated Code of Maryland

Notice of Final Action
[12-180-F]

On October 10, 2012, the Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted amendments to Regulation .09 under **COMAR 12.04.01 General Regulations**. This action, which was proposed for adoption in 39:15 Md. R. 1007 (July 27, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

**Subtitle 04 POLICE TRAINING
COMMISSION**

12.04.01 General Regulations

Authority: Correctional Services Article, §2-109; Public Safety Article, §3-208(a); Annotated Code of Maryland

Notice of Final Action
[12-143-F]

On October 10, 2012, the Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted amendments to Regulation .12 under **COMAR 12.04.01 General Regulations**. This action, which was proposed for adoption in 39:12 Md. R. 752 — 753 (June 15, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

**Subtitle 04 POLICE TRAINING
COMMISSION**

12.04.07 Police Auxiliary and Reserve Volunteer Program

Authority: Correctional Services Article, §2-109; Public Safety Article, §3-208(a); Tax-General Article, §10-208; Annotated Code of Maryland

Notice of Final Action
[12-207-F]

On October 10, 2012, the Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted new Regulations .01 — .11 under a new chapter, **COMAR 12.04.07 Police Auxiliary and Reserve Volunteer Program**. This action, which was proposed for adoption in 39:16 Md. R. 1100 — 1103 (August 10, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

Title 26

DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

26.11.19 Volatile Organic Compounds from Specific Processes

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

Notice of Final Action

[12-137-F]

On October 22, 2012, the Secretary of the Environment adopted new Regulation **.27-1** under **COMAR 26.11.19 Volatile Organic Compounds from Specific Processes**. This action, which was proposed for adoption in 39:12 Md. R. 756—758 (June 15, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

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

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 16 MISCELLEANOUS

31.16.10 *Complaint Investigation and Determination Process*

Authority: Insurance Article, §2-109(a); Health-General Article, §19-705(a)(2); Annotated Code of Maryland

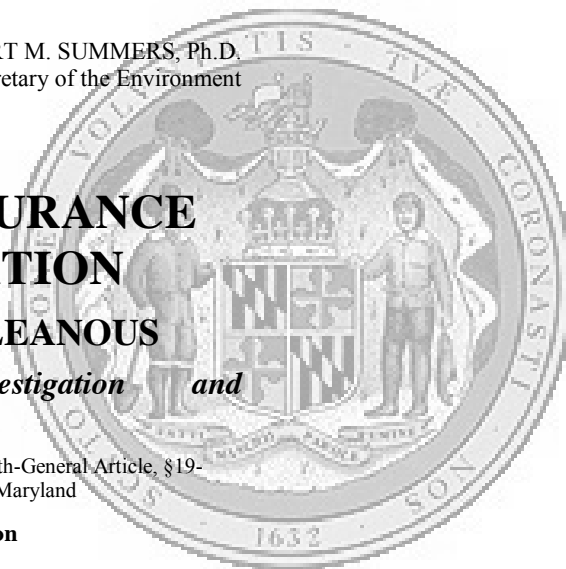
Notice of Final Action

[12-225-F]

On October 16, 2012, the Insurance Commissioner adopted new regulations **.01—.09** under a new chapter, **COMAR 31.16.10 Complaint Investigation and Determination Process**. This action, which was proposed for adoption in 39:17 Md. R. 1173 — 1175 (August 24, 2012), has been adopted as proposed.

Effective Date: November 12, 2012.

THERESE M. GOLDSMITH
Insurance Commissioner



Withdrawal of Regulations

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

21.11.12 State Apprenticeship and Training Fund

Authority: State Finance and Procurement Article, §§17-603—17-606,
Annotated Code of Maryland

Notice of Withdrawal

[11-279-W]

The Commissioner of Labor and Industry withdraws the proposal to adopt new Regulations .01—.09 under a new chapter, **COMAR 21.11.12 State Apprenticeship and Training Fund**, as published in 38:20 Md. R. 1249—1251 (September 23, 2011).

J. RONALD DEJULHS
Commissioner of Labor and Industry

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 12 HEALTH MAINTENANCE ORGANIZATIONS; ENTITIES THAT ACT AS HEALTH INSURERS

31.12.08 Payments to Nonparticipating Providers

Authority: Health-General Article, §19-710.1(k), Annotated Code of
Maryland

Notice of Withdrawal

[11-223-W]

The Insurance Commissioner withdraws the proposal to amend Regulations .04 and .06 under **COMAR 31.12.08 Payments to Nonparticipating Providers**, as published in 38:17 Md. R. 1039 — 1040 (August 12, 2011) and repropoed in 39:2 Md. R. 223 (January 27, 2012).

THERESE M. GOLDSMITH
Insurance Commissioner

Proposed Action on Regulations

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

Symbol Key

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

Promulgation of Regulations

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

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

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

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 21 MENTAL HYGIENE REGULATIONS

10.21.21 Community Mental Health Programs — Psychiatric Rehabilitation Programs for Adults

Authority: Health-General Article, §§10-901 and 10-902, Annotated Code of Maryland

Notice of Proposed Action

[12-305-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .06 under **COMAR 10.21.21 Community Mental Health Programs — Psychiatric Rehabilitation Programs for Adults**.

Statement of Purpose

The purpose of this action is to clarify that electronic signatures are permitted.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

.06 Evaluation and Planning Services.

A.—C. (text unchanged)

D. Continuing Evaluation.

(1) Contact Notes. Staff shall document in the individual's medical record:

(a) Each contact with or about the individual, including, at a minimum:

(i)—(v) (text unchanged)

(vi) A legible signature, *which may include an electronic signature*, and printed or typed name of the program staff member providing care, with the appropriate title; and

(b) (text unchanged)

(2)—(4) (text unchanged)

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

Subtitle 24 MARYLAND HEALTH CARE COMMISSION

10.24.05 Continuation of Authority to Provide Non-Primary [Research Waivers] PCI Through Participation in the Follow-On C-PORT E Registry

Authority: Health-General Article, §§19-101, 19-118, [and] 19-120, and 19-120.1, Annotated Code of Maryland

Notice of Proposed Action

[12-301-P]

The Maryland Health Care Commission proposes to amend Regulations .01 and .02, repeal existing Regulations .03 and .06, and amend and recodify existing Regulations .04, .05, and .07 to be Regulations .03, .04, and .05, respectively, under **COMAR 10.24.05 Continuation of Authority to Provide Non-Primary PCI Through Participation in the Follow-On C-PORT E Registry**. This action was considered by the Commission at an open meeting held on September 20, 2012, notice of which was given through publication in the Maryland Register, under State Government Article §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to provide technical amendments which allow the Commission to continue oversight of non-primary PCI programs at Registry hospitals, while the Commission is in the process of revising the State Health Plan Chapter on Cardiac Surgery and Percutaneous Coronary Intervention Services. This action will bring the regulations into line with recent statutory enactments, specifically Health-General Article §19.120.1.

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 Paul Parker, Director, Center for Hospital Services, Maryland Health Care Commission, 4160 Patterson Avenue Baltimore, Maryland 21215, or call 410-764-3261, or fax to 410-358-1311. Comments will be accepted through 4:30 p.m. on December 7, 2012. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "C-PORT study" means [a] *the randomized clinical research trial that was conducted by the Atlantic Cardiovascular Patient Outcomes Team (C-PORT) to determine whether nonprimary PCI performed in hospitals without on-site cardiac surgery services is as safe and effective as nonprimary PCI performed in hospitals with on-site cardiac surgery services.*

(3) — (4) (text unchanged)

(5) "Primary PCI" means PCI capable of relieving coronary vessel narrowing associated with ST-segment elevation myocardial infarction (STEMI) *and is also known as emergency PCI.*

(6) — (8) (text unchanged)

(9) "Waiver to perform nonprimary PCI" means a time-limited exemption from the requirements of COMAR 10.24.17.04E, Policy 5.0, by which the Commission [permits] *permitted* an acute care hospital without on-site cardiac surgery services to perform nonprimary PCI services within the C-PORT study.

(10) (text unchanged)

.02 Purpose and Scope.

A. — B. (text unchanged)

C. [As] *In 2011, after the C-PORT E research study [nears the attainment of its patient accrual target, the principal investigator of the research study has recommended that] concluded active enrollment, the Commission [continue] continued the [C-PORT E] research waiver of each hospital that [is] was in good standing [so that], thereby permitting each such hospital [will not have to shut down its program] to continue to offer nonprimary PCI services while the required follow-up data on C-PORT E patients [is] was collected and analyzed, provided that*

[D. The Commission has determined that the term of an existing research waiver held by a hospital that maintains good standing under the Commission's requirements should be extended while the hospital participates in the Registry, thereby permitting] the hospital [to continue] *continued* to perform non-primary PCI under the limitations and for the Registry term provided in [these] *prior* regulations until such time as the Commission has the information from the research study that is needed to guide State policy about the regulation of non-primary PCI.

[E.] *D. [The Commission shall consider data collected by the C-PORT E study and information from the Registry in updating its State Health Plan for cardiovascular services, including planning policies governing the requirement to have cardiac surgical services on-site for non-primary PCI.] Health-General Article, §19-120.1(d), Annotated Code of Maryland, effective July 1, 2012, provides that a certificate of conformance to establish a nonprimary PCI service is not required for a Registry hospital that the Commission determines, on or before December 31, 2012, continues to be in compliance with:*

(1) *Commission regulations, including COMAR 10.24.17, Table A-1; and*

(2) *The requirements of the Registry.*

E. The Commission has convened a clinical advisory group, in accordance with Health-General Article, §19-120.1(g)(3), Annotated Code of Maryland, that will offer advice to the Commission on the update of COMAR 10.24.17, the Cardiac Surgery and PCI Services Chapter of the State Health Plan. The analysis conducted as part of this update will review the C-PORT E study results, which were published in a peer-reviewed journal in March 2012 and will consider the system impact, including access, cost-effectiveness, and quality implications, of non-primary PCI being performed in hospitals without on-site cardiac surgery.

F. Until the updated COMAR 10.24.17 is effective, each Registry hospital shall continue to meet each requirement in these regulations, including each requirement in the Registry's manual of operations, in order to continue to provide nonprimary PCI.

[.04] .03 [Review of Applications for] Conditions for Maintaining Authority to Perform Nonprimary PCI and Participation in Registry.

A. [Review Criteria.] *A Registry hospital shall maintain compliance with the following requirements:*

(1) [An applicant C-PORT E research waiver hospital shall meet the study site inclusion criteria established in the Atlantic C-PORT E research study protocol.

(2) An applicant shall document that it will] *A Registry hospital shall meet the criteria established in the manual of operations of the*

C-PORT E Registry of Non-Primary PCI that follows-on the C-PORT E Study of Non-Primary PCI[.]; and

[(3)] (2) [An applicant shall document that it will] *A Registry hospital shall* continue to satisfy the following requirements:

(a) For institutional resources:

(i) [An applicant shall maintain] *Maintain* a patient prioritization plan that guarantees that a patient who requires primary PCI for STEMI is given immediate preference for care in the cardiac catheterization laboratory;

(ii) [An applicant shall maintain] *Maintain* a formal and properly executed written agreement with a tertiary care center that provides for the unconditional transfer of each non-primary PCI patient who requires additional care, including emergent or non-primary cardiac surgery or PCI, from the applicant hospital to the tertiary institution; and

(iii) [An applicant shall maintain] *Maintain* its agreement with an advanced cardiac support emergency medical services provider that guarantees arrival of the air or ground ambulance at the applicant hospital within 30 minutes of a request for non-primary PCI patient transport by the applicant;

(b) For physician resources, [an applicant] *A Registry hospital shall maintain* adequate staff necessary for the provision of primary and non-primary PCI services, including a minimum of three interventional cardiologists who:

(i) — (iii) (text unchanged)

(c) For minimum volumes, [an applicant] *A Registry hospital shall maintain* a minimum volume of 200 PCI procedures during each year of its waiver;

(d) For follow-up of patients enrolled in the C-PORT E study, [an applicant] *A Registry hospital shall maintain* a patient follow-up rate of 98 percent; and

(e) For follow-up of patients enrolled in the Registry, [an applicant] *A Registry hospital shall commit* to patient follow-up through hospital discharge.

[(4)] In determining whether to extend the research waiver of an existing C-PORT E research waiver hospital and permit it to enter the Registry, the Commission shall consider appropriate factors, including:

(a) An applicant's current performance under its non-primary PCI research waiver; and

(b) An applicant's current performance under its primary PCI waiver.]

B. [The Commission staff shall prepare a staff recommendation on an application to enter the Registry for consideration by the Commission.] *A Registry hospital shall notify the Commission in writing within 3 business days of the occurrence of any of the following:*

(1) *The hospital performs non-primary PCI on a patient not enrolled in the Registry;*

(2) *The hospital's primary PCI waiver expires, is relinquished, or is withdrawn;*

(3) *The hospital fails to notify the Commission of the death of or a coronary artery bypass surgery experienced by a patient participating in the Registry;*

(4) *The hospital fails to perform a minimum of 200 PCI procedures annually each year after it received a non-primary PCI research waiver from the Commission; or*

(5) *The hospital fails to meet and maintain the criteria required by the Commission for participation in the Registry, or its participation in the Registry ends for any reason.*

C. [The burden of proof that a non-primary research waiver hospital meets the applicable review criteria rests with the applicant.] *A hospital required to give notice under §B of this regulation shall, on written notice from the Commission, immediately relinquish its authority to perform nonprimary PCI.*

[.05] .04 [Waiver] Term.

[A.] A hospital's ability to provide non-primary PCI [by virtue of the extension of its research waiver and entry into] *in* the Registry expires on the earlier of:

[(1)] A. The date upon which the Commission determines, through implementation in *an update to* COMAR 10.24.17 or other appropriate regulation, that the results of the C-PORT E study are sufficiently complete to guide public policy;

[(2)] B. A finding by the Commission that the C-PORT E study [is unlikely to] *did not* produce reliable results to guide public policy; or

[(3)] C. (text unchanged)

[B. Pending the Commission's consideration of applications made pursuant to regulatory changes anticipated in §A(1) of this regulation, the Commission may extend a waiver to perform non-primary PCI by an affirmative vote of the majority of the quorum present and voting.]

[.07] .05 [Waiver] Performance and Monitoring.

A. Each *Registry* hospital [granted a waiver to perform non-primary PCI within the C-PORT E study or within the Registry] shall provide data to the Commission in a form and manner acceptable to the Commission.

B. Each *Registry* hospital [granted a waiver to perform non-primary PCI within the C-PORT E study or within the Registry] shall submit periodic progress reports in a format specified by the Commission and, at the conclusion of the research project and, if requested, at the end of the Registry, submit final reports in a form and manner acceptable to the Commission, as provided in COMAR 10.24.17.05D(2)(d).

C. Each *Registry* hospital [granted a waiver to perform non-primary PCI within the C-PORT E study or within the Registry] shall authorize the C-PORT E study principal investigator and the Registry coordinator to provide data requested by the Commission.

CRAIG P. TANIO, M.D.

Chair

Maryland Health Care Commission

Subtitle 24 MARYLAND HEALTH CARE COMMISSION

10.24.14 State Health Plan for Facilities and Services: Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services

Authority: Health-General Article, §§19-109 (a)(1) and 19-121, Annotated Code of Maryland

Notice of Proposed Action

[12-302-P-I]

The Maryland Health Care Commission proposes to amend Regulation .01 under **COMAR 10.24.14 State Health Plan for Facilities and Services: Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services**. This action was considered by the Commission at an open meeting held on September 20, 2012, notice of which was given through publication in the Maryland Register, under State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update the Plan's policies and Certificate of Need review rules and standards. These updates streamline the plan by concentrating its policy focus, simplifying Certificate of Need rules, and updating definitions.

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 Paul Parker, Director, Center for Hospital Services, Maryland Health Care Commission, 4160 Patterson Ave., Baltimore, Maryland 21215, or call 410-764-3261, or fax to 410-358-1311. Comments will be accepted through 4:30 p.m. on December 7, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Commission during a public meeting to be held on January 17, 2013, at 1 p.m., at 4160 Patterson Avenue Baltimore, Maryland 21215.

.01 Incorporation by Reference.

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

B. Documents Incorporated.

(1) The State Health Plan for Facilities and Services: Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services [is incorporated by reference].

(2) Supplement No. 1.

CRAIG P. TANIO, M.D.
Chairman
Maryland Health Care Commission

Subtitle 25 MARYLAND HEALTH CARE COMMISSION

10.25.17 Benchmarks for Preauthorization of Health Care Services

Authority: Health-General Article, §§19-101 and 19-108.2, Annotated Code of Maryland

Notice of Proposed Action

[12-303-P]

The Maryland Health Care Commission proposes to adopt new Regulations .01 — .06 under a new chapter, **COMAR 10.25.17 Benchmarks for Preauthorization of Health Care Services**. This action was considered by the Commission at an open meeting on September 20, 2012, notice of which was given through publication in the Maryland Register, pursuant to State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to clarify the entities that are required to comply with certain benchmarks for standardizing and automating the preauthorization of health care services, including reporting requirements and deadlines for reporting on the progress of attaining the benchmarks. The regulation also details the process by which payors may be waived from compliance and the imposed penalties for failure to meet the reporting requirements.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David Sharp, Director, Center for Health Information Technology, Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, Maryland 21215, or call (410) 764-3578, or fax to (410) 358-1236. Comments will be accepted through 4:30 p.m., December 7, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Commission during a public meeting to be held on January 17, 2013, at 1 p.m., at 4160 Patterson Avenue, Baltimore, Maryland 21215.

.01 Scope.

A. This chapter applies to a payor that:

- (1) Requires preauthorization for health care services; and
- (2) Is required to report to the Maryland Health Care Commission (Commission) on or before certain dates on its attainment and plans for attainment of certain preauthorization benchmarks.

B. This chapter does not apply to a pharmacy benefits manager that only provides services for workers' compensation claims pursuant to Labor and Employment Article, §9-101, et seq., Annotated Code of Maryland, or for personal injury protection claims pursuant to Insurance Article, §19-101, et seq., Annotated Code of Maryland.

.02 Definitions.

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

B. Terms Defined.

(1) "Commission" means the Maryland Health Care Commission.

(2) "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

(3) "Health Care Service" has the meaning stated in Insurance Article, §15-10A-01, Annotated Code of Maryland.

(4) "Payor" means one of the following State-regulated entities that require preauthorization for a health care service:

(a) An insurer or nonprofit health service plan that provides hospital, medical, or surgical benefits to individuals or groups on an expense-incurred basis under health insurance policies or contracts that are issued or delivered in the State;

(b) A health maintenance organization that provides hospital, medical, or surgical benefits to individuals or groups under contracts that are issued or delivered in the State; or

(c) A pharmacy benefits manager that is registered with the Maryland Insurance Commissioner, except for a pharmacy benefits manager that only provides services for workers' compensation claims pursuant to Labor and Employment Article, §9-101, et seq., Annotated Code of Maryland, or for personal injury protection claims pursuant to Insurance Article, §19-101, et seq., Annotated Code of Maryland.

(5) "Preauthorization" means the process of obtaining approval from a payor by meeting certain criteria before a certain health care service can be rendered by the health care provider.

.03 Benchmarks.

A. On or before October 1, 2012, each payor shall establish online access for a provider to the following:

(1) A list of each health care service that requires preauthorization by the payor; and

(2) Key criteria used by the payor for making a determination on a preauthorization request.

B. On or before March 1, 2013, or another date established by the Commission, in consultation with its multistakeholder workgroup and published in the Maryland Register, each payor shall establish an online process for:

(1) Accepting electronically a preauthorization request from a provider; and

(2) Assigning to a preauthorization request a unique electronic identification number that a provider may use to track the request during the preauthorization process, whether or not the request is tracked electronically, through a call center, or by fax.

C. On or before July 1, 2013, or another date established by the Commission, in consultation with its multistakeholder workgroup and published in the Maryland Register, each payor shall establish an online preauthorization system that meets the requirements of Insurance Article, §19-108.2(e), Annotated Code of Maryland, to approve:

(1) In real time, electronic preauthorization requests for pharmaceutical services:

(a) For which no additional information is needed by the payor to process the preauthorization request; and

(b) That meet the payor's criteria for approval;

(2) Within 1 business day after receiving all pertinent information on requests not approved in real time, electronic preauthorization requests for pharmaceutical services that:

(a) Are not urgent; and

(b) Do not meet the standards for real-time approval under item (1) of this item; and

(3) Within 2 business days after receiving all pertinent information, electronic preauthorization requests for health care services, except pharmaceutical services, that are not urgent.

D. A payor that becomes authorized to provide benefits or services within the State of Maryland after October 1, 2012, shall meet each benchmark in Regulation .03B of this chapter within 3 months of the payor's offering of services or benefits within the State.

.04 Reporting.

A. On or before March 1, 2013, a payor shall report to the Commission in a form and manner specified by the Commission on:

(1) The status of the payor's attainment of the benchmarks in Regulation .03A and B of this chapter; and

(2) An outline of the payor's plans for attaining the benchmark in Regulation .03C of this chapter.

B. On or before December 1, 2013, a payor shall report to the Commission in a form and manner specified by the Commission on the payor's attainment of the benchmarks in Regulation .03C.

.05 Waiver from Benchmark Requirement.

A. A payor may request that the Commission issue or renew a waiver from the requirement to meet a benchmark in Regulation .03B of this chapter by the demonstration of extenuating circumstances, including:

(1) For an insurer or nonprofit health service plan, a premium volume that is less than \$1,000,000 annually in the State;

(2) For a group model health maintenance organization, as defined in Health-General Article, §19-713.6, Annotated Code of Maryland, preauthorizations of health care services requested by providers not employed by the group model health maintenance organization; or

(3) Other circumstances determined by the Executive Director to be extenuating.

B. Submission of Request for Waiver or Renewal of Waiver.

(1) A request for a waiver or renewal of waiver shall be in writing and shall include:

(a) A description of each preauthorization benchmark for which a waiver is requested; and

(b) A detailed explanation of the extenuating circumstances necessitating the waiver.

(2) A request for a waiver shall be filed with the Commission in accordance with the following:

(a) For the benchmark in Regulation .03A of this chapter, no later than 30 days after the effective date of this chapter;

(b) For benchmarks in Regulation .03B and C of this chapter, no later than 60 days prior to the compliance date; or

(c) For renewal of a waiver, no later than 45 days prior to its expiration.

(3) For a payor that becomes authorized to provide benefits or services within the State of Maryland after October 1, 2012, within 30 days after the date the payor is authorized to provide benefits or services within the State.

C. Issuance of Waivers.

(1) The Executive Director may issue a waiver from a preauthorization benchmark to a payor that demonstrates extenuating circumstances within this chapter.

(2) The Executive Director will review and provide a decision on all waiver requests within a reasonable timeframe.

(3) A waiver or renewal of a waiver shall be valid for 1 year, unless withdrawn by the Executive Director, after notice to the payor.

D. Review of Denial of Waiver.

(1) A payor that has been denied a waiver may seek Commission review of a denial by filing a written request for review with the Commission within 20 days of receipt of the Executive Director's denial of waiver.

(2) The full Commission may hear the request for review directly or, at the discretion of the Chair of the Commission, appoint a Commissioner to review the request, who will make a recommendation to the full Commission.

(3) The payor may address the Commission before the Commission determines whether or not to issue a waiver after a request for review of denial of waiver by the Executive Director.

E. A waiver or renewal of waiver from the requirements of this chapter may not be sold, assigned, leased, or transferred.

.06 Fines.

A payor that does not meet the reporting requirements of this chapter may be assessed a fine in accordance with COMAR 10.25.12.01, et seq.

CRAIG P. TANIO, M.D.
Chair
Maryland Health Care Commission

Subtitle 32 BOARD OF PHYSICIANS

10.32.02 Hearings Before the Board of Physicians

Authority: Health Occupations Article, §§1-307, [1-401,] 1-402, 1-602, 1-603, 1-604, 1-606, 14-205, 14-317, 14-404, 14-405, 14-405.1, 14-406, 14-407, 14-408, 14-409, 14-411, 14-505, 14-5A-03, 14-5A-13(d), 14-5A-16, 14-5A-17, 14-5A-17.1, 14-5A-19, 14-5B-03, 14-5B-12(d), 14-5B-13, 14-5B-14, 14-5B-14.1, 14-5B-16, 14-5C-03, 14-5C-16, 14-5C-17, 14-5C-19, 14-5D-12(D), 14-5D-13—14-5D-16, 14-601, 14-606, 15-205(B), 15-307(f), 15-311, 15-312, 15-314, 15-315, and 15-316; State Government Article, §§10-206, 10-216, and 10-226; Annotated Code of Maryland

Notice of Proposed Action

[12-307-P]

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulations .02, .03, .06, and .09, adopt new Regulations .02—.07, .10, .11, .13, and .14, recodify and amend existing Regulations .04, .05 and .07 to be Regulations .08, .09, and .12, respectively, and recodify existing Regulations .08 and .10 to be Regulations .15 and .16, respectively, under **COMAR 10.32.02 Hearings Before the Board of Physicians**.

At this time, the Secretary of Health and Mental Hygiene is also withdrawing the repeal of existing Regulations .02, .03, .06, and .09, new Regulations .02—.07, .10, .11, .13, and .14, recodification and amendment of existing Regulations .04, .05, and .07 to be Regulations .08, .09, and .12, respectively, and recodification of existing Regulations .08 and .10 to be Regulations .15 and .16, respectively, under **COMAR 10.32.02 Hearings Before the Board of Physicians** as proposed in 39:11 Md. R. 702—717 (June 1, 2012).

This action was considered by the Board of Physicians at a public meeting held on August 22, 2012, notice of which was given by publication on the Board of Physicians web site <http://www.mbp.state.md.us/forms/aug12agenda.pdf> from August 8, 2012 – August 22, 2012, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update the chapter based on operational changes resulting from revisions of the Medical Practice Act and changes in operating procedures. The proposal includes sanctioning guidelines for disciplining a physician for a violation of the Medical Practice Act or COMAR 10.32, and the imposition of administrative fines for failure to earn the requisite number of continuing medical education credits.

The regulations were originally developed through a deliberative and inclusive process. The Board considered the action at public meetings held on January 25 and April 25, 2012, notice of which was given by publication pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland. The Board researched the laws of other states and reviewed other publicly available materials. The proposed regulations were published in the Maryland Register for formal comment from June 1, 2012 through July 2, 2012. The Board received 3 letters and 2 emails containing approximately 35 comments during the formal comment period. Substantive comments were received from 2 individuals and 3 organizations. All comments were closely examined.

The following is a summary of the substantive categories of comments received during that formal comment period (June 1, 2012 through July 2, 2012), and the Board's assessment and decision. As a result of the changes made during this process, the Board has decided to withdraw and submit these revised regulations as a new proposal.

DEFINITIONS.

Comment: The definition of “administrative prosecutor” does not contain a statement that the administrative prosecutor be an assistant attorney general, and general concern regarding the separation of the administrative prosecutors from Board counsel.

Response: The Office of the Attorney General has already reorganized its staff and updated guidelines regarding separate functions, which are available on the Board's website. The regulations already state the administrative prosecutor is a party to the case. The Board has also added language to COMAR 10.32.02.03E(7) reflecting its current practice of delegating the issuance and service of the charges to the administrative prosecutor.

Comment: The Board did not specify the number of Board members on the Disciplinary Committee for Case Resolution (DCCR). The current language is “...generally, 3 or 4...”.

Response: Though the law does not require that a specified minimum of Board members serve in this capacity, the Board has revised the language to reflect that the “Disciplinary Committee for Case Resolution (DCCR)” will be comprised of a minimum of 3 members.

Comment: The new definition of “proposed decision” indicates the Board will not uniformly delegate questions of law and proposed sanctions to the Office of Administrative Hearings (OAH).

Response: “Proposed decision” actually relates to Board's choice of whether to delegate proposed findings of fact, conclusions of law, and sanctions, a combination of all three, or some subset of those three elements, to the OAH. This increases the flexibility of the parties to reach an agreement after the Disciplinary Committee for Case Resolution (DCCR) but before the start of the hearing.

Comment: The definition of “peer review” now includes “special qualifications to judge the matter at hand” and gives the Board broad discretion regarding who qualifies as a peer reviewer.

Response: The Board consists of 21 members, which includes 14 physicians and 1 physician assistant, and is uniquely qualified to make such a selection. The language is intended to guide the Board's selection of peer reviewers while maintaining its discretion. However, the Board has further included the language “professionally involved in the specialty or specialties” to add clarity to the credentials of peer reviewers, while maintaining flexibility to select appropriate peer reviewers.

Comment: The definition of “summary suspension” should not include an “indefinite period of time”.

Response: The definition of “summary suspension” should not include information about possible future actions. The use of “indefinite period of time” reflects the commenter's suggestion that the definition not specify a time period, and distinguishes between a suspension and summary suspension.

PREHEARING PROCEEDINGS

Comment: The Board has not developed standards for reviewing subpoenas of patient mental health records when investigating allegations relating to psychiatrists.

Response: The Board is particularly sensitive to issues surrounding mental health records and has already agreed to go beyond the requirements of Maryland law by allowing the psychiatrist to send a letter regarding why such a record review should not occur, and by establishing the proposed Board review of the letter and proposed subpoena. Otherwise, the Board will follow the directives of the Health-General Article of the Code that specifically address the Board's authority in these matters [Health-General Article, §4-307(K)(1)(v)(1), Annotated Code of Maryland].

Comment: The timeframe in which the respondent may provide, on a voluntary basis, a response to the peer review reports the Board obtained during investigation does not include additional time for service by U.S. Mail.

Response: The response time of ten (10) business days is taken directly from Health Occupations Article, §1-604(a). Since the measure counts only business days, the number of days to respond would be a least 12, and generally 14. However, the Board has added 3 additional days to respond when peer review reports are delivered to the licensee by regular U.S. Mail to the regulation.

Comment: The Board should place some limitations on permitting a complainant's attendance at the Case Resolution Committee conference (CRC) and prohibiting a complainant from using information obtained at the conference in other proceedings.

Response: The requirement to offer the complainant an opportunity to attend the CRC was adopted in uncodified law (Chapter 252, 2003, Section 7). Under Maryland law, this information is not discoverable or admissible for use in other proceedings [Health Occupations Article, §14-410(a)]. Complainants rarely attend the CRC even though each is invited to do so. However, the Board has added language prohibiting the respondent, administrative prosecutor, and complainant from releasing any information obtained during CRC proceedings.

Comment: An agreement between the parties should not be required prior to being offered a CRC.

Response: The CRC conference date is generally set by the administrative prosecutor in the charging document, which should encourage the parties to negotiate an agreement soon after service of the charges. Every respondent is offered a CRC conference. If no agreement is reached, the case necessarily proceeds to a hearing.

ADJUDICATION OF ALLEGATIONS IN A CHARGING DOCUMENT

Comment: Language refers to "allegations which are disputed according to §C of this regulation" without a specific §C.

Response: Regulation .04B and C both reflected this error, which was apparently included in an earlier draft. The Board has deleted the phrase "on allegations which are disputed according to §C of this regulation" in both Regulation .04B(2)(a) and Regulation .04B(3)(a).

Comment: The regulation requires a licensee to notify the administrative prosecutor within 45 days of statements or documents not included in the medical records, without a corresponding duty of the administrative prosecutor.

Response: The requirements in Regulation .04C(2), relating to disclosure of statements and consultations not in the medical records obtained during discovery, are "recovered memories" that cannot be found in the medical records, regardless of the time interval for supplying the information. The administrative prosecutor could not have "recovered memories" of records created by the licensee. Additionally, the regulation requires – only in standard of care cases – that statements not included in the medical records be disclosed 45 days after charging. In these cases, licensees have already produced and summarized the records submitted for peer review. Statements not included in those records need to be disclosed early so that they may be considered by the CRC, and potentially by the peer reviewers and the Board, in resolving the case. This measure is potentially helpful to the licensee since timely disclosure may lead to an earlier settlement or other resolution of the case. Both parties already have a continuing duty to notify the other and the OAH of any updates to discovery [COMAR 10.32.02.03(E)(6)].

Comment: A determination regarding legal sufficiency of the licensee's expert reports should be made within a timeframe that would allow the licensee to correct any issues.

Response: The Board has added language to the regulation that gives the administrative law judge the authority to require timely

amendment of any report deemed to be insufficient and allowing ample opportunity for the opposing party to prepare for the hearing.

Comment: The Board should not be allowed to introduce evidence not recited in the charging document.

Response: Proper notice to comply with due process does not require that the charging document recite all the evidence intended to be introduced at the hearing. The evidence to be introduced at the hearing is properly addressed by the administrative law judge at the prehearing conference and the hearing itself, not in the charging documents. To do otherwise ignores discovery and other processes designed to elicit the information relevant and necessary for both parties to present their respective cases.

Comment: The Board's regulations sometimes conflict with OAH hearing regulations.

Response: The existing regulation contains specific, unchanged language that "in the event of conflict between §E of [the Board's] regulation and COMAR 28.02.01, §E of this regulation shall apply". COMAR 10.32.02.03E(9)(b). In other words, the Board's regulation controls and shall apply in cases of conflict between the Board's and OAH regulations.

BOARD EXCEPTION PROCESS AND FINAL ORDER

Comment: The proposed text makes attachments part of the 15-page limit of written exceptions.

Response: This section should read: "If a party attaches any part of the record to the exceptions, response, or reply, the attached pages are not to be encompassed within the applicable page limit." The Board has corrected this language. The Board has also included language regarding potential submission of record extracts to provide uniformity for the Board and the parties.

Comment: The 90-day time limit for the issuance of a Final Order of the Board was removed.

Response: The time limit for issuance of a final order by the Board is stated in law (State Government Article, §10-216), however, the Board has added the language back into the regulation.

Comment: The proposed regulation increases the default revocation period from 1 year to 3 years.

Response: The new default is 3 years only if the order does not otherwise specify another timeframe (which can be less, or more, than 3 years). Specifying a timeframe for reapplication saves both the licensee and the Board time and resources in preparation, review and processing of premature reinstatement applications.

SANCTIONING AND IMPOSITION OF FINES

Comments: Many of the comments about the sanctioning guidelines relate to provisions established in law (Health Occupations Article, §1-606), including the non-binding nature of the guidelines, the range of sanctions, and distribution of fines.

Response: An advisory letter is not a "sanction"; hence, it does not appear on the chart. The Board is sensitive to mental health issues that may lead to or be involved in prohibited conduct, and by conscious decision of the Board during its discussion of this regulation, has a zero minimum fine.

With respect to fines, any fines collected as a result of findings under Health Occupations Article, §14-404, are deposited to the General Fund, as specified in Health Occupations Article, §14-405(1)(b), and not to the Board Fund. The fines listed are a range of amounts appropriate to the violation, while giving the Board flexibility to consider mitigating circumstances when imposing a fine. Minimum fines are not required – the regulation clearly states that fines may be imposed in addition to a sanction, but cannot be imposed independent of a sanction. However, the Board has removed the second sentence in COMAR 10.32.10A(3)(d) to make clear that imposing a fine in any case is within its discretion, but is not mandatory.

The Board declines at this time to design or develop an “algorithm” for the imposition of sanctions. Currently, the entire Board meets to impose sanctions and needs to maintain its discretion and flexibility in designing sanctions — within the guidelines - that provide effective and meaningful discipline, while maintaining its ability to consider the enumerated mitigating and aggravating factors in doing so. The Board often imposes sanctions based on its past actions in similar cases, though it remains flexible to adjust the sanctions for any particular case. The Board must be able to impose stiff penalties for especially egregious conduct, while maintaining the flexibility to impose lesser discipline for offenses that do not warrant such action. Should the Board begin to operate under the two-panel system recommended by Dr. Jay Perman’s independent review team, the Board will consider forming a committee to discuss further revisions to the guidelines to strike a balance between flexibility and consistency between the two panels.

The Board has, however, added language to the regulation that requires the Board to articulate a reason for imposing any sanction that falls outside the guidelines.

OTHER

Comment: The Board should include a licensee’s mandatory duty to report other practitioners suspected of being unfit to practice and/or unprofessional conduct, and a mandatory duty to report suspected child abuse.

Response: The regulation under consideration addresses the Board’s procedures for investigatory and disciplinary matters before the Board. These regulations are promulgated under authority of the Medical Practice Act, Health Occupations Article, Titles 14 and 15. The Board does not have the legal authority to mandate reporting in regulation. The existing statute already contains a provision for the Board to take disciplinary action against a physician who fails to report suspected child abuse [Health Occupations Article, §14-404(a)(25)].

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. These regulations give the Board explicit authority to fine a licensee for failure to obtain continuing medical education credits (CME) required for licensure renewal. The sanctioning guidelines, however, will serve as a guide to the Board when imposing discipline upon a licensee and will have no economic impact, except to the extent that a licensee is found guilty of a violation.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$10,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-) NONE	\$10,000

E. On other industries or trade groups:

F. Direct and indirect effects on public: NONE

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

A. and D. The Board of Physicians audits approximately 100 licensees per year to verify that they have earned their continuing medical education credits (50 required every 2 years for physicians; number varies per category of allied health practitioner). This estimate assumes that 10 percent of the sample will be lacking one or more credits and that, on the average, each licensee will lack 10 credits. Therefore, the fine imposed would be: $100 \times 10 \times .10 \times \$100 = \$10,000$. This will produce revenue to the Board and an expense on the licensees.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

.02 Definitions.

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

B. Terms Defined.

- (1) “Administrative law judge (ALJ)” means a hearing officer delegated the duty of conducting evidentiary hearings for the Board.
- (2) “Administrative Procedure Act” means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.
- (3) “Administrative prosecutor” means the attorney assigned from the Office of the Attorney General to prosecute administrative charges.
- (4) Administrative Reinstatement.
 - (a) “Administrative reinstatement” means the reactivation of an inactive or expired license.
 - (b) “Administrative reinstatement” does not include postdisciplinary reinstatement.
- (5) “Advisory letter” means a nonpublic letter issued by the Board which informs, educates, or admonishes an individual licensed or certified by the Board in regard to the practice of medicine or an allied health profession.
- (6) “Applicant” means an individual who has submitted to the Board an application for initial licensure or for administrative or postdisciplinary reinstatement.
- (7) “Board” means the Maryland State Board of Physicians.
- (8) “Board counsel” means the attorney assigned from the Office of the Attorney General for the purpose of advice on legal matters before the Board.
- (9) “Cease and desist order” means an order of the Board prohibiting an individual from practicing medicine without a license.
- (10) “Charging document” means a document issued by the Board which sets forth charges or an intent to deny an application for initial licensure or for administrative reinstatement on grounds

authorized by the Medical Practice Act or other statute granting the Board disciplinary authority.

(11) *Complaint.*

(a) *“Complaint” means an allegation or report that:*

(i) *A health care provider has committed a prohibited act for which the Board can take disciplinary action, impose a fine, or deny licensure; or*

(ii) *An individual is practicing medicine without a license.*

(b) *“Complaint” includes, but is not limited to, the following:*

(i) *Issuance of a certificate of merit in a malpractice claim;*

(ii) *A report from a hospital or related institution, or an alternative health system, pursuant to Health Occupations Article, §14-413 or 14-414, Annotated Code of Maryland;*

(iii) *A law enforcement report;*

(iv) *A report from another country, state, or jurisdiction or the armed services of the United States;*

(v) *A malpractice insurance report;*

(vi) *A report from another federal or state agency or court in any country, state, or jurisdiction;*

(vii) *Consumer complaints;*

(viii) *Media publications;*

(ix) *Statements on applications for licensure, renewal, or reinstatement; and*

(x) *Other information, from whatever source, which warrants investigation.*

(12) *“Contested case” has the meaning stated in State Government Article, §10-202(d), Annotated Code of Maryland.*

(13) *“Disciplinary Committee for Case Resolution (DCCR)” means a committee composed of a minimum of 3 Board members who make recommendations to the Board for proposed disposition of matters prior to a hearing.*

(14) *“Disposition agreement” means a formal nonpublic agreement by which the health care provider agrees to comply with certain conditions and the Board stays further investigation or forgoes further action on a matter based on compliance with those conditions.*

(15) *“Final order” means:*

(a) *The final written decision of the Board which results from a contested case proceeding or other formal proceeding and which contains findings of fact, conclusions of law, and a disposition which:*

(i) *Denies a license;*

(ii) *Sanctions by reprimand, probation, fine, consent order, suspension, or revocation;*

(iii) *Dismisses charges;*

(iv) *Accepts a surrender of a license; or*

(v) *Denies administrative reinstatement of a license;*

(b) *An order that denies postdisciplinary reinstatement of a license; or*

(c) *An order to cease and desist from the practice of medicine.*

(16) *“Fine” means a monetary penalty.*

(17) *“Imperatively requires” means that an action shall be undertaken pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, as a result of factual contentions which raise a substantial likelihood of risk of serious harm to the public health, safety, or welfare before an evidentiary hearing governed by the Administrative Procedure Act is likely to be completed and result in a final order.*

(18) *Investigation.*

(a) *“Investigation” means the gathering of the information necessary for the Board to determine one or more of the following:*

(i) *Whether there is reasonable cause to charge the respondent with a violation of the Medical Practice Act or another statute which gives the Board disciplinary authority;*

(ii) *Whether an applicant is eligible for licensure or administrative reinstatement;*

(iii) *The facts necessary for the Board to issue a declaratory ruling; or*

(iv) *Whether an individual has complied with any Board order.*

(b) *“Investigation” includes:*

(i) *A preliminary investigation; and*

(ii) *A full investigation.*

(19) *“Investigative Review Panel (IRP)” means a disciplinary subcommittee composed of Board members, advised by staff, Board counsel, and others, which is designated by the Board to:*

(a) *Review complaints;*

(b) *Recommend for full investigation or closure; and*

(c) *Make recommendations as to action on cases under investigation.*

(20) *“Involved medical specialty” means the area of medical specialty whose practitioners, in the Board’s opinion:*

(a) *Treat the medical or surgical ailment, symptom, or problem in question; and*

(b) *Would likely be familiar with the risks and benefits of treatments provided for that ailment, symptom, or problem.*

(21) *Licensure.*

(a) *“Licensure” means permission to engage in a health care profession regulated by the Board.*

(b) *“Licensure” includes certification and registration.*

(22) *“Medical Practice Act” means Health Occupations Article, §§14-101—14-702, Annotated Code of Maryland.*

(23) *“Peer review” means an evaluation by a physician or physicians with special qualifications to judge the matter at hand, based on professional involvement within the involved medical specialty or specialties, of an act or acts of medical or surgical care, or other acts connected with medical practice, by an applicant or licensee.*

(24) *“Postdeprivation hearing” means a Board hearing scheduled after the Board has issued an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, and at which the respondent has the opportunity to explain why the Board should rescind the order of summary suspension.*

(25) *“Postdisciplinary reinstatement” means:*

(a) *The reactivation of a revoked or suspended license; or*

(b) *The reactivation of a license surrendered while the licensee was under investigation or subject to disciplinary charges.*

(26) *“Predeprivation hearing” means a Board hearing at which the respondent has the opportunity to explain why the Board should not issue an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland.*

(27) *“Preliminary investigation” means the gathering of the information necessary for the Board to determine whether it should dismiss a complaint, or conduct further investigation to determine reasonable cause to charge the respondent with a violation of the Medical Practice Act or another statute which gives the Board disciplinary authority or to find an applicant ineligible for licensure or simple reinstatement and begins with the receipt of a complaint.*

(28) *“Prohibited act” means any conduct for which the Board can issue a sanction.*

(29) "Proposed decision" means the proposed findings of fact and, where required by the delegation order from the Board, the proposed conclusions of law and proposed disposition issued by the administrative law judge.

(30) "Recusal" means disqualification by a Board member from participating in a proceeding because of a legal interest or prejudice in the case before the Board.

(31) "Reinstatement inquiry panel" means a committee of Board members who may meet informally and confidentially with applicants for postdisciplinary reinstatement and make recommendations to the Board.

(32) "Respondent" means an individual who has been:

(a) Given notice to answer allegations concerning violations of a statute over which the Board has jurisdiction;

(b) Notified as to a potential summary suspension pursuant to State Government Article, §10-226(c), Annotated Code of Maryland;

(c) Given notice to answer allegations concerning violations of a Board order; or

(d) Given notice that the Board is investigating good moral character or the commission of an act that could be the subject of discipline if committed by a licensee, in relation to an application for licensure.

(33) "Revocation" means the removal of a health care provider's license to practice a health occupation.

(34) "Sanction" means an action by the Board which:

(a) Reprimands;

(b) Places on probation;

(c) Fines;

(d) Suspends or revokes a license;

(e) Disciplines by a consent order; or

(f) Accepts a letter of surrender in lieu of charges or further investigation or prosecution.

(35) "Sanctioning guidelines" means guidelines, adopted by the Board and set out in Regulation .11 of this chapter, indicating the minimum and maximum penalty associated with each ground for discipline and mitigating or aggravating circumstances which could result in imposition of a penalty below the minimum or above the maximum.

(36) "Show cause" means a demand by letter or order issued by the Board, which directs the respondent to:

(a) Respond either in writing or by an appearance before the Board; and

(b) Present reasons and argument why a particular order should not be entered.

(37) "Special qualifications to judge the matter at hand" means those credentials which qualify a peer reviewer as a member of the involved medical specialty in a particular case.

(38) "Stay" means the withholding of Board action against a health care provider.

(39) "Stet" means the act of staying further action in a proceeding, subject to the proceeding being reopened at a later date.

(40) "Summary suspension" means a denial for an indefinite period of the right to use a license.

(41) "Surrender" means the voluntary relinquishing of a license to the Board by a health care provider.

(42) "Suspension" means a denial of the right to use a license.

.03 Prehearing Proceedings.

A. This regulation applies to:

(1) Proceedings under Health Occupations Article, §1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, or 15-315, Annotated Code of Maryland; and

(2) To the extent specifically provided in this regulation, cease and desist orders.

B. This regulation does not apply to procedures pursuant to Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland.

C. Investigation of Complaints.

(1) Designated staff shall undertake a preliminary investigation of each complaint as appropriate to the nature of the complaint.

(2) The Board's Investigative Review Panel (IRP) shall review a complaint in light of the preliminary investigation and may direct further investigation, referral for peer review, dismissal, or dismissal with an advisory letter.

(3) Participation in the IRP is not ordinarily a basis for recusal of a Board member from further proceedings in the case.

(4) Investigative Subpoenas.

(a) Except as provided in §C(4)(b) of this regulation, upon the receipt of a timely written request from a psychiatrist who is the subject of a complaint concerning the quality of the psychiatric care provided by that psychiatrist, a quorum of the Board shall review a subpoena for mental health records made or held by that psychiatrist before the subpoena is enforced.

(b) Section C(4)(a) of this regulation does not apply to:

(i) Any subpoena other than an investigative subpoena;

(ii) A subpoena issued in response to an investigation opened based upon a patient complaint;

(iii) A subpoena issued as a result of a complaint or action by a law enforcement agency;

(iv) A subpoena issued as a result of a complaint from a health care professional;

(v) A subpoena for records if the executive director or the deputy director determines that there is a reasonable possibility that the records will be destroyed, secreted, lost, or altered if the subpoena is not promptly enforced; or

(vi) A subpoena if the executive director or deputy director determines that there is a reasonable possibility of imminent harm to the public health, safety, or welfare, including the health, safety, or welfare of an individual patient.

(c) Section C(4)(b) of this regulation does not affect any rights which an individual may have under Health-General Article, Annotated Code of Maryland, to contest a subpoena in court.

D. Review by the Peer Reviewers.

(1) The Board shall contract for peer review services if a question of standards of quality care in the practice of medicine arises.

(2) The Board shall obtain reports from at least two different peer reviewers in each case.

(3) If one or both peer reviewers conclude that a violation of the standard of care has occurred, the Board shall make the final peer review report, consisting of the reports of each individual peer reviewer, available to the respondent for review before the Board considers whether to issue charges. The Board shall redact the names of the peer reviewers before making the report available under this section.

(4) The respondent may provide a written response to the peer review report within 10 business days after the report was sent to the respondent by electronic mail or 13 business days if the report was sent via U.S. postal service.

(5) The Board shall:

(a) Consider both the final peer review report and any written response submitted within the time period specified in §D(4) of this regulation; and

(b) Determine whether there is reasonable cause to charge a respondent with failure to meet appropriate standards of quality care.

E. Prosecution of Complaint.

(1) Except as provided in §E(2) of this regulation, the Board may not bring charges against a licensee based solely on events contained in a complaint the Board received more than 6 years after:

(a) The day the complainant actually discovered the facts that form the basis of the complaint; or

(b) The day when a reasonable person exercising due diligence should have discovered the facts that form the basis of the complaint.

(2) The prohibition in §E(1) of this regulation does not apply to complaints that are based on any of the following:

(a) Criminal convictions;

(b) Sexual misconduct;

(c) Other boundary violations;

(d) Reciprocal actions under Health Occupations Article, §14-404(a)(21), Annotated Code of Maryland;

(e) Ongoing substance abuse;

(f) Fraudulent concealment of material information; or

(g) Acts that occurred while a patient was a minor.

(3) After reviewing the completed investigative information and reports, the Board shall make its determination to:

(a) Dismiss the complaint;

(b) Take informal action by issuing a nonpublic advisory letter;

(c) Request the respondent to enter into a disposition agreement with the Board if the respondent suffers from substance abuse or a physical, mental, or emotional condition which may otherwise jeopardize medical care;

(d) Issue an initial cease and desist order, subject to:

(i) §E(4) and (5) of this regulation; and

(ii) The procedures set out in Regulation .13 of this chapter;

(e) Except as provided in §E(1) of this regulation, vote to charge a respondent with a violation of the Medical Practice Act or COMAR 10.32.07, or another statute which gives the Board disciplinary authority;

(f) Vote to deny initial licensure or administrative reinstatement; or

(g) Accept a surrender on terms acceptable to the Board.

(4) *Summary Suspension.*

(a) In addition to charging, the Board may vote an intent to summarily suspend the license of the respondent pursuant to State Government Article, §10-226(c), Annotated Code of Maryland.

(b) A vote to summarily suspend the license of the respondent may be taken before the Board charges the respondent.

(5) After a vote to take formal action under §E(3)(d), (e), or (f) of this regulation, the Board shall refer the matter to the administrative prosecutor for prosecutorial action.

(6) Based upon a review of the case, the prosecutor may refer the matter back to the Board for further consideration.

(7) If the Board issues charges or a notice of an intent to deny an application for initial licensure or for administrative reinstatement, the Board shall serve it upon the respondent by regular mail or hand delivery at the address the respondent maintains for purposes of licensure notice. The Board may delegate the issuance and service of the charges to the administrative prosecutor.

(8) The Board, in the notice of intent to deny an application for initial licensure or administrative reinstatement, shall provide the respondent with an opportunity to request a hearing within 30 days from receipt of service.

(9) *Disciplinary Committee for Case Resolution (DCCR).*

(a) After service of the charging document, the Board shall offer the respondent a meeting with the DCCR. This is a voluntary,

informal settlement proceeding to explore the possibility of a consent order or other resolution of the matter.

(b) If there is no agreement between the respondent and the administrative prosecutor, the matter proceeds to a hearing.

(c) Except for the Board's consideration of a proposed resolution of a case achieved through the conference with the DCCR, neither the Board, the parties, nor the complainant may make use of any commentary, admissions, facts revealed, or positions taken, including any disposition recommended by the DCCR, in the subsequent stages of the disciplinary proceedings unless the subject matter is available from other sources or is otherwise discovered. The respondent, administrative prosecutor, and complainant are prohibited from revealing this material.

(d) The complainant may attend and participate as authorized by statute. The complainant may be accompanied by Board staff but not by any other person.

(e) Participation in a DCCR is not ordinarily a basis for recusal of a Board member from further proceedings in the case.

F. Representation; Parties.

(1) The respondent may appear in proper person or be represented by counsel in any matter before the Board and during any stage of the disciplinary proceedings. The respondent may be represented only by an attorney admitted to the Maryland Bar or specially admitted to practice law in Maryland under Rule 14 of the Maryland Rules Governing Admissions to the Bar found in the Maryland Rules.

(2) The administrative prosecutor shall present evidence and argument at an evidentiary hearing on the charges and arguments before the Board in the exceptions process as specified in Regulation .05 of this chapter.

(3) The administrative prosecutor is a party to the administrative proceedings:

(a) As soon as formal charges are issued; and

(b) Until the Board's final decision is issued.

(4) The Board is not a party to the proceedings before an administrative law judge.

.04 Adjudication of Allegations in a Charging Document.

A. Application.

(1) This regulation applies to cases under Health Occupations Article, §§1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, and 15-315 Annotated Code of Maryland.

(2) This regulation does not apply to cases under Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland, or to cease and desist orders issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland.

B. Delegation.

(1) The Board shall initially delegate to an administrative law judge responsibility to make:

(a) Proposed findings of fact;

(b) Proposed findings of fact and proposed conclusions of law; or

(c) Proposed findings of fact, proposed conclusions of law, and proposed disposition.

(2) If the Board has delegated the case to the Office of Administrative Hearings for the issuance of proposed findings of fact only, the following apply:

(a) The delegation to the Office of Administrative Hearings is limited to making proposed findings of fact on allegations which are disputed;

(b) The Board may rescind the delegation if:

(i) The parties jointly notify the Board prior to the prehearing conference, or the administrative law judge notifies the Board prior to the occurrence of the factors set out in State

Government Article, §10-205(d)(2), Annotated Code of Maryland, that there are no substantial factual allegations in dispute;

(ii) The notification recites the facts which are undisputed; and

(iii) The Board determines that the facts agreed upon are sufficient to decide the issue; and

(c) If a delegation to the Office of Administrative Hearings has been rescinded pursuant to §B(2)(b) of this regulation, the Board shall set the case on the Board docket for the Board to issue conclusions of law and a disposition based on the undisputed material facts, after giving the parties a reasonable opportunity for written and oral argument.

(3) If the Board has delegated the case to the Office of Administrative Hearings for the issuance of proposed findings of fact and conclusions of law only, the following apply:

(a) The delegation to the Office of Administrative Hearings is limited to making proposed findings of fact and conclusions of law on allegations which are disputed; and

(b) The Board may rescind the delegation if:

(i) The parties jointly notify the Board prior to the prehearing conference, or the administrative law judge notifies the Board prior to the occurrence of the factors set out in State Government Article, §10-205(d)(2), Annotated Code of Maryland, that there are no substantial factual allegations or conclusions of law in dispute;

(ii) The notification recites the facts and conclusions of law which are undisputed; and

(iii) The Board determines that the facts and conclusions of law agreed upon are sufficient to decide the issue.

(c) If a delegation to the Office of Administrative Hearings has been rescinded pursuant to §B(3)(b) of this regulation, the Board shall set the case on the Board docket for the Board to issue a disposition based on the undisputed material facts and conclusions of law, after giving the parties a reasonable opportunity for written and oral argument.

(4) The Board may rescind a delegation to an administrative law judge if prior to the start of the evidentiary hearing:

(a) The parties execute a proposed consent order settling all aspects of the case; and

(b) The Board formally executes an approval of that proposed consent order.

C. Discovery.

(1) *Discovery on Request.* In addition to any disclosures required by §C(2) or (3) of this regulation, by written request served on the other party and filed with the administrative law judge, a party may require another party to produce, within 15 calendar days, the following:

(a) A list of witnesses to be called; and

(b) Copies of documents intended to be produced at the hearing.

(2) *Mandatory Notice of Specific Defenses in Cases Involving the Standard of Quality Care.*

(a) The respondent shall notify the administrative prosecutor not later than 45 days after the issuance of charges of any statement made to the respondent by the patient which was not recorded in the respondent's medical record of the patient, and which affected the patient's course of treatment, including but not limited to:

(i) Any refusal of hospitalization or treatment;

(ii) Any report of symptoms;

(iii) Any report of the effects of medication;

(iv) Any report by the patient of consultations or treatment by other health care providers; and

(v) Any expressions by the patient of a preference for one course of treatment over another.

(b) The respondent shall notify the administrative prosecutor not later than 45 days after the issuance of charges of:

(i) Any consultation concerning the patient, formal or informal, with any other health care provider, which is not recorded in the patient's medical record; or

(ii) Any communication with family members of the patient which affected the patient's course of treatment, and which is not recorded in the patient's medical record.

(c) The notices required by §C(2)(a) and (b) of this regulation shall be in writing and shall state:

(i) The name of the declarant or consultant;

(ii) The substance of the declaration or consultant report; and

(iii) The date on which each communication took place.

(d) Unless the respondent has provided the notice required by §C(2) of this regulation, the administrative law judge shall exclude from the hearing any evidence described in §C(2)(a) or (b) of this regulation.

(3) Mandatory Discovery.

(a) Each party shall provide to the other party not later than 15 days prior to the prehearing conference or 45 days prior to the scheduled hearing, whichever is earlier:

(i) The name and curriculum vitae of any expert who will testify at the hearing; and

(ii) A detailed written report prepared and signed by the expert summarizing the expert's testimony, which includes the opinion offered and the factual basis and the reasons underlying the opinion.

(b) If the administrative law judge finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the administrative law judge shall exclude from the hearing:

(i) The testimony of the expert; and

(ii) Any report of the expert.

(c) The administrative law judge shall consider and decide arguments concerning the sufficiency of the report at the prehearing conference and may require that the report be timely amended, if insufficient, to allow the opposing party ample opportunity to prepare for hearing.

(d) If an expert adopts the written report of the Board peer reviewer or reviewers, or adopts a sufficiently specific charging document as the expert's report, that adoption is considered to satisfy the requirements set forth in §C(3) of this regulation.

(4) Parties are not entitled to discovery of items except as listed in §C(1), (2), or (3) of this regulation.

(5) Subject to §C(7) of this regulation, both parties have a continuing duty to supplement their disclosures of witnesses and documents.

(6) Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list subsequent to:

(a) The prehearing conference, if scheduled; or

(b) If no prehearing conference is scheduled, 15 days prior to the hearing.

(7) The prohibition from adding witnesses subsequent to the prehearing conference does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

D. Hearing.

(1) Unless the delegation has been rescinded according to §B(2), (3), or (4) of this regulation, the administrative law judge shall conduct an evidentiary hearing governed by the Administrative Procedure Act and COMAR 28.02.01.

(2) Evidence otherwise admissible under COMAR 28.02.01 may not be excluded solely on the ground that the evidence is not recited in the charging document.

(3) During these proceedings, the administrative law judge shall treat all records except for a charging document issued by the Board as confidential and sealed.

(4) Construction.

(a) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, §C of this regulation shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.

(b) In the event of a conflict between §C of this regulation and COMAR 28.02.01, §C of this regulation shall apply.

(5) The administrative law judge shall issue to the Board a written proposed decision including, where applicable, proposed findings of fact, proposed conclusions of law, and a proposed disposition after the conclusion of the hearing.

.05 Board Exceptions Process and Final Order.

A. Application.

(1) This regulation applies to cases under Health Occupations Article, §§1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, and 15-315 Annotated Code of Maryland.

(2) This regulation does not apply to cases under Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-14(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland, or to cease and desist orders issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland.

B. Exceptions.

(1) Written Exceptions.

(a) Any party may file with the Board exceptions to a proposed decision of an administrative law judge within 15 days of its issuance. A party may file a response to any exceptions within 15 days of the date the exceptions are filed. The Board may extend the period for filing exceptions and responses. The Board may grant a party filing exceptions the opportunity to file a reply to a response within a stated period of time as determined by the Board in any specific case. No further exceptions or responses of any kind may be accepted.

(b) Format.

(i) Written exceptions and responses to exceptions are limited to 15 pages in length, double-spaced and in at least 12-point type, and with margins of at least 1 inch.

(ii) Any reply to responses to exceptions is limited to five pages in the same format.

(iii) If a party attaches any part of the record to the exceptions, response, or reply, the attached pages are not to be encompassed within the applicable page limit. The Board may require the attachment of those parts of the record cited in the exceptions in a form designated by the Board.

(c) Exceptions, responses, and replies may refer to the record by citing the exhibit number or the transcript page.

(d) The Board chair or the Board chair's designee may in each case rule on specific procedural issues with respect to written exceptions.

(e) The Board may not accept additional evidence through the written exceptions process.

(2) Oral Exceptions Hearing.

(a) If either party files exceptions, the Board shall schedule a hearing, ordinarily 30 days after the receipt of responses to the exceptions, after which the Board shall issue an order containing the Board's findings of fact, conclusions of law, and disposition.

(b) The presiding Board member, usually the Board chair, shall:

(i) Determine all procedural issues that are governed by this section;

(ii) Make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing; and

(iii) Ordinarily limit oral presentation by the respondent and the administrative prosecutor to 20 minutes each.

(c) The party who filed the first exceptions shall ordinarily proceed first.

(3) Additional Evidence. At the oral exceptions hearing, the Board may not accept additional evidence unless:

(a) Both parties consent to the admission of additional documentary evidence and the Board determines that acceptance of the additional evidence would promote the just and efficient completion of the process; or

(b) The Board determines that either:

(i) A compelling reason exists that would create an obvious injustice if the additional documentary evidence were not considered and the evidence can be admitted without compromising the rights of the other party, including the other party's opportunity to see the proffered evidence in a timely manner or cross-examine the source of the proffered document and present evidence to the contrary; or

(ii) The evidence has been timely proffered before the administrative law judge and the administrative law judge abused his or her discretion in refusing to admit the evidence.

(4) If the parties do not file exceptions, the Board shall consider the record, including the proposed decision of the administrative law judge, and issue its order based on the Board's findings of fact and conclusions of law.

(5) A Board staff member who testified at the hearing before the administrative law judge may not be present during Board deliberations.

C. Board Action.

(1) Final Order. The Board shall issue a final order within 90 days after the conclusion of:

(a) An exceptions hearing; or

(b) Other formal Board proceedings.

(2) Effect of Revocation Order.

(a) When a time period is not stated in an order for revocation, the Board may not entertain an application for postdisciplinary reinstatement until at least 3 years after the date of the order.

(b) A revocation of a license may not be for less than 1 year and may be permanent.

(c) The Board may not entertain an application for postdisciplinary reinstatement after an order of revocation unless:

(i) Any time period stated in the order has expired;

(ii) Any condition set out in the order has been fulfilled;

(iii) The applicant has filed a formal application and paid the fee; and

(iv) The applicant meets all of the requirements for reinstatement set out in COMAR 10.32.01.10.

(d) The Board shall entertain applications for reinstatement pursuant to the procedures and standards of Regulation .06B of this chapter.

(3) Denial of Licensure. If the Board issues a final order of denial of an application for initial licensure on disciplinary grounds or on grounds of lack of moral character, the respondent may not reapply for a minimum of 3 years or for a longer period as set out in the order.

(4) Tolling.

(a) Except as a Board order directs otherwise in a specific case, if a licensee subject to probation or suspension fails to renew a license:

(i) The failure to renew the license does not remove the suspension or probation from the licensee's disciplinary record during the period of nonrenewal;

(ii) Any condition of probation or condition precedent to terminating a suspension that is dependent on possessing a license is

tolled until the probationer or suspended licensee again possesses a license; and

(iii) The time period of probation or suspension, if any, is tolled until the probationer or suspended licensee again possesses a license.

(b) Section C(4)(a) of this regulation does not:

(i) Apply to fines; or

(ii) Require the Board to reinstate any former licensee.

.06 Postdisciplinary Reinstatement of a License.

A. Postdisciplinary reinstatement after an order of suspension is subject to the following conditions:

(1) If an order suspends a license for a certain period of time, the respondent may petition the Board for postdisciplinary reinstatement only pursuant to that order;

(2) The Board may not entertain early termination of the suspension;

(3) If termination of a suspension is made contingent on the happening of an event, the respondent shall establish the occurrence of the event to the satisfaction of the Board; and

(4) If a health care practitioner whose license is suspended fails to renew the suspended license when that license expires, the health care practitioner may petition the Board for termination of suspension only after applying for and meeting the requirements for reinstatement set out in COMAR 10.32.01.10.

B. Postdisciplinary reinstatement of a revoked or surrendered license is subject to the following conditions:

(1) A petitioner for postdisciplinary reinstatement of a revoked or surrendered license shall submit the following:

(a) A written application for reinstatement on a form prescribed by the Board;

(b) The appropriate fee;

(c) Written responses to any questions the Board may propose concerning the reasons the license was revoked or surrendered and the petitioner's current fitness to practice; and

(d) Evidence of the completion of continuing medical education credits to the same extent as if the petitioner had been continuously licensed;

(2) If a license was revoked or surrendered while the licensee was under investigation or subject to disciplinary charges, the Board may not consider the application for postdisciplinary reinstatement unless:

(a) If the letter of surrender indicates that the surrender or the revocation order is for a certain length of time, the time period has expired; or

(b) If the letter of surrender or revocation order does not indicate a time certain, 3 years have passed since the date of the order; and

(c) If the letter of surrender makes reinstatement contingent on certain conditions, those conditions have occurred;

(3) The Board may grant postdisciplinary reinstatement of a revoked or surrendered license only in accordance with the terms of the order of revocation or the letter of surrender;

(4) The Board may grant postdisciplinary reinstatement subject to any terms and conditions the Board considers appropriate for public safety and the protection of the integrity and reputation of the profession;

(5) The Board may convene a reinstatement inquiry panel which:

(a) May conduct an informal inquiry which shall include, if requested, an opportunity for the petitioner to have a personal interview with the panel;

(b) May consider the petitioner's history;

(c) May consider presentations from both the petitioner and the administrative prosecutor's office; and

(d) Shall make a recommendation to the full Board;

(6) The full Board shall consider the application form, the petitioner's responses to the written questions, and the supporting documentation and written arguments, if any, submitted by the petitioner and the administrative prosecutor's office, as well as the reinstatement inquiry panel's recommendation;

(7) The Board shall determine in its discretion if postdisciplinary reinstatement is in the interest of the health and welfare of the general public and consistent with the best interest of the profession; and

(8) A Board decision denying reinstatement may set out when, if ever, a subsequent petition may be submitted.

C. The Board shall issue a final written order on the postdisciplinary reinstatement application that:

(1) Reinstates the license of the petitioner without conditions;

(2) Reinstates the license of the petitioner with one or more of the following conditions:

(a) Probation;

(b) Requirements for supervision;

(c) Further review of competence or performance;

(d) Limitations on practice; or

(e) Other conditions that the Board considers necessary; or

(3) Denies reinstatement.

D. An order granting or denying postdisciplinary reinstatement is an order resulting from formal disciplinary action.

E. A petition for postdisciplinary reinstatement may be withdrawn only with the permission of the Board. The Board may not refund the fee except for extraordinary cause.

.07 Judicial Review.

A. A respondent whose license has been sanctioned by a final order of the Board after a contested case proceeding under §§14-404, 14-5A-17.1, 14-5B-14.1, 14-5D-15, or 15-315(b), may seek judicial review of the Board's decision as provided under Health Occupations Article, §14-408(b), Annotated Code of Maryland.

B. An individual whose application for initial licensure or administrative reinstatement has been denied by a final Board order after a contested case proceeding under §§14-205(a)(1)(iii), 14-5A-17.1, 14-5B-14.1, 14-5D-15, or 15-315(b), may appeal the decision as provided under Health Occupations Article, §14-408(b), Annotated Code of Maryland.

[.04] .08 Proceedings under Health Occupations Article, §§14-404(b), 14-5A-17(c), [and] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), and 15-314(b), Annotated Code of Maryland.

A. In this regulation, "health care provider" means an individual who is a:

(1)—(2) (text unchanged)

(3) [Certified medical radiation technologist; or] *Licensed radiographer*;

(4) [Certified] *Licensed nuclear medical technologist*[.];

(5) *Licensed radiation therapist*;

(6) *Licensed radiologist assistant*;

(7) *Licensed polysomnographic technologist*;

(8) *Licensed athletic trainer*; or

(9) *Licensed physician assistant*.

B. Health Occupations Article, §§14-404(b), 14-5A-17(c), [and] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), and 15-314(b), Annotated Code of Maryland, [governs] govern mandatory actions of the suspension or revocation of a license on the filing of certified docket entries, if the health care provider is convicted of or pleads guilty, including by an Alford plea, or a plea of nolo contendere to a crime involving moral turpitude.

C. Procedures.

(1) The Office of the Attorney General through Board counsel shall provide to the Board certified docket entries of the criminal court proceeding and the following documents from the court record:

(a) (text unchanged)

(b) For a plea of guilty, *including an Alford plea*, or a plea of nolo contendere, at least one of the following:

(i)—(iv) (text unchanged)

(2) When the Board determines that documents provided to it indicate that the respondent comes within the language and intent of Health Occupations Article, §14-404(b), 14-5A-17(c), [or] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland, and the Board has a basis for finding preliminarily that it applies to the respondent, the Board shall vote to issue an order requiring the respondent to show cause why the Board should not take action under this section.

(3)—(4) (text unchanged)

D. (text unchanged)

E. Opportunity to Be Heard.

(1)—(2) (text unchanged)

(3) The respondent may also, within 30 days of service of the show cause order, request an opportunity to address the Board by a limited evidentiary hearing on the same issues. However, this argument may not be as of right, but is discretionary based on the existence of genuine issues of material fact or law *as determined by the Board*.

(4) The presiding Board member, usually the Board chair, shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding Board member shall make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing. Ordinarily, the respondent and the administrative prosecutor shall limit their oral presentation to [30] 20 minutes each. The respondent shall proceed first.

(5)—(6) (text unchanged)

F. (text unchanged)

G. Burdens of Production and Persuasion.

(1) (text unchanged)

(2) The administrative prosecutor bears the burden of persuasion by [clear and convincing evidence] *a preponderance of the evidence* that the respondent was convicted of or pled guilty or nolo contendere to a crime of moral turpitude.

H. Board Action.

(1) (text unchanged)

(2) A pending appeal of the conviction or plea does not operate as a bar to the Board's acting under Health Occupations Article, §14-404(b)(1), 14-5A-17(c)(1), [or] 14-5B-14(c)(1), 14-5C-17(c), 14-5D-14(b)(1), or 15-314(b), Annotated Code of Maryland.

(3) A respondent suspended pursuant to Health Occupations[,] Article, §§14-404(b), 14-5A-17(c), [or] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b)(1), or 15-314(b), Annotated Code of Maryland, shall be reinstated immediately upon the filing of a certified docket entry that the conviction has been reversed. The reinstatement does not terminate any other disciplinary action or investigation pending against the respondent.

[.05] .09 Summary Suspension.

A.—C. (text unchanged)

D. Predeprivation Hearing Before the Board.

(1) The presiding Board member shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding Board member may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing, and shall limit the oral presentation by the respondent

and the administrative prosecutor to [30] 20 minutes each. The respondent shall proceed first.

(2)—(3) (text unchanged)

E.—I. (text unchanged)

J. Evidentiary Hearing Before the Administrative Law Judge.

(1) (text unchanged)

(2) After a full evidentiary hearing, the administrative law judge shall provide the Board with proposed findings of fact and conclusions of law and proposed disposition. The administrative prosecutor and respondent may file exceptions in accordance with Regulation [.03F] .05B of this chapter. After the Board issues its final order, the respondent may appeal this decision in accordance with Regulation [.03H] .07 of this chapter.

.10 Sanctioning and Imposition of Fines.

A. General Application of Sanctioning Guidelines.

(1) Sections A and B of this regulation and Regulation .11 of this chapter do not apply to offenses for which a mandatory sanction is set by statute or regulation.

(2) Except as provided in §B of this regulation, for violations of Health Article §§14-404(a), 14-504 and 1-302, Annotated Code of Maryland, the Board shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.

(3) Ranking of Sanctions.

(a) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:

- (i) Reprimand;
- (ii) Probation;
- (iii) Suspension; and
- (iv) Revocation.

(b) A stayed suspension in which the stay is conditioned on the completion of certain requirements is ranked as probation.

(c) A stayed suspension not meeting the criteria for §A(3)(b) of this regulation is ranked as a reprimand.

(d) A fine listed in the sanctioning guidelines may be imposed in addition to but not as a substitute for a sanction.

(e) The addition of a fine does not change the ranking of the severity of the sanction.

(4) The Board may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the chart.

(5) Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.

(6) If a licensee has violated more than one ground for discipline as set out in the sanctioning guidelines:

(a) The sanction with the highest severity ranking should be used to determine which ground will be used in developing a sanction; and

(b) The Board may impose concurrent sanctions based on other grounds violated.

(7) Notwithstanding the sanctioning guidelines set forth in Regulation .11 of this chapter, in order to resolve a pending disciplinary action, the Board and the licensee may agree to a surrender of license or a consent order with terms, sanction, and fine agreed to by the Board, the administrative prosecutor, and the licensee.

(8) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in §B(5) and 65) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction

in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(9) If the Board imposes a sanction that departs from the sanctioning guidelines set forth in Regulation .11 of this chapter, the Board shall state its reasons for doing so in its final decision and order.

B. Aggravating and Mitigating Factors.

(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in §B(5) and (6) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(2) Nothing in this regulation requires the Board or an administrative law judge to make findings of fact with respect to any of these factors.

(3) A departure from the sanctioning guidelines set forth in Regulation .11 of this chapter is not a ground for any hearing or appeal of a Board action.

(4) The existence of one or more of these factors does not impose on the Board or an administrative law judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set out in the sanctioning guidelines.

(5) Mitigating factors may include, but are not limited to, the following:

- (a) The absence of a prior disciplinary record;
- (b) The offender self-reported the incident;
- (c) The offender voluntarily admitted the misconduct, made full disclosure to the Board and was cooperative during the Board proceedings;
- (d) The offender implemented remedial measures to correct or mitigate the harm arising from the misconduct;
- (e) The offender made good faith efforts to make restitution or to rectify the consequences of the misconduct;
- (f) The offender has been rehabilitated or exhibits rehabilitative potential;
- (g) The misconduct was not premeditated;
- (h) There was no potential harm to patients or the public or other adverse impact; or
- (i) The incident was isolated and is not likely to recur.

(6) Aggravating factors may include, but are not limited to, the following:

- (a) The offender has a previous criminal or administrative disciplinary history;
- (b) The offense was committed deliberately or with gross negligence or recklessness;
- (c) The offense had the potential for or actually did cause patient harm;
- (d) The offense was part of a pattern of detrimental conduct;
- (e) The offender committed a combination of factually discrete offenses adjudicated in a single action;
- (f) The offender pursued his or her financial gain over the patient's welfare;
- (g) The patient was especially vulnerable;
- (h) The offender attempted to hide the error or misconduct from patients or others;
- (i) The offender concealed, falsified or destroyed evidence, or presented false testimony or evidence;
- (j) The offender did not cooperate with the investigation; or
- (k) Previous attempts to rehabilitate the offender were unsuccessful.

C. Fines for Unauthorized Practice of Medicine.

(1) The Board may impose a fine as provided in §C(3) of this regulation for:

(a) Practicing medicine without a license in violation of Health Occupations Article, §14-601, Annotated Code of Maryland; or

(b) A violation of an order of cease and desist from practicing medicine without a license.

(2) Factors in determining the amount of a fine include, but are not limited to the following:

- (a) The extent to which the respondent derived any financial benefit from the improper conduct;
- (b) The willfulness of the improper conduct;
- (c) The extent of actual or potential public harm caused by the improper conduct; and
- (d) The deterrent effect of the fine.

(3) Range of Fines Imposed.

(a) Except as specified in §C(3)(b) of this regulation, the Board may impose fines as follows:

- (i) For the first violation, not less than \$1,000 and not more than \$30,000;
- (ii) For the second violation, not less than \$10,000 and not more than \$40,000; and
- (iii) For the third violation, not less than \$15,000 and not more than \$50,000.

(b) If the conduct resulted in harm to any patient, the Board may consider each patient seen to be a separate violation when imposing a fine listed in §C(3)(a) of this regulation.

(4) The Board shall pay all monies collected pursuant to this section into the Board's fund.

D. Other Fines.

(1) The Board shall impose a fine of \$100 for a violation of Health Occupations Article, §14-505, Annotated Code of Maryland, and a fine of \$100 for a violation of Health Occupations Article, §14-316(f), Annotated Code of Maryland.

(2) The Board shall pay all monies collected pursuant to §D(1) of this regulation into the Board's fund.

E. Offenses Related to Continuing Medical Education Credits.

(1) First Offense of Failure to Document Credits.

(a) Except as provided in §E(2) or (3) of this regulation, if a licensee has submitted an application claiming the completion of continuing medical education credits and the licensee fails to document the completion of such continuing medical education credits when audited by the Board, the Board may impose a civil fine under Health Occupations Article, §14-316(d)(4), 14-5A-13(d)(2), 14-5B-12(d)(2), 14-5D-12(g), or 15-307(f), Annotated Code of Maryland, of up to \$100 per missing continuing medical education credit in lieu of a sanction under Health Occupations Article, §14-404, 14-5A-17, 14-5B-14, 14-5D-14, or 15-314, Annotated Code of Maryland.

(b) Section E(1)(a) of this regulation does not limit the Board's authority to require completion of the missing continuing medical education credits.

(2) Willful Falsification.

(a) If a licensee has willfully falsified an application with respect to continuing medical education credits, the licensee may be charged under one or more of the following, as appropriate:

- (i) Health Occupations Article, §14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5D-14(a)(3), or 15-314(a)(3), Annotated Code of Maryland;
- (ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5D-14(a)(10), or 15-314(a)(11), Annotated Code of Maryland; and
- (iii) Health Occupations Article, §14-404(a)(36) or 15-314(a)(36), Annotated Code of Maryland.

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(b) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5D-14, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines.

(3) Licensees Previously Disciplined Under §E(1) or (2) of this Regulation.

(a) If a licensee has been previously fined or otherwise disciplined under §E(1) or (2) of this regulation, the Board may, for a subsequent offense relating to continuing medical education credits, charge a licensee under one or more of the following, as appropriate:

(i) Health Occupations Article, §14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5D-14(a)(3), or 15-314(a)(3), Annotated Code of Maryland;

(ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5D-14(a)(10), or 15-314(a)(11), Annotated Code of Maryland; and

(iii) Health Occupations Article, §14-404(a)(36) or 15-314(a)(36), Annotated Code of Maryland.

(b) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5D-14, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines for a subsequent offense.

(c) The Board may not apply the sanction described in §E(1) of this regulation in determining a sanction for a licensee previously

fined or disciplined for an offense related to continuing medical education credits.

(4) The Board shall pay all monies collected pursuant to this section into the State's General Fund.

F. Payment of Fines.

(1) An individual shall pay to the Board any fine imposed under this regulation within 15 calendar days of the date of the order, unless the order specifies otherwise.

(2) Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, does not stay payment of a fine imposed by the Board pursuant to this regulation.

(3) If an individual fails to pay, in whole or in part, a fine imposed by the Board pursuant to this regulation, the Board may not restore, reinstate, or renew a license until the fine has been paid in full.

(4) In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings to ensure prompt payment.

.11 Sanctioning Guidelines for Physicians.

A. Subject to provisions of Regulation .10A and B of this chapter, the Board may impose sanctions as outlined in §B of this regulation on physicians for violations of Health Occupations Article, §§14-404(a), 14-504, and 1-302, Annotated Code of Maryland.

B. Range of Sanctions.

Ground	Maximum Sanction	Minimum Sanction	Maximum Fine	Minimum Fine
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another	Revocation	Reprimand with 2 years' probation	\$50,000	\$10,000
(2) Fraudulently or deceptively uses a license	Revocation	Probation	\$50,000	\$10,000
(3) Is guilty of immoral or unprofessional conduct in the practice of medicine, consisting of:				
(a) Sexual impropriety as defined by the Board's regulations at COMAR 10.32.17.02	Revocation	Reprimand	\$50,000	\$10,000
(b) A sexual violation as defined in the Board's regulations at COMAR 10.32.17.02	Revocation	1 year probation	\$50,000	\$10,000
(c) Ethical violations that are not sexual in nature	Revocation	Reprimand	\$50,000	\$5,000
(d) Attesting to earning but failing to earn required number of continuing medical education (CME) credits	Revocation	Reprimand	\$50,000	\$10,000
(4) Incompetence	Revocation	Suspension until professional incompetence is addressed to the Board's satisfaction.	\$50,000	\$5,000
(a) Is professionally incompetent				
(b) Is physically or mentally incompetent	Revocation	Suspension until physical or mental incompetence is addressed to the Board's satisfaction.	\$50,000	\$0

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(5) Solicits or advertises in violation of Health Occupations Article, §14-503, Annotated Code of Maryland	Reprimand with probation	Reprimand	\$50,000	\$5,000
(6) Abandons a patient	Revocation	Reprimand	\$50,000	\$10,000
(7) Habitually is intoxicated	Revocation	Suspension until physician is in treatment and has been abstinent for 6 months	\$50,000	\$0
(8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland	Revocation	Suspension until physician is in treatment and has been abstinent for 6 months	\$50,000	\$0
(9) Provides professional services: (a) While under the influence of alcohol; or (b) While using any narcotic or controlled dangerous substance, as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or other drug that is in excess of therapeutic amounts or without valid medical indication	Revocation	Suspension until physician is in treatment and has been abstinent for 6 months	\$100,000	\$10,000
(10) Promotes the sale of drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain	Suspension for 5 years	Reprimand	\$50,000	\$10,000
(11) Willfully makes or files a false report or record in the practice of medicine	Revocation	Reprimand	\$50,000	\$10,000
(12) Willfully fails to file or record any medical report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report	Revocation	Reprimand	\$50,000	\$10,000
(13) On proper request, and in accordance with the provisions of Health - General Article, Title 4, Subtitle 3, Annotated Code of Maryland, fails to provide details of a patient's medical record to the patient, another physician, or hospital	Suspension	Reprimand	\$10,000	\$1,000
(14) Solicits professional patronage through an agent or other person or profits from the acts of a person who is represented as an agent of the physician	Suspension for 1 year	Reprimand	\$50,000	\$5,000
(15) Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient	Revocation	Reprimand	\$100,000	\$10,000

PROPOSED ACTION ON REGULATIONS

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<p>(16) Agrees with a clinical or bioanalytical laboratory to make payments to the laboratory for a test or test series for a patient, unless the licensed physician discloses on the bill to the patient or third-party payor: (a) The name of the laboratory; (b) The amount paid to the laboratory for the test or test series; and (c) The amount of procurement or processing charge of the licensed physician, if any, for each specimen taken</p>	<p>Suspension for 1 year</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(17) Makes a willful misrepresentation in treatment</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(18) Unauthorized Persons</p>				
<p>(a) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(b) When the offense under §B(18)(a) of this regulation: (i) Consists solely of a physician permitting an unlicensed allied health professional to work in a hospital (ii) The allied health professional is employed by the hospital, not the physician; (iii) The physician is not employed by the hospital; and (iv) The recruitment, hiring, scheduling, and credentialing of the allied health professional is performed by the hospital and not the physician</p>	<p>Suspension for 1 year</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$0</p>
<p>(19) Grossly overutilizes health care services</p>	<p>Revocation</p>	<p>Reprimand and probation for 2 years</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(20) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section</p>	<p>Penalty comparable to what Board imposes under equivalent Maryland ground for discipline</p>	<p>Penalty equivalent to that imposed by original licensing authority if this is lesser than Board sanction would be.</p>	<p>Fine comparable to what Board imposes under equivalent Maryland ground for discipline</p>	<p>Fine equivalent to that imposed by original licensing authority if this is lesser than Board sanction would be</p>

PROPOSED ACTION ON REGULATIONS

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State	Revocation	Reprimand	\$50,000	\$5,000
(23) Willfully submits false statements to collect fees for which services are not provided	Revocation	Reprimand	\$50,000	\$10,000
(24) Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under this section, and the licensee: (a) Surrendered the license issued by the state or country to the state or country; or (b) Allowed the license issued by the state or country to expire or lapse	Penalty comparable to what Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is lesser than Board sanction would be	Fine comparable to what Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing authority if this is lesser than Board sanction would be
(25) Knowingly fails to report suspected child abuse in violation of the Family Law Article, §5-704, Annotated Code of Maryland	Revocation	Reprimand	\$50,000	\$5,000
(26) Fails to educate a patient being treated for breast cancer of alternative methods of treatment as required by of Health-General Article, §20-113, Annotated Code of Maryland	Reprimand and probation of 1 year with mandatory CMEs	Reprimand	\$50,000	\$5,000
(27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	Revocation	Reprimand and probation for 3 years with practice oversight	\$100,000	\$10,000
(28) Fails to comply with the provisions of Health Occupations Article, §12-102, Annotated Code of Maryland, regarding dispensing prescriptions	Suspension for 2 years	Reprimand	\$50,000	\$2,500
(29) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive	Suspension for 1 year	Reprimand	\$50,000	\$5,000

PROPOSED ACTION ON REGULATIONS

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<p>(30) Except as to an association that has remained in continuous existence since July 1, 1963: (a) Associates with a pharmacist as a partner or co-owner of a pharmacy for the purpose of operating a pharmacy; (b) Employs a pharmacist for the purpose of operating a pharmacy; or (c) Contracts with a pharmacist for the purpose of operating a pharmacy</p>	<p>Suspension for 3 years</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$5,000</p>
<p>(31) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control and Prevention's guidelines on universal precautions</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$100,000</p>	<p>\$10,000</p>
<p>(32) Fails to display the notice regarding CDC universal precautions, as required under Health Occupations Article, §14-415, Annotated Code of Maryland</p>	<p>Suspension</p>	<p>Reprimand</p>	<p>\$10,000</p>	<p>\$1,000</p>
<p>(33) Fails to cooperate with a lawful investigation conducted by the Board</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(34) Is convicted of insurance fraud as defined in Insurance Article, §27-801, Annotated Code of Maryland</p>	<p>Revocation</p>	<p>Suspension for 6 months</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(35) Is in breach of a service obligation resulting from the applicant's or licensee's receipt of State or federal funding for the licensee's medical education</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$100,000</p>	<p>\$10,000</p>
<p>(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine</p>	<p>Revocation</p>	<p>Reprimand</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(37) By corrupt means, threats, or force, intimidates or influences, or attempts to intimidate or influence, for the purpose of causing any person to withhold or change testimony in hearings or proceedings before the Board or those otherwise delegated to the Office of Administrative Hearings</p>	<p>Revocation</p>	<p>Suspension for 3 years</p>	<p>\$50,000</p>	<p>\$10,000</p>
<p>(38) By corrupt means, threats, or force, hinders, prevents, or otherwise delays any person from making information available to the Board in furtherance of any investigation of the Board</p>	<p>Revocation</p>	<p>Suspension for 3 years</p>	<p>\$50,000</p>	<p>\$10,000</p>

(39) Intentionally misrepresents credentials for the purpose of testifying or rendering an expert opinion in hearings or proceedings before the Board or those otherwise delegated to the Office of Administrative Hearings	Revocation	Probation for 3 years	\$50,000	\$10,000
(40) Fails to keep adequate medical records as determined by appropriate peer review	Suspension for 1 year	Reprimand	\$50,000	\$2,500
(41) Performs a cosmetic surgical procedure in an office or a facility that is not: (a) Accredited by: (i) The American Association for Accreditation of Ambulatory Surgical Facilities; (ii) The Accreditation Association for Ambulatory Health Care; or (iii) The Joint Commission on the Accreditation of Health Care Organizations; or (b) Certified to participate in the Medicare program, as enacted by Title XVIII of the Social Security Act	Revocation	Reprimand	\$50,000	\$10,000
(42) Fails to comply with the provisions of Health Occupations Article, §14-504, Annotated Code of Maryland, regarding acupuncture	Revocation of acupuncture registration	Reprimand	\$0	\$0
(43) Fails to comply with the provisions of Health Occupations Article, Title 1, Subtitle 3, Annotated Code of Maryland, regarding patient referrals	Revocation	Suspension for 6 months	\$100,000	\$25,000

[.07] .12 Recusal in Board Proceedings.

A.—C. (text unchanged)

D. Participation by a Board member in an investigation, DCCR, [WRP,] IRP, or other administrative proceeding involving a respondent does not constitute a basis for recusal in a contested case proceeding unless the Board member has:

(1)—(2) (text unchanged)

.13 Cease and Desist Orders.

A. An initial Board order to cease and desist from the unauthorized practice of medicine:

- (1) Is a public document; and
- (2) Is effective immediately unless the order states otherwise.

B. The Board shall serve the initial order by hand delivery, certified mail, or first-class mail.

C. Challenge.

(1) A respondent may challenge the factual or legal basis of the initial order by filing a written opposition within 30 days of its issuance, and may include a request for a hearing.

(2) The Board shall consider that opposition and shall provide a hearing if requested.

(3) After considering the written opposition and the presentations at the hearing, if any, the Board may issue a final order to rescind, modify, or affirm the cease and desist order.

(4) The Board shall serve the final order by hand delivery, certified mail, or first-class mail to the last known address of the respondent.

(5) The respondent may seek judicial review of the Board's final order as provided in the Administrative Procedure Act.

D. Violations of a Cease and Desist Order.

(1) The Board may impose a fine as provided in Regulation .10C of this chapter on any individual who violates a cease and desist order.

(2) Before imposition of a fine for violation of a cease and desist order, the Board shall give notice of the alleged violation, and an opportunity for a hearing.

(3) The hearing may not concern issues:

- (a) That were not raised under §C of this regulation; or
- (b) That were raised under §C of this regulation, but for which the Board did not grant the relief or modification requested.

(4) The only issues to be considered at the hearing are:

- (a) Whether the individual violated the cease and desist order; and

(b) The amount of any fine to be imposed.

(5) The Board shall issue a final order stating whether a violation occurred and if so, the amount of the fine.

(6) The respondent may seek judicial review of the Board's final order as provided in the Administrative Procedure Act.

E. Nothing in this regulation prohibits the Board from delegating any hearing to the Office of Administrative Hearings as permitted by State Government Article, §10-205, Annotated Code of Maryland.

.14 Proposed Orders; Show Cause Hearings.

A. Nothing in this chapter prohibits the Board from issuing a charging document with a proposed order which will go into effect if the respondent fails to request a hearing.

B. Nothing in this chapter prohibits the Board from conducting a show cause hearing to determine if there has been:

(1) A violation of probation;

(2) A violation of a condition under which any portion of a disciplinary order was stayed; or

(3) Any other violation of a Board order.

C. The Board may terminate a show cause hearing if it determines that there are material facts in dispute which cannot reasonably be determined in that venue. The Board may then convene an evidentiary hearing or delegate such a hearing to an administrative law judge.

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

**Title 11
DEPARTMENT OF
TRANSPORTATION**

**Subtitle 11 MOTOR VEHICLE
ADMINISTRATION —
ADMINISTRATIVE
PROCEDURES OCCUPATIONS**

11.11.05 Motor Vehicle Fees

Authority: Transportation Article, §§12-104(b) [and], 12-301, and 13-506, Annotated Code of Maryland

Notice of Proposed Action
[12-292-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulations **11.11.05** under **COMAR 11.11.05**

The Notice of Proposed Action docketed as 12-292-P in 39:22 Md. R. (November 2, 2012) was filed in error with the Division of State Documents. This action has not yet been proposed by the Department of Transportation.

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Tracey C. Sheffield, Regulations Coordinator, MVA, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call (410) 768-7545, or email to tsheffield@mdot.state.md.us, or fax to (410) 768-7506. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

.02 Vehicle Titling Fees.

Service	Section	Fee
A.—H. (text unchanged)		
I. Insurance affidavit in lieu of a title	13-506	20

JOHN T. KUO
Administrator
Motor Vehicle Administration

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

**11.15.24 Proportional Registration of Rental
Vehicles**

Authority: Transportation Article, §§11-148.1, 12-104(b), 12-405, 12-406, and 12-407, 12-409, and 13-402, Annotated Code of Maryland

Notice of Proposed Action
[12-306-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulations **.05** and **.08** under **COMAR 11.15.24 Proportional Registration of Rental Vehicles.**

Statement of Purpose

The purpose of this action is to clarify proportional registration rates for fleet vehicles added after the first day of the licensing year. Also, this action clarifies procedures for preservation of records for audit purposes.

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 Tracey C. Sheffield, Regulations Coordinator, MVA, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call (410) 768-7545, or email to tsheffield@mdot.state.md.us, or fax to (410) 768-7506. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

.05 Proportional Registration of Rental Motor Vehicles.

A. — F. (text unchanged)

G. *When vehicles are added to the fleet after the first day of the licensing year, the same percentage factor used at the beginning of that licensing year shall be used in determining the number of additional vehicles required to be registered in Maryland.*

[G.] H. — [H.] I. (text unchanged)

.08 Preservation of Records and Audit.

A. Records.

(1) — (3) (text unchanged)

(4) *Monthly and yearly records shall be maintained to accurately reflect the inventory count and Maryland registrations. Inventory records shall include a:*

(a) *Count of the vehicles not rented, located in each jurisdiction, at the time of the inventory count;*

(b) *Count of the entire fleet owned or operated, whether rented or not rented, at the time of the inventory count; and*

(c) *Listing of registration plate numbers and dates purchased each year.*

(5) *Registration records and cancelled checks representing payment for license plates purchased or renewed shall be available for auditor review.*

B. — C. (text unchanged)

JOHN T. KUO
Administrator
Motor Vehicle Administration

**Title 13A
STATE BOARD OF
EDUCATION**

**Subtitle 03 GENERAL
INSTRUCTIONAL PROGRAMS**

**13A.03.02 Graduation Requirements for Public
High Schools in Maryland**

Authority: Education Article, §§2-205, 7-203, and 7-205, Annotated Code of Maryland

Notice of Proposed Action
[12-304-P]

The Maryland State Board of Education proposes to amend Regulation .09 under **COMAR 13A.03.02 Graduation Requirements for High School Students in Maryland**. This action was considered at the Maryland Board of Education meeting on August 28, 2012.

Statement of Purpose

The purpose of this action is to reinstate the Government High School Assessment (HSA) as a graduation requirement for students entering 9th grade in the 2013—2014 school year.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed regulation will have a minimal additional fiscal impact on local education agencies (LEAs) depending on the budget allocations within each district. Once the Government High School Assessment (HSA) becomes a graduation requirement, LEAs will need to offer bridge plans and

other remedial options to students. The impact should be minimal as most LEAs already have a budget for bridge plans and remediation. This had been an existing requirement that was paused for budget reasons.

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

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

C. Each of the LEAs will be required to offer students bridge plans and remediation options for passing the Government HSA once it becomes a graduation requirement. The costs of the plans may have an impact on the LEAs, but it should be minimal as this is a reinstatement of an earlier policy.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mary Gable, Assistant State Superintendent, Division of Academic Policy, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0473 (TTY 410-333-6442), or email to mgable@msde.state.md.us, or fax to 410-333-2275. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on January 22, 2013, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.09 Diplomas and Certificates.

A. [Beginning with students entering grade 9 in the 2005—2006 school year, the] *The types of diplomas and certificates specified in §§B—D of this regulation shall be awarded[.] to:*

(1) *Students entering grade 9 in the 2005—2006, 2006—2007, and 2007—2008 school years who graduated on or before the school year 2010—2011;*

(2) *Students entering grade 9 in the 2008—2009, 2009—2010, 2010—2011, 2011—2012, and 2012—2013 school years except that a passing score on the Maryland High School Assessment in government shall not be a graduation requirement; and*

(3) *Students entering grade 9 in the 2013–2014 school year and each school year thereafter.*

B. Maryland High School Diploma. Except as provided in Regulation .12B of this chapter, to be awarded a Maryland high school diploma, a student shall:

(1) — (2) (text unchanged)

(3) Satisfy one of the following:

(a) — (c) (text unchanged)

(d) If the student is unable to meet the requirements in §B(3)(a)—(c) of this regulation, then satisfactorily complete the requirements of the Bridge Plan for Academic Validation *as set forth in §F of this regulation.*

[C.] F. (text unchanged)

[D.] C. Maryland High School Diploma by Examination.

(1) General Educational Development Testing Program. A Maryland High School Diploma by Examination may be awarded for satisfactory performance on approved general educational development tests if the student meets those requirements as defined in [Education] *Labor and Employment* Article, [§7-206] §11-808, Annotated Code of Maryland, and COMAR [13A.03.03.01] 09.37.01.04.

(2) Maryland Adult External High School Diploma Program. A Maryland High School Diploma by Examination may be awarded for demonstrating competencies in general life skills and individual skills on applied performance tests if the student meets those requirements as defined in COMAR [13A.03.03.02] 09.37.01.20.

[E.] D. — [F.] E. (text unchanged)

[G.] (proposed for repeal)

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

Subtitle 08 STUDENTS

13A.08.01 General Regulations

Authority: Education Article, §§2-205, 7-101, 7-301, 7-303—7-305, 7-308 and 8-404, Annotated Code of Maryland; Federal Statutory Reference: 20 U.S.C. §1232g

Notice of Proposed Action

[12-300-P]

The Maryland State Board of Education proposes to amend Regulations .11, .12, and .15, and adopt new Regulation .21 under **COMAR 13A.08.01 General Regulations**. This action was considered at the Maryland State Board of Education meeting on July 24, 2012.

Statement of Purpose

The purpose of this action is to have each local board of education adopt a set of regulations that: (1) reflect a rehabilitative discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior; (2) are designed to keep students in school so that they may graduate college and career ready; (3) prohibit disciplinary policies that trigger automatic discipline without the use of discretion; and (4) explain why and how long-term suspensions or expulsions are last resort options.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed addition to COMAR 13A.08.01.11F(1)(b) requires assigning a school staff person the responsibility of serving as a liaison between teachers and the suspended student or his/her parents. Recognizing the current fiscal situation at both the State and local levels, there are a variety of

low-cost options to meet the liaison requirement, including assigning an additional planning period to a teacher, and/or designating this duty to a portion of a current administrator or counselor’s job responsibilities if they have not already done so. The use of technology is another way to ensure that suspended students are able to continue their instructional program while out of school. Currently, most local school systems have instructional portals through Blackboard or Schoolmax, which allow class work and instructional materials to be posted and accessed by students and parents.

Since COMAR 13A.08.01.03 was adopted, suspension from school has been deemed a lawful absence. COMAR 13A.08.01.05B(5) has required that each local school system institute make-up work requirements including classroom teacher and student responsibilities, time limits, and grading policy for make-up work.

The proposed addition to COMAR 13A.08.01.11F(1)(b) strengthens the existing requirement by adding an explicit liaison component. The proposed regulation requires a liaison between teachers and suspended students or his/her parents. Some schools and districts already have an identified person who serves the liaison role during the suspension process. The Dropout Prevention/School Completion Intervention/Resource Guide (2011) contains a listing of alternative schools and programs reported by local school systems. Twenty-two school systems reported they provide either alternative programming and/or alternative school assignments to suspended students.

School systems that have schools with high rates of suspension are encouraged by the Department to implement Positive Behavioral Interventions and Supports (PBIS) and/or a similar evidenced-based behavior modification program to reduce the number of office referrals and suspensions. MSDE, at the 2013 PBIS Summer Institute, will give priority to schools that have high rates of out-of-school suspensions (300 + suspensions.)

For the school systems that currently have alternative education programs in place, the expense of providing education services to suspended/expelled students is already included in their budgets.

The proposed addition of data collection in COMAR 13A.08.01.12 and .15 requiring annual reporting of school arrests and referrals to law enforcement agencies or to the juvenile justice system will require changes to the Maryland Student Records System Manual and the collection of new data. The Department is able to absorb these costs through its current data collection systems.

Local school systems might experience economic impact by having to update their student data collection systems to record school arrests and referrals to law enforcement agencies or to the juvenile justice system. Estimated costs would vary depending on the local school systems’ budget and technology systems.

The addition of COMAR 13A.08.01.21 will require the Department to enter into a contract with experts to design a Disproportionate Impact Model and analyze local school system discipline data to determine whether there is a disproportionate impact on minority students. Current studies done by the Department are being expanded to include this new requirement.

Revenue (R+/R-)

II. Types of Economic Impact.

Expenditure (E+/E-) Magnitude

A. On issuing agency: NONE

B. On other State agencies: NONE

C. On local governments:

Costs on local education agency (E+) Minimal

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

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

C. Twenty-two of the 24 local education agencies report that they have alternative programs and/or schools currently in place. These program staff could serve the role of liaison. The number of schools reporting out-of-school suspensions of greater than 200 students and the alternative programs currently available for each local education agency is set forth as follows:

- Allegany Co., 1 school, Alternative School, Grades 7—12;
- Anne Arundel Co., 19 schools, Evening high school alternative education programs through home and hospital teaching and Mary Moss Academy;
- Baltimore City, 7 schools, Afternoon Middle School Learning Centers and Alternative Middle and High Schools;
- Baltimore Co., 32 schools, Afternoon middle and high schools and alternative middle and high schools;
- Calvert Co., 3 schools, Calvert County Alternative School and alternative programs, Grades 6—12;
- Caroline Co., 1 school, Caroline Alternative Program, Grades 6—12;
- Carroll Co., 0 schools, Gateway School and P.R.I.D.E, Grades 6—12;
- Cecil Co., 8 schools, Alternative suspension program and Cecil Alternative program;
- Charles Co., 9 schools, Behavior Education Program;
- Dorchester Co., 3 schools, Alternative Learning Center, Grades 6—12;
- Garrett Co., 0 schools, None reported;
- Frederick Co., 6 schools, Heather Ridge School and Heather Ridge Twilight Program;
- Harford Co., 6 schools, Alternative education programs;
- Howard Co., 1 school, Gateway High School, Grades 9—12, and In School Alternative Education Programs, Grades K—12;
- Kent Co., 0 schools, None reported;
- Montgomery Co., 1 school, Alternative Programs, Grades 6—12;
- Prince George’s Co., 20 schools, Alternative Centers;
- Queen Anne’s Co., 0 schools, Alternative Program, Queen Anne’s County High School, Grades 9—12, and Mid-Shore Alternative Collaboration with Caroline County Public Schools, Grades 6—8;
- St. Mary’s Co., 5 schools, Alternative school;
- Somerset Co., 1 school, Alternative Learning Center, Grades 6—10;
- Talbot Co., 0 schools, Alternative Educational Center, Grades K—12;
- Washington Co., 1 school, Washington County Evening High School, Grades 9—12;
- Wicomico Co., 7 schools, Alternative school; and
- Worcester Co., 0 schools, Stephen Decatur High School Evening Program, Grades 9—12, and alternative school.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Charles Buckler, Executive Director, Division of Student, Family and School Support, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0292 (TTY 410-333-6442), or email to cbuckler@msde.state.md.us, or fax to 410-333-8148. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on January 22, 2013 at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.11 Disciplinary Action.

A. Local Regulations. Each local board of education shall adopt a set of regulations [designed to maintain an environment of order and discipline necessary for effective learning. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion] *that:*

- (1) *Reflect a rehabilitative discipline philosophy based on the goals of fostering, teaching, and acknowledging positive behavior;*
- (2) *Are designed to keep students in school so that they may graduate college and career ready;*
- (3) *Prohibit disciplinary policies that trigger automatic discipline without the use of discretion; and*
- (4) *Explain why and how long-term suspensions or expulsions are last resort options.*

B. Terms Defined. In this regulation, the following terms have the meanings indicated:

- (1) (text unchanged)
- (2) “Expulsion” means[, at a minimum, the removal of the student from the student’s regular school program and may be further defined by a local board of education] *the total exclusion of a student from the student’s regular school program for 45 school days or longer for conduct that the superintendent determines, on a case-by-case basis, is violent or poses a serious danger of physical harm to others in the school.*
- (3) “Extended suspension” means the temporary removal of a student from [school for a specified period of time longer than 10 school days for disciplinary reasons by the local superintendent or the local superintendent’s designated representative] *the student’s regular school program for a time period between 11—45 school days for conduct that the superintendent determines, on a case-by-case basis, poses a danger of harm to others in the school.*
- (4) (text unchanged)
- (5) “Long-term suspension” means *the removal of a student from school for a time period between 4—10 days for disciplinary reasons by the principal.*
- [(5)] (6) (text unchanged)
- [(6)] (7) “Short-term suspension” means the removal of a student from school for up to but not more than [10] 3 school days for disciplinary reasons by the principal.
- [(7)] (8) “Suspension” means the application of extended suspension, in-school suspension, [or] short-term suspension, *or long-term suspension.*

C. Suspension and Expulsion.

[(1)] In those instances when the behavior of a student is disruptive and detrimental to the operation of the school, the student may be suspended or expelled.]

- [(2)] (1) — [(3)] (2) (text unchanged)

[(4)] (3) Suspension for More than 10 Days or Expulsion.

(a) — (b) (text unchanged)

(c) If after the investigation the local superintendent or designated representative finds that [a longer] *an extended* suspension or *an* expulsion is warranted, the superintendent or designated representative promptly shall arrange a conference with the student and the student's parent or guardian.

(d) *The process described in §C(3)(a)—(c) of this regulation shall be completed by the 10th school day of the initial suspension. If additional time is necessary to complete the process, the student shall be allowed to return to school, unless the local superintendent or designated representative determines that the conduct at issue was violent, dangerous, or a threat to the safety of the school.*

[(d)] (e) If after the conference the local superintendent or designated representative finds that an *extended* suspension [of more than 10 school days] or an expulsion is warranted, the student or the student's parent or guardian may[.]:

[(i)] [Appeal] *appeal* to the local board within 10 days after the determination[.].

[(ii)] Be heard before the local board or its designated committee; and

(iii) Bring counsel and witnesses to the hearing.]

(f) *If an appeal is filed, it shall be heard before the local board or its designated committee or hearing officer and completed within 30 days of the date of appeal was received by the local board.*

(g) *The student or the student's parent or guardian:*

(i) *Shall be provided the school system's witness list and a copy of the documents that the school system will present at the hearing 5 days before hearing; and*

(ii) *May bring counsel and witnesses to the hearing.*

(h) *The local board shall issue its decision within 10 days after the close of the hearing.*

[(e)] (i) — [(g)] (k) (text unchanged)

[(5)] (4) A student expelled [under] or suspended from school shall remain away from the school premises during those hours each school day when the school the student attends is in session, and may not participate in school-sponsored activities. The expelled or suspended student may return to the school premises during the prohibited hours only for attendance at a previously scheduled appointment, and if the student is a minor then only if accompanied by the student's parent or guardian.

(5) *A student suspended or expelled from school shall be allowed to return to school on the day that the terms and conditions of the suspension or expulsion are met whether or not the student, parent, or guardian has filed an appeal of the suspension.*

(6) — (7) (text unchanged)

(8) A local superintendent may deny attendance to a student who is currently expelled or on *extended suspension* from another school system for a length of time equal to that expulsion or *extended suspension*. A school system shall forward information to another school system relating to the discipline of a student, including information of an expulsion or *extended suspension* of the student, on receipt of the request for information.

D. — E. (text unchanged)

F. *Minimum Education Services. In order to establish accountability and to keep suspended or expelled students on track with classroom work, as is reasonably possible, each local board shall institute education services that at minimum provide that:*

(1) *Each student suspended or expelled out-of-school who is not placed in an alternative education program shall receive daily classwork and assignments from each teacher which shall be reviewed and corrected by teachers on a weekly basis and returned to the student; and*

(2) *Each principal shall assign a school staff person to be the liaison between the teachers and the various students on out-of-*

school suspension or expulsion and to communicate weekly about classwork assignments and school-related issues by phone or email with those out-of-school suspended/expelled students and their parents.

.12 Arrests on School Premises.

A. — E. (text unchanged)

F. *Beginning in the 2013-2014 school year, data on school arrests shall be reported in a manner and format developed by the Department and approved by the State Board.*

.15 Reporting Delinquent Acts.

A. — B. (text unchanged)

C. *Beginning in the 2013—2014 school year, the local school systems shall report data to the Department on school arrests and referrals to law enforcement agencies or to the juvenile justice system in a form and manner developed by the Department and approved by the State Board.*

.21 Reducing and Eliminating Disproportionate/Discrepant Impact.

A. *The Department shall develop a method to analyze local school system discipline data to determine whether there is a disproportionate impact on minority students.*

B. *The Department may use the discrepancy model to assess the impact of discipline on special education students.*

C. *If the Department identifies a school's discipline process as having a disproportionate impact on minority students or a discrepant impact on special education students, the local school system shall prepare and present to the State Board a plan to reduce the impact within 1 year and eliminate it within 3 years.*

D. *The local school system will report its progress annually to the State Board.*

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

Subtitle 12 CERTIFICATION

13A.12.01 General Provisions

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

Notice of Proposed Action

[12-299-P]

The Maryland State Board of Education proposes to amend Regulations .02, .06, and .11 under **COMAR 13A.12.01 General Provisions**. This action was considered at the Maryland State Board of Education meeting on August 28, 2012.

Statement of Purpose

The purpose of this action is to provide a fourth option for issuance of an Advanced Professional Certificate which is independent of course work.

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 Jean Satterfield, Assistant State Superintendent, Certification and Accreditation, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0385 (TTY 410-333-6442), or email to jsatterfield@msde.state.md.us, or fax to 410-333-8963. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on January 22, 2013, at 9 a.m., at 200 West Baltimore Street, Baltimore, Maryland 21201.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Accredited" has the meaning stated in §B[(17)] (19) of this regulation.

(3) — (12) (text unchanged)

(13) "Equivalent credit" means Department-approved professional growth activities designed by the local school system.

[(13)] (14) — [(15)] (16) (text unchanged)

(17) "Highly effective teaching" means, beginning with the 2013-2014 school year, receiving a highly effective rating under the Local Education Agency Evaluation System or the Model State Performance Evaluation Criteria in accordance with COMAR 13A.07.09.

[(16)] (18) — [(25)] (27) (text unchanged)

[(26)] (28) "Professional development plan" means a plan [to describe the employee's continued professional growth] collaboratively designed by the certificate holder and his or her supervisor or designee, which describes the certificate holder's continued professional growth, including specified needs, strengths and interests.

[(27)] (29) — [(38)] (40) (text unchanged)

.06 Professional Certificates.

A. — D. (text unchanged)

E. Advanced Professional Certificate.

(1) An Advanced Professional Certificate shall be issued to an applicant who:

(a) (text unchanged)

(b) [Presents] Submits 6 semester hours of acceptable credit as set forth in Regulation .05C of this chapter; and

[(c) Presents verification of 3 years of satisfactory school-related experience; and]

[(d)] (c) Meets one of the following standards:

(i) Earned a master's or higher degree from an IHE in a certification area directly related to public school education, including 6 semester hours related to the [teacher's] applicant's specific discipline or [the specialist's specific] job assignment, and verification of 3 years of satisfactory school-related experience; or

(ii) Earned at least 36 semester hours of approved content or professional education course work directly related to public school education, earned after the conferral of the bachelor's or higher degree, including at least 21 graduate credits, of which at least six credits shall be related to the [teacher's] applicant's specific discipline or [the specialist's specific] job assignment, and verification of 3 years of satisfactory school-related experience; or

(iii) Obtained National Board Certification and earned a minimum of 12 semester hours of approved graduate course work[, earned after the conferral of the bachelor's or higher degree and] related to the [teacher's] applicant's specific discipline or [the

specialist's specific] job assignment[.], and verification of 3 years of satisfactory school-related experience; or

(iv) Beginning with the 2016-2017 school year, submits evidence of highly effective teaching for a minimum of 3 of the last 5 years immediately preceding the issuance of the Advanced Professional Certificate.

(2) — (3) (text unchanged)

.11 Renewal of Certificates.

A. General.

(1) — (7) (text unchanged)

B. Professional Certificates.

(1) — (4) (text unchanged)

(5) The Advanced Professional Certificate shall be renewed for 5 years if an applicant [is] submits:

[(a) Continuously employed as a professional in a Maryland school during the validity period of the certificate upon the request of the local superintendent of schools and upon presenting all of the following:]

[(i)] (a) A professional development plan for the subsequent Advanced Professional Certificate [designed by the employee and reviewed by the local superintendent of schools] that includes at least 6 semester hours of acceptable credit or equivalent credit under Regulation .05C of this chapter and §A(5) of this regulation, [or the equivalent once the required semester hours of reading course work are completed] and verification of 3 years of satisfactory school-related experience immediately preceding the issuance of the renewed Advanced Professional Certificate; or

[(ii) 6 semester hours of acceptable credit under Regulation .05C of this chapter and §A(5) of this regulation, or verification by the local superintendent of schools that the employee has earned the equivalent of 6 semester hours of credit in professional growth activities during the validity period of the current certificate once the required semester hours of reading course work are completed; and

[(iii) Verification of 3 years of satisfactory school-related experience completed within the 5 years immediately preceding the issuance of the renewed Advanced Professional Certificate; or]

(b) [Not continuously employed as a professional in a Maryland school during the validity period of the certificate, upon the request of the applicant and upon the applicant presenting 6 semester hours of acceptable credit under Regulation .05C of this chapter and §A(5) of this regulation] A professional development plan for the subsequent Advanced Professional Certificate and evidence of highly effective teaching for a minimum of 3 years within the 5 years immediately preceding the issuance of the renewed Advanced Professional Certificate.

C. — D. (text unchanged)

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

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 08 TURF AND SEED

15.08.05 Certified Seed Mixing

Authority: Agriculture Article, §9-202, Annotated Code of Maryland

Notice of Proposed Action [12-296-P]

The Secretary of Agriculture proposes to amend Regulation .11 under **COMAR 15.08.05 Certified Seed Mixing**.

Statement of Purpose

The purpose of this action is to increase fees relating to the testing and mixing of seed under the Department's voluntary supervised seed mixing program and to remove a nonexistent reference.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The fee increase will cover increased operating costs by the Department associated with administering the voluntary supervised seed mixing program for seed companies in Maryland.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$2,151
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$2,151
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminable

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

A. The Department will have an increase in revenue due to the increase in seed mixing fees. The following explains how this revenue was estimated:

- (1) 2,151,000 lbs. of seed were mixed in 2012 by seed companies under the Department's supervision.
- (2) Total amount of seed mixed in 2012, above, was placed in 43,020 fifty lb. bags.
- (3) The seed was inspected by the Department and each bag received a tag or label: $43,020 \times \$0.05 = \$2,151$.

D. The seed companies will incur an increase in expenditure due to the increase in seed mixing fees.

F. Supervised seed mixing protects the consumer against mislabeled seed.

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 Lois Capshaw, Chief, Turf and Seed, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, or call 410-841-5960, or email to Lois.Capshaw@maryland.gov, or fax to 410-841-5969. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

.11 Fees.

A. — C. (text unchanged)

D. For tags or labels used, the applicant shall be assessed at the following rate:

(1) (text unchanged)

(2) Supervised mix tags or labels = [9] 14 cents per tag or label plus \$2 per lot[.].

[3] Analysis tags and labels per rate found in COMAR 15.08.01.11C(5)(g).]

E. (text unchanged)

EARL F. HANCE
Secretary of Agriculture

Title 23 BOARD OF PUBLIC WORKS

Subtitle 02 PROGRAM ADMINISTRATION

23.02.04 State Tidal Wetlands Licensing Procedures

Authority: Environment Article, §§16-201 — 16-205; State Finance and Procurement Article, §10-203; Annotated Code of Maryland

Notice of Proposed Action [12-297-P]

The Board of Public Works proposes to amend Regulation .15 under **COMAR 23.02.04 State Tidal Wetlands Licensing Procedures**. This action was considered at a public meeting held on June 20, 2012, notice of which was published pursuant to State Government Article, §10-506, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement Ch. 722, Acts of 2012, effective July 2, 2012, which requires the Board of Public Works to establish a minimum compensation rate of \$2.50 per linear foot per year for each cable, pipeline, or similar structure laid on, in, or under a State wetlands as a condition of a wetlands license. This action will conform regulations to legislation brought by the 2012 General Assembly.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed regulation aligns COMAR 23.02.04.15 with Ch. 722, Acts of 2012 (H.B. 1411), which was signed into law by Governor O’Malley on May 22, 2012. H.B. 1411 established a minimum compensation rate of \$2.50 per linear foot per year for each cable, pipeline, or similar structure placed over, on, in, or under State Wetlands as a condition of a wetlands license. The prior compensation rate set forth in Regulation .15 was \$1 per linear foot per year for each cable, pipeline, or similar structure. H.B. 1411 made significant changes to the two major sources of revenue for the Wetlands and Waterways Program Fund: (1) application fees for authorizations issued by the Maryland Department of the Environment, Wetlands and Waterways Program (Program), and licenses issued by the Board of Public Works (Board) and (2) the minimum compensation rate assessed by the Board for each cable, pipeline, or similar structure placed over, on, in, or under State Wetlands (i.e., State property) as a condition of a wetlands license. According to the revised fiscal and policy note prepared by the Department of Legislative Services during the 2012 General Assembly Session, H.B. 1411 will increase special fund revenues to Wetlands and Waterways Program Fund by about \$307,800 annually beginning in FY 2013 due to the bill’s changes in the fee structure and compensation rates for wetlands and waterways projects. The bill does not require additional expenditures by MDE.

II. Types of Economic Impact.

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

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

- A. Revenue estimates were generated based on the application stream and invoices from Fiscal Year 2010.
- E. The increase in the minimum compensation rate for cables, pipelines, or similar structures impacts approximately 26 companies that have infrastructure on State property.
- F. While it is not possible to estimate and it is anticipated that any increase would be modest, there may be an indirect impact on the public in the event that the increased assessment contributes to a rate increase by an affected company.

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 Doldon Moore, Wetlands Administrator, Board of Public Works, Wetlands Administration, 80 Calvert Street, Room 117, Annapolis, MD 21401, or call 410-260-7764, or email to dmoore@comp.state.md.us, or fax to 410-974-5240. Comments will be accepted through December 3, 2012. A public hearing has not been scheduled.

.15 Compensation.

- A. (text unchanged)
- B. Compensation for Licensed Fill or Other Encroachment.
 - (1) (text unchanged)
 - (2) The Administrator:
 - (a) Shall determine the fair market value of the licensed area [before and after improvement, with the values being] based on the [value of the adjacent upland parcel, or, for licensed fill or encroachment affecting more than 1/2 acre, on the] higher of two appraisals obtained by the licensee;
 - (b) -- (c) (text unchanged)
- C. (text unchanged)
- D. Compensation for Installation of Cables, Pipelines, or Other Structures.
 - (1) [If compensation] *Compensation* is required for the placement of a cable, pipeline, or other structure stated in Regulation .04C of this chapter over, on, in, or under State wetlands[, the].
 - (2) *The Administrator* shall calculate the amount of compensation according to the rate schedule in [§D(2)] §D(3) of this regulation, or an amount or rate specified by the Board, before proceeding with the procedure described in §B(2)(c) of this regulation.
 - [(2)] (3) A nonrecurring, nonrefundable fee of \$1,000 shall be charged, and:
 - (a) For the first 5-year period, an annual fee of [§1] \$2.50 per linear foot shall be charged; *and*
 - (b) At the end of the first 5-year period and at the end of each additional 5-year period, the amount of the per linear foot annual fee [shall] *may* be adjusted to reflect the change for that period in the Consumer Price Index as published by the U. S. Department of Labor, Bureau of Labor Statistics, or by an appropriate index selected by the Board[; and
 - (c) At the end of the next 5-year review period for existing authorization, the compensation annual fee of \$1 per linear foot shall be charged].
 - [(3)] (4) Each cable, pipeline, or similar structure is individually subject to the compensation requirement[, except the annual fees set out in §D(2) of this regulation are not assessed for cables which:
 - (a) Were installed before March 15, 1966;
 - (b) Replace or supplement cables installed before March 15, 1966, if the replacement or supplementary cables are to be located within an average of 50 feet of the center line of any cables installed before March 15, 1966;
 - (c) Are installed as the result of action by any federal, State, or local governmental unit; or
 - (d) Do not continue to generate revenue and are certified to the Board’s satisfaction as abandoned in place to avoid the environmental disruption of removal].

E. Compensation received under the terms and conditions of any State wetlands license is credited to the Department's Wetlands [Compensation] and Waterways Program Fund [for acquisition of wetlands and conservation purposes].

SHEILA McDONALD
Executive Director
Board of Public Works

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 02 OCCUPATIONAL, INDUSTRIAL, AND RESIDENTIAL HAZARDS

26.02.03 Control of Noise Pollution

Authority: Environment Article, §3-401, Annotated Code of Maryland

Notice of Proposed Action [12-285-P]

The Secretary of the Environment proposes to amend the Preface and Regulations .01 and .02, amend and recodify existing Regulation .03A, B, D to be Regulation .02B, C, D, and repeal existing Regulations .03C, .04, and .05 under COMAR 26.02.03 Control of Noise Pollution.

Statement of Purpose

The purpose of this action is to:

- (1) Repeal the requirements for the Maryland Department of the Environment (MDE) to enforce noise control standards, making it an option for local governments;
- (2) Clarify and simplify the noise standards by removing one definition, combining standards from two regulations into one regulation, and repealing one unused regulation;
- (3) Extend the exemption of noise and vibration prohibitions to marina equipment used to move boats during certain times; and
- (4) Repeal the regulation pertaining to penalties.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Under current noise regulations the existing standard for residential (receiving) districts is 65db (decibels). Noise level testing on new model forklifts by Department of Environment staff has indicated that it may not be possible for the forklifts used to move boats at some marinas and "boatels" to achieve this standard at the property line of the receiving property. The excursion of the current noise standard could potentially result in a marina owner having to cease operations. This regulation creates an exception in the regulation that should be technologically achievable, thus reducing economic impact that could result in the closure of some marinas.

For the amendments to the overall noise program, this action does not materially affect State finances, as MDE has implemented only a minimal program in recent years. MDE workloads decreased minimally beginning in FY 2013 due to the elimination of MDE involvement in handling noise complaints and due to any future reduction in workload associated with revising noise standards under current administrative procedures. Local government workloads may

increase beginning in FY 2013 due to the elimination of MDE involvement in handling noise complaints. However, based on the recent history of the State noise control program, the impact on local government operations and finances is likely minimal. To the extent a local government opts to expand implementation of noise control efforts due to the elimination of State involvement, expenditures may increase in the form of salaries and equipment costs to implement the program locally. However, the increased burden on an individual county is not anticipated to be substantial as the Department receives fewer than 75 complaints, on average, per year, statewide. Further, when MDE administered a statewide program there was only one full time employee handling noise enforcement. Any expenses could be partially or fully offset by additional fine revenue collected through any expanded enforcement activities by the local jurisdiction.

MDE has determined that this bill has minimal or no impact on small business.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency: Noise Program	(E-)	Minimal
B. On other State agencies:	NONE	
C. On local governments: Local Noise Programs	(E+)	Minimal
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups: Marina operators	(+)	Moderate
F. Direct and indirect effects on public:		
(1) Public	(+)	Minimal
(2) Public	(-)	Minimal

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

- A. All noise complaints will be re-directed to local governments.
- B. Does not impact other state agency noise programs.
- C. Local enforcement of noise programs may require an increase in salary or equipment needs to handle noise complaints previously received by MDE. However, it is anticipated that an individual jurisdiction would receive fewer than 5 additional noise complaints, on average, per year.
Fewer noise violations from routine marina activities should result in fewer actionable complaints received by local authorities.
- E. Action would require fewer and/or less costly noise mitigation measures by marina operators.
F(1). The public would be better served by state rules fostering resolution of noise complaints at the local level where incompatible uses exist.
F(2). Would permit the current noise levels from marina activities without requiring mitigation. These could be perceived as a nuisance to nearby landowners.

Economic Impact on Small Businesses

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

Marina operators would be exempt from potentially expensive noise mitigation measures. This exemption could potentially prevent their business from closing.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to John Backus, Environmental Program Manager, Maryland Department of the Environment, 1800 Washington Blvd. Baltimore, MD 21230, or call 410-537-3965, or email to jbackus@mde.state.md.us, or fax to 410-537-3998. Comments will be accepted through December 3, 2012. An informational public meeting will be held at MDE Headquarters on Tuesday, November 13, 2012 at 1 p.m., Montgomery Business Park, 1800 Washington Blvd., Baltimore, MD 21230. Please notify John Backus if you plan to attend.

Preface

The Environmental Noise Act of 1974 of the State of Maryland declares as policy the limitation of noise to that level which will protect the health, general welfare, and property of the people of the State. It requires that the Department assume responsibility [for the jurisdiction over the level of noise, and] to prepare regulations for the control of noise, including the establishment of standards for ambient noise levels and equipment performance with respect to noise, for adoption by the Secretary of the Environment. *It allows political subdivisions to adopt environmental noise standards.* Enforcement of the regulations and standards is the responsibility of [the Department] *political subdivisions* in all areas[, using the facilities and services of local agencies within the areas to the greatest extent possible. The Department shall coordinate the programs of all State agencies relating to noise abatement, and each State agency prescribing sound level limits or regulations respecting noise shall obtain the endorsement of the Department in prescribing any limits or regulations].

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1)—(3) (text unchanged)

[(4) “Day-night average sound level (L_{dn})” means in decibels, the energy average sound level for a 24-hour day with a 10 decibel penalty applied to noise occurring during the nighttime period; i.e., noise levels occurring during the period from 10 p.m. one day until 7 a.m. the next are treated as though they were 10 dBA higher than they actually are. The use of the A-weighting is understood. The mathematical expression for L_{dn} is as follows:

$$L_{dn} = 10 \log_{10}[(15/24) 10^{L_d/10} + (9/24) 10^{(L_n + 10)/10}]$$

where L_d = The daytime average sound level.

L_n = The nighttime average sound level.]

[(5)] (4) —[(27)] (26) (text unchanged)

.02 Environmental Noise Standards.

- A. (text unchanged)
- B. Standards for Environmental Noise—General.

(1)—(2) (proposed for repeal)

[A. Noise and Vibration Prohibitions.]

(1) A person may not cause or permit noise levels which exceed those specified in [Table 2] *this table* except as provided in [§A(2) or (3), or §B] §B(2) or (3), or §C, of this regulation.

Table 1 Maximum Allowable Noise Levels (dBA) for Receiving Land Use Categories				
[Effective Date]	Day/Night	Industrial	Commercial	Residential
	Day	75	67	65
[Upon Adoption]	Night	75	62	55

(2) A person may not cause or permit noise levels emanating from construction or demolition site activities which exceed:

(a) 90 dBA during daytime hours;

(b) The levels specified in Table [2] *I* during nighttime hours.

(3) A person may not cause or permit the emission of prominent discrete tones and periodic noises which exceed a level which is 5 dBA lower than the applicable level listed in Table [2] *I*.

(4) (text unchanged)

(5) A person may not operate or permit to be operated an off-road internal combustion engine powered recreational vehicle, including, but not limited to, a dirt bike, an all terrain vehicle, a go cart, a snowmobile, or a similar vehicle, on private property closer than 300 feet to a neighboring residence or the associated curtilage, without the written permission of the affected resident, unless it can be demonstrated to the Department that the vehicle can be operated within the noise limits specified in Table [2] *I* under [§A(1)] §B(1) of this regulation.

[B.] C. Exemptions.

(1) (text unchanged)

(2) The provisions of this regulation do not apply to the following:

(a) —(p) (text unchanged)

(q) *Marina equipment used to move boats during the period from 7 am to 7 pm provided that the noise level does not exceed 80 dBA at 20 meters from the equipment.*

(3)—(4) (text unchanged)

D. Measurement.

(1)—(2) (text unchanged)

(3) Sound level meters used to determine compliance with Regulation [.03] .02 shall meet or exceed the specifications for Type II sound level meters.

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

Subtitle 09 MARYLAND CO₂ BUDGET TRADING PROGRAM

Notice of Proposed Action

[12-295-P]

The Secretary of the Environment proposes to amend:

(1) Regulation .02 under **COMAR 26.09.01 General Administrative Provisions**; and

(2) Regulations .03 and .06 — .09 under **COMAR 26.09.02 Applicability, Determining Compliance, and Allowance Distribution**.

Statement of Purpose

The purpose of this action is to amend regulations under COMAR 26.09, Maryland CO₂ Budget Trading Program, with regard to the following:

(1) Add certain definitions.

(2) Revise the process by which allowances are allocated to the set-aside accounts.

(3) Revise the requirements for the distribution of allowances from the Long Term Contract Set-Aside Account.

(4) Revise the amount of allowances allocated to the Long Term Contract Set-Aside Account and the Clean Generation Set-Aside Account.

(5) Specify that the only renewable energy credit purchases that qualify to have RGGI CO₂ allowances retired are renewable energy credits generated in RGGI states.

Background

The Healthy Air Act

The Healthy Air Act was signed into law on April 6, 2006 and required Maryland to join the Regional Greenhouse Gas Initiative (RGGI) by July 2007. Maryland joined RGGI when the Governor signed RGGI's multi-state Memorandum of Understanding (MOU) on April 20, 2007. The Department subsequently adopted Code of Maryland Regulations (COMAR) 26.09.01 to .03, implementing the "Maryland CO₂ Budget Trading Program," which became effective on July 17, 2008. COMAR 26.09.04 ("Auctions") became effective as a permanent regulation on August 25, 2008.

The Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative is comprised of nine states in the Northeast and Mid-Atlantic regions. These states adopted market-based carbon dioxide (CO₂) cap and trade programs designed to reduce emissions of CO₂, a greenhouse gas, from fossil fuel-fired electricity generators with a nameplate capacity of 25 megawatts or greater. RGGI currently is comprised of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and Maryland. New Jersey discontinued participation after the end of the first compliance period, 2009-2011. Participating RGGI states each require electricity generators to have acquired, through regional auction or secondary market transactions, one CO₂ allowance for every ton of CO₂ emitted over a three-year compliance period. Auction proceeds fund a number of state programs, including energy efficiency programs that result in lower CO₂ emissions through reduced electricity demand.

The RGGI program has several unique features unlike other cap and trade programs in the U.S. The allowances are controlled by the states and can be allocated or sold to sources. Most states have opted to auction the allowances to sources through quarterly auctions. Proceeds from the auctions are used to fund energy efficiency programs to reduce demand for electricity and provide a means to lower CO₂ emissions. The states conducted the first quarterly regional auction in September 2008, and the program officially began in January 2009.

The electricity generation sector is a major contributor to climate change because a large amount of CO₂ is released during the combustion of fossil fuels. With this in mind, RGGI set a cap of 188,076,976 tons of CO₂ emissions for the region, based on averaged emissions in 2000 to 2002 from eligible electricity generators. Maryland receives 37,503,983 CO₂ allowances for each year from 2009 through 2014. Between 2015 and 2018, Maryland will annually receive 2 ½ percent fewer CO₂ allowances as the RGGI cap reduces by 10 percent during that time. Maryland has set aside 7,388,491 allowances in 4 different set aside accounts to account for special needs or programs.

Maryland Set Asides

The four set aside accounts are: 1) the Limited Industrial Set Aside; 2) the Long Term Contract Set Aside; 3) the Clean Generation Set Aside; and the Voluntary Renewable Set Aside. The Limited Industrial Set Aside allows the Department to retire allowances equal to the emissions of industrial sources that generate their own electricity but have been exempted from RGGI because they do not

sell electricity to the grid. The Long Term Contract Set Aside allows sources with long term contracts prescribing what those sources may charge for electricity to obtain allowances free of charge in cases of financial jeopardy. The Clean Generation Set Aside provides allowances to new, clean electric generation sources as an incentive. The incentive lasts for six years. The Voluntary Renewable Set Aside allows the Department to retire allowances proportional to renewable energy credits purchased voluntarily to be retired on behalf of RGGI. Currently, allowances from these set aside accounts that remain unused are either retired or offered for sale at auction. The purpose of this regulation is to improve utilization and dispensation of these set asides.

Current Market Conditions

RGGI has completed its first control period, 2009-2011. In many ways RGGI has been very successful. The regional auctions have generated almost a billion dollars in revenue for the states. These funds were used to provide funding for energy efficiency programs, rebates to ratepayers and energy efficiency projects for the states as well as bill payment for low income residents and general fund relief. At this time, the participating states have undertaken a comprehensive review of the RGGI program.

Carbon dioxide emissions in the RGGI region have decreased substantially. One factor contributing to the decrease in regional emissions has been a shift in use of natural gas over oil for fuel at electricity generators due to a significant decrease in the price of natural gas. Another factor is an economic downturn that began in late 2008 and continues today. As electric generating companies acquired CO₂ allowances equal to their emissions, some CO₂ allowances offered at the regional auctions were not sold. Maryland regulations allow these allowances to be offered for sale at a subsequent auction or to be retired. With demand for allowances through the auction smaller than the amount of allowances offered, the participating states have held the unsold allowances until the end of a compliance period. This allows the states to determine whether demand exists for the allowances or whether retirement would provide the best environmental benefit.

In addition to some of the allowances going unsold at auction, many of the CO₂ allowances allocated to Maryland's set-aside accounts were not utilized. The Department reviewed the need and usage of the set asides. The Department determined the set asides served useful purposes but recognized usage could be sporadic. The process for populating the set aside accounts was revised to retain unused set aside allowances in the accounts and only add new allowances to replenish the accounts to their regulatory limit. In this manner, more current year allowances would go directly to auction. Although some of these allowances may go unsold, this process allows a greater percentage of Maryland's allowances to enter the marketplace earlier.

Proposed Amendments:

This proposed action includes the following revisions to the existing regulations:

1. Definitions:

In Chapter 01, the Department added the definition "long term contract price" to indicate the price at which allowances from the long term set aside account would be sold.

2. Revise the process by which allowances are allocated to the set-aside accounts.

The process for populating the set aside accounts was revised to retain unused set aside allowances in the accounts and only add new allowances to replenish the accounts to their regulatory limit. In this manner, more current year allowances would go directly to auction. Although some of these allowances may go unsold, this process

allows a greater percentage of Maryland’s allowances to enter the marketplace earlier.

3. Revise the requirements for the distribution of allowances from the Long Term Contract Set-Aside Account.

The Department revised the Long Term Contract Set Aside account to allow sources with qualifying long term contracts to purchase allowances directly from the Department. This option is reserved for sources with long term contracts that do not allow the source to recoup the cost of purchasing allowances through electricity pricing. The price of allowances for 2012 is set at \$1.93, the current reserve price. The price of allowances is increased each year by the percentage increase of the Consumer Price Index. This price is termed the long term contract price and it is equal to the reserve price, the lowest price states will accept for the purchase of allowances.

4. Revise the amount of allowances allocated to the Long Term Contract Set-Aside Account.

The allowances allocated to the Long Term set Aside account is decreased to 1,600,000. The decrease is based on a change in the number of sources eligible to utilize this account. Only one source remains eligible. The number of allowances allocated to this account is based on the average of the last 12 years of CO₂ emissions for the eligible source rounded to the nearest hundred thousand.

AES CO₂ Emissions:

- 2000 1,536,726
- 2001 1,599,235
- 2002 1,570,012
- 2003 1,606,756
- 2004 1,580,557
- 2005 1,751,923
- 2006 1,546,789
- 2007 1,655,318
- 2008 1,513,663
- 2009 1,219,525
- 2010 1,559,223
- 2011 1,626,207
- AVE 1,563,828

5. Specify that the only renewable energy credit purchases that qualify to have RGGI CO₂ allowances retired are renewable energy credits generated in RGGI states.

These amendments add more specificity to the renewable energy credits that can qualify under the Voluntary Renewable Set Aside provisions. For a renewable energy credit to be eligible to be used under this set aside, the renewable energy credit must have been generated in a state or states participating in the RGGI program. The retirement of the renewable energy credit under these circumstances reduces the RGGI cap and prevents an equal amount of electricity from being generated with fossil fuel.

6. Remove the provision allowing direct purchase of allowances by electric generating units above the price trigger of \$7.00.

In the event that allowance prices reached \$7.00 or higher during the first control period, COMAR 26.09.02.03(c) and 26.09.02.03D allowed electric generating units to purchase allowances directly from the Department at \$7.00. Since this provision only applied to the first control period, 2009-2011, it is being removed.

Sources Affected:

AES Warrior Run

Emissions Reductions Expected from this Action:

No emissions reductions are expected from this action.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. These amendments have minimal economic impact.

As a result of these amendments, one source will be able to purchase allowances directly from the Department at the long term contract price. The long term contract price is equal to the auction reserve price and all allowances sold at auction currently sell for that price. If allowances begin to escalate in price and sell for more than the reserve price, the source will receive an economic benefit.

As a result of these amendments, the Department will be able to offer more current year allowances for auction earlier than without these amendments. This may result in more allowances being sold and more proceeds distributed under the Strategic Energy Investment Fund.

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

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

D. As a result of these amendments, AES Warrior Run will be able to purchase allowances directly from the Department at the long term contract price. The long term contract price is equal to the auction reserve price and all allowances sold at auction currently sell for that price. If allowances begin to escalate in price and sell for more than the reserve price, the source will receive an economic benefit.

F. As a result of these amendments, the Department will be able to offer more current year allowances for auction earlier than without these amendments. This may result in more allowances being sold and more proceeds distributed under the Strategic Energy Investment Fund.

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

The Department of the Environment will hold a public hearing on the proposed action on December 5, 2012 at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st

Floor Conference Rooms, Baltimore, Maryland 21230-1720. Interested persons are invited to attend and express their views. Comments may be sent to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us. Comments must be received not later than December 5, 2012, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Copies of the proposed action and supporting documents are available for review at the following locations: The Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

26.09.01 General Administrative Provisions

Authority: Environment Article, §§1-101, 1-404, 2-103, and 2-1002(g), Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1) — (68) (text unchanged)

(68-1) "Long Term Contract Price" means the 2012 reserve price adjusted annually in accordance with COMAR 26.09.02.07H.

(69) — (103) (text unchanged)

26.09.02 Applicability, Determining Compliance, and Allowance Distribution

Authority: Environment Article, §§1-101, 1-404, 2-103, and 2-1002(g), Annotated Code of Maryland

.03 Distribution of CO₂ Allowances and Compliance.

- A. — B. (text unchanged)
- C. General Distribution of CO₂ Allowances.

(1) (text unchanged)

(2) [The] *On or before January 31 of each calendar year*, the Department shall [annually] allocate *all* CO₂ allowances from the CO₂ Budget Trading Program to [each of these accounts as follows:

(a) 3,465,101 allowances to the Limited Industrial Exemption Set-aside Account;

(b) 1,698,191 allowances to the Long Term Contract Set-aside Account;

(c) 350,000 allowances to the Voluntary Renewable Set-aside Account;

(d) 1,875,199 allowances to the Clean Generation Set-aside Account; and

(e) The remainder of allowances to the Consumer Energy Efficiency Account] *the Consumer Energy Efficiency Account, except as directed in §C(3) and (4) of this regulation.*

(3) [Availability of Allowances by Auction.] *The Department shall allocate CO₂ allowances from the Consumer Energy Efficiency Account to each of the following accounts so that the total number of allowances in each account is:*

[(a) Except as provided in §C(3)(c) of this regulation, the Department shall make available for auction 100 percent of the allowances annually allocated to the Consumer Energy Efficiency Account.

(b) The Department shall establish auction schedules by the following dates:

(i) By January 1, 2009, for auctions in calendar years 2009, 2010, 2011, and 2012; and

(ii) By January 1, 2010, for auctions in calendar year 2013 and by the January 1 of each year after that, for the calendar year that is 3 years after that date.

(c) If, at any time during the first control period, the auction clearing price of the current year's allowances reaches \$7 or higher, the Department shall withhold the remainder of that year's allowances in the Consumer Energy Efficiency Account from sale in any future auction during that calendar year and make these allowances available by direct sale to CO₂ budget units in Maryland.

(d) Allowances to be made available for purchase may not exceed 50 percent of the annual allocation to the Consumer Energy Efficiency Account.]

(a) 3,465,101 in the Limited Industrial Exemption Set-aside Account;

(b) 1,600,000 in the Long Term Contract (LTC) Set-aside Account;

(c) 350,000 in the Voluntary Renewable Set-aside Account;

and

(d) 1,875,199 in the Clean Generation Set-aside Account.

(4) *If, on December 31 of each year, allowances have been sold or awarded from a set-aside account such that the number of allowances in the set-aside account falls below the required allocation in §C(3)(a)—(d) of this regulation, as applicable, that account shall be replenished from the Consumer Energy Efficiency Account in the following calendar year using allowances from that calendar year.*

[D.] (proposed for repeal)

[E] *D. Demonstrating Compliance.*

(1) — (3) (text unchanged)

(4) The identification of available CO₂ allowances for compliance deduction by serial number or by default is as follows:

(a) (text unchanged)

(b) In the absence of an identification or in the case of a partial identification of available CO₂ allowances by serial number, the Department shall deduct CO₂ allowances for a control period in the following descending order:

(i) — (ii) (text unchanged)

(iii) Subject to the relevant compliance deduction limitations identified in [§E(2)(c)] §D(2)(c) of this regulation, any CO₂ offset allowances transferred and recorded in the compliance account, in chronological order; and

(iv) Any CO₂ allowances, other than those identified in [§E(4)(b)(i)—(iii)] §D(4)(b)(i)—(iii) of this regulation, that are available for deduction in the order they were recorded.

.06 Limited Industrial Exemption Set-aside Account.

A. (text unchanged)

B. A CO₂ budget source is exempt from the requirements of Regulation [03E] .03D of this chapter if it meets the following criteria:

(1) — (3) (text unchanged)

C. — F. (text unchanged)

G. [At the end of a calendar year and after] *After* the Department has retired CO₂ allowances from the Limited Industrial Exemption Set-aside Account *for the preceding calendar year*, the Department [will transfer any remaining CO₂ allowances in the Limited Industrial Exemption Set-aside Account to the Consumer Energy Efficiency Account or the CO₂ Allowance Contingency Account] *shall supplement the remaining allowances in the account by transferring from the Consumer Energy Efficiency Account the number of*

allowances needed to restore the balance of the Limited Industrial Exemption Set-aside Account to 3,465,101.

.07 Long Term Contract Set-aside Account.

A. (text unchanged)

B. [Eligibility for a CO₂ budget unit for] *A long term contract applicant may purchase allowances [awarded by] from the Long Term Contract Set-aside Account through direct sale from the Department [from the Long Term Contract Set-aside Account are determined in accordance with the following criteria] at the long term contract price if:*

(1) [That a] *A long term contract with the applicant for the electrical output of [the] its budget [unit] units has been in existence since January 1, 2001; and*

(2) [That the] *The applicant is unable to [pass] recover the cost of purchasing allowances through electricity pricing or other mechanism. [on; and*

(3) *That purchasing allowances equal to the CO₂ budget unit's CO₂ emissions will affect the financial viability of the plant or direct or indirect corporate or individual owners of the plant.]*

C. [If allowances are awarded, in order to] *To remain eligible [for future allowances] to purchase allowances from the Long Term Contract Set-aside Account through direct sale from the Department, the [CO₂ budget unit] applicant shall renegotiate the long term contract to include the cost of purchasing CO₂ allowances [as soon as the] when the first opportunity to exercise any option in the existing contract occurs.*

D. [The] *Each calendar year, the CO₂ authorized account representative for the compliance account, referred to in this subtitle as the LTC applicant, shall make all [submissions] requests for purchase of allowances from the Long Term Contract Set-aside Account to the Department in writing [required for the award of allowances] by November 15 of each year.*

E. [The LTC applicant may submit a written request to the Department for a specified number of CO₂ allowances in the Long Term Contract Set-aside Account as follows:

(1) *To be considered for allowances for calendar year 2009, the request shall be submitted by October 1, 2008; and*

(2) *To be considered for allowances for calendar years after 2009, the request shall be submitted by the March 1 immediately preceding the allocation years for which it is being made, unless allocations were granted as part of a previous request.] If all the allowances are not sold from the Long Term Contract Set-aside Account by the end of the calendar year, the undistributed allowances shall remain in the account. On or before January 31 of the following year, the Department shall transfer from the Consumer Energy Efficiency Account the number of allowances needed to restore the balance of the Long Term Contract Set-aside Account to 1,600,000.*

F. [The LTC applicant may submit a request for an award of allowances for up to 4 years.] *Allowances Available for Purchase by LTC Applicants.*

(1) *All allowances purchased by LTC applicants in accordance with §D of this regulation shall be maintained in the CO₂ budget source's compliance account and only used to demonstrate compliance for a control period.*

(2) *Allowances purchased by LTC applicants in accordance with §D of this regulation may not be resold.*

G. The request shall include the following[, with reasonable supporting documentation]:

(1) *A copy of the long term contract [with a certification that the LTC applicant is unable to pass the cost of allowances on to the purchasing party] if it has not been provided to the Department previously, or if it has, a letter certifying that the contract has not changed; and*

[(2) Profit and loss statements for the CO₂ budget unit for the previous 5-year period;]

(2) *A letter certifying that the LTC applicant is unable to recover the cost of allowances through electricity pricing or other mechanism.*

(3) *Fuel data from the previous 5-year period, such as purchase costs;*

(4) *The calculation of emissions from the CO₂ budget unit or units covered by the long term contract;*

(5) *A statement of costs to the CO₂ budget unit or units associated with this subtitle, contrasted with all other costs associated with the operation of the CO₂ budget unit or units;*

(6) *Other information as determined by the LTC applicant, such as a certification that purchasing allowances equal to emitted CO₂ will affect the financial viability of the plant, or direct or indirect corporate or individual owners of the plant, including all supporting documentation; and*

(7) *Additional information requested by the Department that is necessary to make a decision on the request.]*

[H.] — [N.] (proposed for repeal)

H. Calculation of Long Term Contract Price.

(1) *The Long Term Contract Price (LTCP) in calendar year 2012 shall be \$1.93.*

(2) *For years subsequent to calendar year 2012, the LTCP shall be established as of the first day of each calendar year, and shall be calculated as follows:*

The LTCP for a given year shall be the LTCP for the immediately preceding calendar year multiplied by the quotient of the sum of one plus the difference of the CPI for the given year minus the CPI for the immediately preceding calendar year divided by the CPI for the immediately preceding calendar year,

$$LTCP(2012+n) = LTCP(2012+(n-1)) \times \{1 + [CPI(2012+n) - CPI(2012+(n-1))] / CPI(2012+(n-1))\}.$$

(a) *"n" means the number of years since 2012;*

(b) *"CPI(...)" means the CPI for the year determined by the calculation within the parentheses; and*

(c) *"LTCP(...)" means the LTCP for the year determined by the calculation within the parentheses.*

.08 Voluntary Renewable Set-aside Account.

A. Administration and Participation.

(1) (text unchanged)

(2) *When a person, electricity supplier, retail marketer, or renewable energy facility residing or doing business in Maryland or on behalf of a person residing or doing business in Maryland accumulates renewable energy credits (RECs) equal to 1 or more tons of CO₂ as calculated pursuant to §C(1) of this regulation, the person, electricity supplier, retail marketer or renewable energy facility may submit the documentation identified in §B(2) of this regulation to the Department in exchange for the permanent retirement of CO₂ allowances from the Voluntary Renewable Set-aside Account, if the renewable energy is generated or created, as applicable, in a state or states participating in a multi-state CO₂ air pollution control and emissions reduction program established pursuant to this chapter or corresponding rules and regulations in other participating states as a means of reducing emissions of CO₂ from CO₂ budget sources.*

(3) — (13) (text unchanged)

B. (text unchanged)

C. Determining the Number of CO₂ Allowances to Be Retired.

(1) — (2) (text unchanged)

(3) [If] *For a given calendar year, if the number of CO₂ allowances calculated for retirement is less than [the number of CO₂ allowances in the Voluntary Renewable Set-aside Account, then the*

Department shall transfer at the end of the calendar year all remaining allowances in the Voluntary Renewable Set-aside Account to the Consumer Energy Efficiency Account or the CO₂ Allowance Contingency Account;] 350,000, the allowances remaining in the Voluntary Renewable Set-aside Account shall remain in that account. After the retirement of allowances for the preceding calendar year, the Department shall transfer from the Consumer Energy Efficiency Account the number of allowances needed to restore the balance of the Voluntary Renewable Set-aside Account to 350,000.

(4) Every 2 years, the Department, *in consultation with the Committee*, shall review, and if appropriate, increase the number of CO₂ allowances allocated to the Voluntary Renewable Set-aside Account, considering projected voluntary renewable sales, REC market impact, associated impacts pertaining to Maryland's renewable portfolio standard, and other relevant factors.

.09 Clean Generation Set-aside Account.

A. (text unchanged)

B. A CO₂ budget [units] *unit* that [commence] *commences* operation after January 1, 2009, *is* eligible for an award of allowances from the Clean Generation Set-aside Account if [they] *it*:

(1) [Use] *Uses* gaseous fossil fuel as the primary fuel; [and]

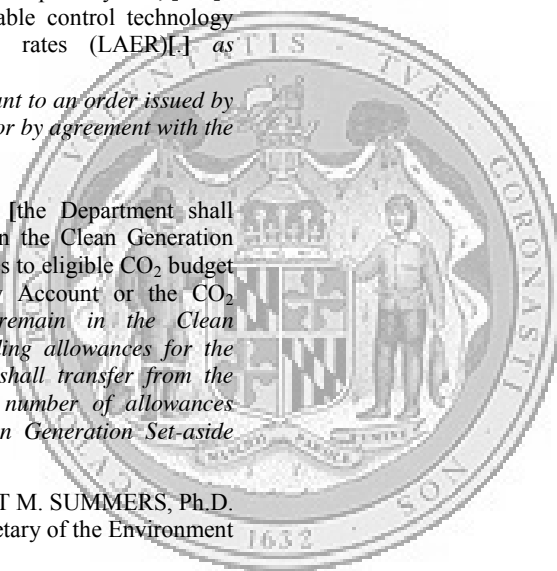
(2) [Have] *Has* applied best available control technology (BACT) or lowest achievable emission rates (LAER)[.] *as applicable; and*

(3) *Has not been constructed pursuant to an order issued by the Public Service Commission of Maryland or by agreement with the State.*

C. — G. (text unchanged)

H. At the end of each calendar year, [the Department shall transfer] any CO₂ allowances that remain in the Clean Generation Set-aside Account[, after awarding allowances to eligible CO₂ budget units, to the Consumer Energy Efficiency Account or the CO₂ Allowance Contingency Account] *will remain in the Clean Generation Set-aside Account. After awarding allowances for the preceding calendar year, the Department shall transfer from the Consumer Energy Efficiency Account the number of allowances needed to restore the balance of the Clean Generation Set-aside Account to 1,875,199.*

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



Errata

COMAR 10.44.05

At 39:19 Md. R. 1271 (September 21, 2012), column 1, line 13
from the top:

For: adopt new Regulations **.01 — .05** under **COMAR
10.44.05**

Read: adopt new Regulations **.01 — .06** under **COMAR
10.44.05**

COMAR 10.44.09

At 39:19 Md. R. 1272 (September 21, 2012), column 2, line 27
from the top:

For: **Hygienists** and adopt new Regulations **.01—05** under
COMAR

Read: **Hygienists** and adopt new Regulations **.01—06** under
COMAR

[12-22-42]



Special Documents

DEPARTMENT OF THE ENVIRONMENT

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on November 15, 2012, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 14, 2012, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. The deadline for the submission of written comments is November 26, 2012.

DATES: The public hearing will convene on November 15, 2012, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is November 26, 2012.

ADDRESS: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436.

Information concerning the applications for these projects is available at the SRBC Water Resource Portal at www.srbc.net/wrp. Materials and supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at www.srbc.net/pubinfo/docs/2009-02%20Access%20to%20Records%20Policy%2010-09.PDF.

Opportunity to Appear and Comment:

Interested parties may appear at the hearing to offer comments to the Commission on any project listed below. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Ground rules will be posted on the Commission's web site, www.srbc.net, prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project listed below may also be mailed to Mr. Richard Cairo, General Counsel, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102-2391, or submitted electronically through <http://www.srbc.net/pubinfo/publicparticipation.htm>. Comments mailed or electronically submitted must be received by the Commission on or before November 26, 2012, to be considered.

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Rescission Action:

Project Sponsor and Facility: Cinram Manufacturing, Borough of Olyphant, Lackawanna County, Pa. (Docket Nos. 19960701 and 19960701-1).

Project Sponsor and Facility: Clark Trucking, LLC Northeast Division (Lycoming Creek), Lewis Township, Lycoming County, Pa. (Docket No. 20111207).

Project Sponsor and Facility: Woolrich, Inc., Gallagher Township, Clinton County, Pa. (Docket No. 20050305).

Compliance Action:

Project Sponsor: Chobani, Inc. Project Facility: South Edmeston Facility, Town of Columbus, Chenango County, N.Y.

Projects Scheduled for Action:

Project Sponsor and Facility: Aqua Infrastructure, LLC (Source Approval), Piatt, Mifflin, Watson, Cummings, Anthony, Lycoming, and Cogan House Townships, Lycoming County, Pa. Modification to expand regional pipeline system (Docket No. 20120604).

Project Sponsor and Facility: Black Bear Waters, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Modification to increase surface water withdrawal by an additional 0.500 mgd (peak day), for a total of 0.900 mgd (peak day) (Docket No. 20120303).

Project Sponsor and Facility: Cabot Oil & Gas Corporation (Bowman Creek), Eaton Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.290 mgd (peak day) (Docket No. 20080929).

Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek), Lemon Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.054 mgd (peak day) (Docket No. 20080920).

Project Sponsor and Facility: Cabot Oil & Gas Corporation (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.250 mgd (peak day) (Docket No. 20080918).

Project Sponsor and Facility: Caernarvon Township Authority, Caernarvon Township, Berks County, Pa. Application for renewal of groundwater withdrawal of up to 0.035 mgd (30-day average) from Well 6 (Docket No. 19820912).

Project Sponsor and Facility: Carrizo (Marcellus), LLC (Silver Creek), Silver Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.720 mgd (peak day).

Project Sponsor and Facility: Centura Development Company, Inc., Old Lycoming Township, Lycoming County, Pa. Application for groundwater withdrawal of up to 0.250 mgd (30-day average) from Well 1.

Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.440 mgd (peak day) (Docket No. 20080906).

Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20080923).

- Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Wysox Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20080914).
- Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.715 mgd (peak day) (Docket No. 20110607).
- Project Sponsor and Facility: Chief Oil & Gas LLC (Sugar Creek), Burlington Borough and Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.099 mgd (peak day).
- Project Sponsor and Facility: Citrus Energy (Susquehanna River), Washington Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 1.994 mgd (peak day) (Docket No. 20081205).
- Project Sponsor and Facility: EQT Production Company, Duncan Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.072 mgd (30-day average) from Antrim Well 1.
- Project Sponsor and Facility: EQT Production Company, Duncan Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.072 mgd (30-day average) from Antrim Well 2.
- Project Sponsor and Facility: EQT Production Company (Pine Creek), Porter Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.000 mgd (peak day).
- Project Sponsor and Facility: Equipment Transport, LLC (Pine Creek), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.467 mgd (peak day).
- Project Sponsor and Facility: EXCO Resources (PA), LLC (Little Muncy Creek), Franklin Township, Lycoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).
- Project Sponsor and Facility: EXCO Resources (PA), LLC (Pine Creek), Watson Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).
- Project Sponsor and Facility: Falling Springs Water Works, Inc. (Falling Springs Reservoir), Ransom Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.800 mgd (peak day).
- Project Sponsor and Facility: Gaberseck Brothers (Odin Pond 2), Keating Township, Potter County, Pa. Application for surface water withdrawal of up to 0.249 mgd (peak day).
- Project Sponsor and Facility: Galeton Borough Water Authority, Galeton Borough, Potter County, Pa. Application for groundwater withdrawal of up to 0.288 mgd (30-day average) from the Germania Street Well.
- Project Sponsor and Facility: Houtzdale Municipal Authority (Beccaria Springs), Gulich Township, Clearfield County, Pa. Application for surface water withdrawal of up to 5.000 mgd (peak day).
- Project Sponsor and Facility: Mark Manglaviti & Scott Kresge (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.999 mgd (peak day).
- Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Modification to increase surface water withdrawal by an additional 0.499 mgd (peak day), for a total of 1.498 mgd (peak day) (Docket No. 20100309).
- Project Sponsor and Facility: Borough of Patton, Clearfield Township, Cambria County, Pa. Application for groundwater withdrawal of up to 0.316 mgd (30-day average) from Well 2.
- Project Sponsor and Facility: Borough of Patton, Clearfield Township, Cambria County, Pa. Application for groundwater withdrawal of up to 0.316 mgd (30-day average) from Well 3.
- Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (First Fork Sinnemahoning Creek), Wharton Township, Potter County, Pa. Application for renewal of surface water withdrawal of up to 0.231 mgd (peak day) (Docket No. 20080928).
- Project Sponsor and Facility: Southwestern Energy Production Company (Lycoming Creek – Bodines), Lewis Township, Lycoming County, Pa. Request for extension of Docket No. 20091207.
- Project Sponsor and Facility: Southwestern Energy Production Company (Lycoming Creek – Ralston), McIntyre Township, Lycoming County, Pa. Request for extension of Docket No. 20091210.
- Project Sponsor and Facility: Southwestern Energy Production Company (Middle Lake), New Milford Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.720 mgd (peak day).
- Project Sponsor and Facility: Talisman Energy USA Inc. (Tamarack Lake), Armenia Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.100 mgd (peak day).
- Project Sponsor and Facility: West Cocalico Township Authority, West Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.259 mgd (30-day average) from Well 2 (Docket No. 19780101).
- Project Sponsor and Facility: York County Solid Waste and Refuse Authority, Hopewell Township, York County, Pa. Modification to replace a remediation well source with no increase in the total system withdrawal limit (Docket No. 19970506).

AUTHORITY: Public Law 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806-808.

Dated: October 12, 2012.

THOMAS W. BEAUDUY
Deputy Executive Director

[12-22-35]

General Notices

Notice of ADA Compliance

The State of Maryland is committed to ensuring that individuals with disabilities are able to fully participate in public meetings. Anyone planning to attend a meeting announced below who wishes to receive auxiliary aids, services, or accommodations is invited to contact the agency representative at least 48 hours in advance, at the telephone number listed in the notice or through Maryland Relay.

BOARD OF BARBERS

Subject: Public Meeting
Date and Time: December 10, 2012, 9:30 a.m. — 4 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195
 [12-22-25]

ADVISORY COUNCIL ON CEMETERY OPERATIONS

Subject: Public Meeting
Date and Time: November 29, 2012, 10 a.m. — 1 p.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl., Baltimore, MD
Contact: Marilyn Harris-Davis (410) 230-6229
 [12-22-16]

CHESAPEAKE BAY TRUST

Subject: Public Meeting
Date and Time: November 14, 2012, 3 — 6 p.m.
Place: Camp Letts Boat House, Edgewater, MD
Contact: Heather Adams (410) 974-2941
 [12-22-32]

BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

Subject: Public Meeting
Date and Time: November 8, 2012, 10 a.m. — 3 p.m.
Place: Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rm. 108/109, Baltimore, MD
Contact: Emily Jones (410) 764-4665
 [12-22-40]

BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

Subject: Public Meeting
Date and Time: November 15, 2012, 10 a.m. — 2 p.m.
Place: Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Baltimore, MD
Add'l. Info: Public Meeting on MD Massage Therapy Continuing Education Units (CEUs)
Contact: Emily Jones (410) 764-4665
 [12-22-33]

MARYLAND COLLECTION AGENCY LICENSING BOARD

Subject: Public Meeting
Date and Time: November 14, 2012, 10:30 a.m. — 12:30 p.m.
Place: Montgomery County Office of Consumer Protection, 100 Maryland Ave., Ste. 330, Rockville, MD
Contact: Kelly Mack (410) 230-6079
 [12-22-22]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting
Date and Time: December 3, 2012, 9:30 a.m. — 4 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195
 [12-22-24]

BOARD OF MASTER ELECTRICIANS

Subject: Public Meeting
Date and Time: December 25, 2012, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., Rm. 302, Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
 [12-22-11]

EMERGENCY MEDICAL SERVICES BOARD

Subject: Public Meeting
Date and Time: November 13, 2012, 9 — 11 a.m.; part of the meeting may include a closed session
Place: 653 W. Pratt St., Ste. 212, Baltimore, MD
Add'l. Info: The State Emergency Medical Services Board (EMS Board) meets regularly on the 2nd Tuesday of each month.
Contact: Leandrea Gilliam (410) 706-4449
 [12-22-08]

MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

Subject: Public Meeting
Date and Time: November 14, 2012, 10 a.m. — 12 p.m.
Place: 653 W. Pratt St., Ste. 212, Baltimore, MD

Add'l. Info: The Protocol Review Committee meets regularly on the 2nd Wednesday of every other month.
Contact: Leandrea Gilliam (410) 706-4449
 [12-22-09]

MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

Subject: Public Meeting
Date and Time: November 16, 2012, 10 a.m. — 12 p.m.
Place: 653 W. Pratt St., Ste. 508, Baltimore, MD
Add'l. Info: The Provider Review Panel (PRP) meets regularly on the 3rd Friday of every other month.
Contact: Leandrea Gilliam (410) 706-4449
 [12-22-10]

UNINSURED EMPLOYERS' FUND BOARD

Subject: Public Meeting
Date and Time: November 20, 2012, 10 a.m. — 12 p.m.
Place: 300 E. Joppa Rd., Ste. 402, Towson, MD
Contact: James Himes (410) 321-4136
 [12-22-41]

STATE BOARD OF STATIONARY ENGINEERS

Subject: Public Meeting
Date and Time: December 18, 2012, 10 a.m. — 12 p.m.
Place: 500 n. Calvert St., Rm. 302, Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
 [12-22-12]

BOARD OF ENVIRONMENTAL SANTARIANS

Subject: Public Meeting
Date and Time: December 5, 2012, 10 a.m. — 4 p.m.
Place: Howard Co. Bureau of Utilities, 8270 Old Montgomery Rd., Columbia, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: E. Lee Haskins (410) 537-3594
 [12-22-05]

**DEPARTMENT OF HEALTH AND
MENTAL HYGIENE**

Subject: Public Meeting
Date and Time: November 7, 2012, 6 — 8 p.m.
Place: 201 W. Preston St., Rm. L2, Baltimore, MD
Contact: Adelline Ntatin (410) 767-2623
 [12-22-28]

**DEPARTMENT OF HEALTH AND
MENTAL
HYGIENE/LABORATORIES
ADMINISTRATION**

Subject: Public Meeting
Date and Time: December 4, 2012, 8:30 a.m. — 12 p.m.
Place: O'Connor Bldg., 201 W. Preston St., Rm. L-37, Baltimore, MD
Contact: Georgette P. Zoltani (410) 764-2899
 [12-22-27]

**BOARD OF HEATING,
VENTILATION, AIR-
CONDITIONING, AND
REFRIGERATION CONTRACTORS
(HVACR)**

Subject: Public Meeting
Date and Time: November 14, 2012, 9:30 a.m. — 12 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Steve Smitson (410) 230-6169
 [12-22-14]

**BOARD OF HEATING,
VENTILATION, AIR-
CONDITIONING, AND
REFRIGERATION CONTRACTORS
(HVACR)**

Subject: Public Meeting
Date and Time: December 12, 2012, 9:30 a.m. — 12 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Steve Smitson (410) 230-6169
 [12-22-15]

**MARYLAND INSURANCE
ADMINISTRATION**

Subject: Public Meeting
Date and Time: December 19, 2012, 9:30 — 11:30 a.m.
Place: Maryland Insurance Administration, 200 St. Paul Pl., 22nd Fl. Conf. Rm., Baltimore, MD
Add'l. Info: Meeting of the Workgroup on Access to Habilitative Services Benefits <http://www.mdinsurance.state.md.us/sa/news-center/legislative-information.html>
Contact: Tinna Damaso Quigley (410) 468-2202
 [12-22-37]

**DEPARTMENT OF JUVENILE
SERVICES**

Subject: Statement of Need
Add'l. Info: The Department of Juvenile Services (DJS) hereby gives notice of issuing a Statement of Need for expansion of number of placements for an already licensed Residential Child Care Program pursuant to COMAR 14.31.09.04. The Statement of Need is posted on the DJS website, <http://www.djs.state.md.us/publication-data.asp>.
Contact: Betsy Tolentino (410) 230-3146
 [12-22-43]

**DIVISION OF LABOR AND
INDUSTRY/MARYLAND
APPRENTICESHIP AND TRAINING
COUNCIL**

Subject: Public Meeting
Date and Time: November 13, 2012, 9 a.m. — 12 p.m.
Place: Baltimore JATC for the Electrical Industry, 2699 W. Patapsco Ave., Baltimore, MD
Add'l. Info: The Apprenticeship and Training Council will consider the approval and registration of new apprenticeship programs, revisions to presently approved apprenticeship programs and other business which may come before the Council.
Contact: C. Edward Poarch II (410) 767-2246
 [12-22-36]

**MARYLAND HEALTH CARE
COMMISSION**

Subject: Public Meeting
Date and Time: November 15, 2012, 1 p.m.
Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD
Contact: Valerie Wooding (410) 764-3460
 [12-22-02]

**MARYLAND PUBLIC
BROADCASTING COMMISSION**

Subject: Public Meeting
Date and Time: November 20, 2012, 8:30 — 10:30 a.m.
Place: Maryland Public Television, Owings Mills, MD
Contact: Sharon Abernathy (410) 581-4141
 [12-22-04]

**MINORITY BUSINESS ENTERPRISE
ADVISORY COMMITTEE**

Subject: Public Meeting
Date and Time: November 14, 2012, 8:30 a.m. — 5 p.m.

Place: Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., Hanover, MD
Contact: Pam Gregory (410) 865-1253
 [12-22-13]

**BOARD OF EXAMINERS OF
NURSING HOME ADMINISTRATORS**

Subject: Public Meeting
Date and Time: November 14, 2012, 9:30 a.m.
Place: 4201 Patterson Ave., Rm. 109, Baltimore, MD
Contact: Patricia A. Hannigan (410) 764-4750
 [12-22-34]

**BOARD OF EXAMINERS IN
OPTOMETRY**

Subject: Public Meeting
Date and Time: November 28, 2012, 9:30 — 11:30 a.m.
Place: Metro Executive Bldg., 4201 Patterson Ave., Rm. 100, Baltimore, MD
Add'l. Info: Health Occupations Article, Title 11, Annotated Code of Maryland, and COMAR 10.28, amendments, additions, and revisions, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into administrative session.
Contact: Patricia G. Bennett (410) 764-4710
 [12-22-01]

BOARD OF PHYSICIANS

Subject: Public Meeting
Date and Time: November 14, 2012, 9 a.m. — 5 p.m.
Place: 4201 Patterson Ave., Rm. 108-109, Baltimore, MD
Add'l. Info: The Board may discuss/vote on proposed regulations. A portion of the meeting may be held in closed session.
Contact: Carole Catalfo (410) 764-4777
 [12-22-29]

BOARD OF PLUMBING

Subject: Public Meeting
Date and Time: November 15, 2012, 10 a.m. — 12:30 p.m.
Place: 500 N. Calvert St., Rm. 302, Baltimore, MD
Contact: Brenda Clark (410) 230-6164
 [12-22-03]

BOARD OF PUBLIC ACCOUNTANCY

Subject: Public Meeting
Date and Time: December 4, 2012, 9 a.m. — 12 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Dennis L. Gring (410) 230-6224
 [12-22-18]

GENERAL NOTICES

1474

REAL ESTATE COMMISSION

Subject: Public Meeting
Date and Time: November 28, 2012, 10:30 a.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patricia Hannon (410) 230-6199
[12-22-20]

REAL ESTATE COMMISSION

Subject: Public Hearing
Date and Time: November 28, 2012, 12:30 p.m.
Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patricia Hannon (410) 230-6199
[12-22-21]

RETIREMENT AND PENSION SYSTEM — BOARD OF TRUSTEES

Subject: Public Meeting
Date and Time: November 20, 2012, 12:30 — 1 p.m.
Place: Laurel Park, Laurel, MD
Contact: J. Michael Hopkins (410) 296-9682
[12-22-17]

BOARD OF REVENUE ESTIMATES

Subject: Public Meeting
Date and Time: November 15, 2012, 9 — 11 a.m.
Place: Louis L. Goldstein Treasury Bldg., 80 Calvert St., Assembly Rm., Annapolis, MD
Contact: Linda I. Vasbinder (410) 260-7450
[12-22-19]

STATE BOARD OF INDIVIDUAL TAX PREPARERS

Subject: Public Meeting
Date and Time: November 19, 2012, 1 — 5 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Douglas Blackstone (410) 230-6244
[12-22-23]

COMMUNICATIONS TAX REFORM COMMISSION

Subject: Public Meeting
Date and Time: November 7, 2012, 1 — 4 p.m.
Place: Louis L. Goldstein Treasury Bldg., 80 Calvert St., Assembly Rm., Annapolis, MD
Contact: Linda I. Vasbinder (410) 260-7450
[12-22-30]

BOARD OF WELL DRILLERS

Subject: Public Meeting
Date and Time: December 19, 2012, 9 a.m. — 4 p.m.
Place: MDE, 1800 Washington Blvd., Terra Conf. Rm., Baltimore, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Willie Everett (410) 537-3644
[12-22-06]

WORKERS' COMPENSATION COMMISSION

Subject: Public Meeting on Regulations
Date and Time: November 8, 2012, 9 — 11 a.m.
Place: 10 E. Baltimore St., 7th Fl., Baltimore, MD
Add'l. Info: Portions of this meeting may be held in closed session.
Contact: Amy Lackington (410) 864-5300
[12-22-07]



COMAR IN PDF — ORDER FORM

Titles	Agency Name	Price ¹	Subscription ²	Quantity	Total
Complete set of COMAR PDF format		\$1,000	\$500	_____	_____
Title 01	Executive Department	\$35	\$24	_____	_____
Title 02	Office of the Attorney General	\$22	\$13	_____	_____
Title 03	Comptroller of the Treasury	\$30	\$20	_____	_____
Title 04	General Services	\$16	\$10	_____	_____
Title 05	Housing and Community Development	\$78	\$50	_____	_____
Title 07	Human Resources	\$80	\$53	_____	_____
Title 08	Natural Resources	\$78	\$51	_____	_____
Title 09	Labor, Licensing and Regulation	\$89	\$60	_____	_____
Title 10	Health & Mental Hygiene (All parts) **	\$272	\$180	_____	_____
Title 10	Part 1 **	\$48	\$32	_____	_____
Title 10	Part 2 **	\$75	\$50	_____	_____
Title 10	Part 3 **	\$75	\$50	_____	_____
Title 10	Part 4 **	\$50	\$35	_____	_____
Title 10	Part 5 **	\$69	\$50	_____	_____
Title 11	Transportation (All parts) **	\$106	\$75	_____	_____
Title 11	Part 1 (Transportation) **	\$42	\$25	_____	_____
Title 11	Parts 2 & 3 (MVA)**	\$74	\$50	_____	_____
Title 12	Public Safety and Correctional Services	\$67	\$43	_____	_____
Title 13A	Board of Education	\$63	\$42	_____	_____
Title 13B	Higher Education Commission	\$25	\$15	_____	_____
Title 14	Independent Agencies	\$87	\$60	_____	_____
Title 15	Agriculture	\$48	\$30	_____	_____
Title 16	Juvenile Service	\$23	\$15	_____	_____
Title 17	Budget and Management	\$28	\$16	_____	_____
Title 18	Assessments and Taxation	\$20	\$12	_____	_____
Title 19A	State Ethics Commission	\$24	\$14	_____	_____
Title 20	Public Service Commission	\$49	\$32	_____	_____
Title 21	State Procurement Regulations	\$48	\$30	_____	_____
Title 22	State Retirement and Pension System	\$22	\$13	_____	_____
Title 23	Board of Public Works	\$18	\$11	_____	_____
Title 24	Business and Economic Development	\$34	\$20	_____	_____
Title 25	State Treasurer	\$16	\$9	_____	_____
Title 26	Environment (All parts) **	\$189	\$125	_____	_____
Title 26	Part 1 **	\$54	\$35	_____	_____
Title 26	Part 2 **	\$83	\$52	_____	_____
Title 26	Part 3 **	\$57	\$38	_____	_____
Title 26	Part 4 **	\$37	\$24	_____	_____
Title 27	Critical Area Comm. for the Chesapeake and Atlantic Coastal Bays	\$18	\$10	_____	_____
Title 28	Office of Administrative Hearings	\$16	\$9	_____	_____
Title 29	State Police	\$30	\$18	_____	_____
Title 30	MD Institute for Emergency Medical Services Systems	\$25	\$17	_____	_____
Title 31	Maryland Insurance Administration	\$68	\$45	_____	_____
Title 32	Aging	\$25	\$15	_____	_____
Title 33	State Board of Elections	\$42	\$25	_____	_____
Title 34	Planning	\$31	\$18	_____	_____
Title 35	Veterans Affairs	\$16	\$9	_____	_____
	Individual Binders (COMAR PDF's binders not included)	\$15	S & H \$9.00	_____	_____
				Total:	_____

Prices are for single user license only ~ Multi-user licenses are available. Please call 410-260-3876 for pricing information.

¹ Price is per copy of each Title

² Subscription (optional) - Receive updated information quarterly. ~ If ordered, subscription quantities MUST match Title quantities.

** See the following pages for description of contents

COMAR IN PRINT — ORDER FORM (8 ½ x 11 format)

Titles	Agency Name	Price ¹	Subscription ²	Quantity	Total
Complete set of COMAR (includes binders)		\$1,400	\$700	_____	_____
Title 01	Executive Department	\$47	\$30	_____	_____
Title 02	Office of the Attorney General	\$31	\$20	_____	_____
Title 03	Comptroller of the Treasury	\$41	\$25	_____	_____
Title 04	General Services	\$23	\$12	_____	_____
Title 05	Housing and Community Development	\$103	\$70	_____	_____
Title 07	Human Resources	\$104	\$70	_____	_____
Title 08	Natural Resources	\$102	\$70	_____	_____
Title 09	Labor, Licensing and Regulation	\$116	\$75	_____	_____
Title 10	Health & Mental Hygiene (All Parts)**	\$345	\$230	_____	_____
Title 10	Part 1 **	\$65	\$40	_____	_____
Title 10	Part 2 **	\$99	\$70	_____	_____
Title 10	Part 3 **	\$99	\$70	_____	_____
Title 10	Part 4 **	\$69	\$42	_____	_____
Title 10	Part 5 **	\$91	\$62	_____	_____
Title 11	Transportation (All parts) **	\$137	\$85	_____	_____
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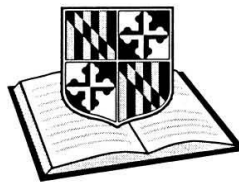
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