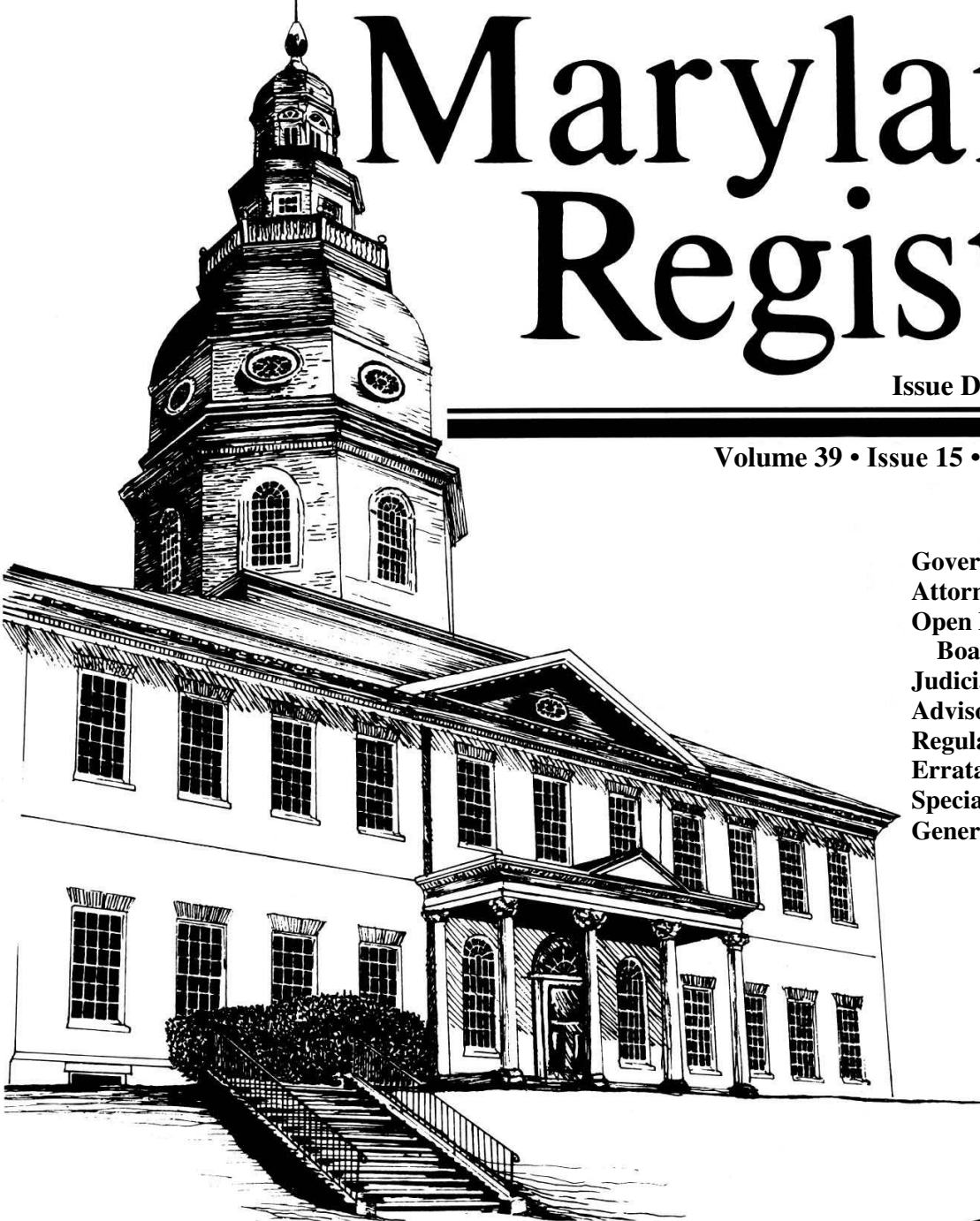

Maryland Register

Issue Date: July 27, 2012

Volume 39 • Issue 15 • Pages 939—1026

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Attorney General
Open Meetings Compliance
Board
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Advisory Opinions
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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before July 9, 2012, 5 p.m.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 July 9, 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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Individuals with disabilities who desire assistance in using the publications and services of the Division of State Documents are encouraged to call (410) 974-2486, or (800) 633-9657, or FAX to (410) 974-2546, or through Maryland Relay.

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Issue Date	Emergency and Proposed Regulations 5:00 p.m.*	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
August 10	July 23	August 1	July 30
August 24	August 6	August 15	August 13
September 7	August 20	August 29	August 27
September 21**	August 30	September 12	September 10
October 5	September 17	September 26	September 24
October 19**	October 1	October 10	October 5
November 2	October 15	October 24	October 22
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

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.

* 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 Subtitle Chapter Regulation Section Subsection Paragraph 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.

03 COMPTROLLER OF THE TREASURY

03.06.01.43 • 38:23 Md. R. 1425 (11-4-11)
03.06.01.44 • 38:13 Md. R. 758 (6-17-11)
03.06.02.06 • 39:3 Md. R. 261 (2-10-12)

05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

05.02.03.01—12 • 39:13 Md. R. 788 (6-29-12) (ibr)

07 DEPARTMENT OF HUMAN RESOURCES

07.02.14.01—10 • 39:6 Md. R. 413 (3-23-12)
07.02.15.03 • 39:9 Md. R. 614 (5-4-12)
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08 DEPARTMENT OF NATURAL RESOURCES

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08.02.04.17 • 39:15 Md. R. 974 (7-27-12) (ibr)
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08.02.10.01 • 39:15 Md. R. 975 (7-27-12)
08.02.24.01 • 39:12 Md. R. 748 (6-15-12)
08.18.02 • 39:14 Md. R. 850 (7-13-12) (err)
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09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

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09.12.28.01—07 • 39:13 Md. R. 791 (6-29-12) (ibr)
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09.32.01.18-1 • 39:1 Md. R. 27 (1-13-12)
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09.34.05.01,02 • 39:6 Md. R. 419 (3-23-12)
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10.01.21.01—07 • 38:20 Md. R. 1213 (9-23-11)
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- 10.24.11.01 • 39:15 Md. R. 980 (7-27-12) (ibr)
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- 14.34.02.04 • 39:8 Md. R. 578 (4-20-12)

15 DEPARTMENT OF AGRICULTURE

- 15.11.08.01—.09 • 39:11 Md. R. 718 (6-1-12)
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**27 CRITICAL AREA COMMISSION FOR THE
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27.01.01.01 • 39:13 Md. R. 810 (6-29-12)

27.01.02.03—.05,.08 • 39:13 Md. R. 810 (6-29-12)

27.01.03.05,.07 • 39:13 Md. R. 810 (6-29-12)

27.01.06.02,.03 • 39:13 Md. R. 810 (6-29-12)

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**30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL
SERVICES SYSTEMS (MIEMSS)**

30.01.02.01 • 39:14 Md. R. 847 (7-13-12) (ibr)

31 MARYLAND INSURANCE ADMINISTRATION

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33 STATE BOARD OF ELECTIONS

33.08.01.01,.10 • 39:14 Md. R. 847 (7-13-12)

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33.10.11.38 • 39:14 Md. R. 847 (7-13-12)

The Governor

EXECUTIVE ORDER 01.01.2012.12

Declaration of Emergency

WHEREAS, The State of Maryland is subject to a variety of hazards and disasters including but not limited to severe thunderstorms, heat waves, and other weather-related events;

WHEREAS, Having been advised and informed by the Maryland Emergency Management Agency that as a result of severe thunderstorms that affected the entire State on June 29 and June 30, 2012, an emergency exists in all counties and Annapolis City, Baltimore City, and Ocean City and that resources may be requested due to the intense and powerful wind and severe weather storms affecting the State of Maryland including widespread power outages and excessive heat;

WHEREAS, Over eight-hundred and forty thousand (840,000) Maryland citizens are without power;

WHEREAS, Power restoration is not expected for up to seven (7) days;

WHEREAS, Additional powerful storms are expected in the next twenty-four (24) to thirty-six (36) hours;

WHEREAS, Transportation, water utility, and other critical infrastructure is being negatively affected by said power outages;

WHEREAS, Maryland residents have been subject to extreme heat, including temperatures above ninety degrees and heat index measures as high as one-hundred (100) degrees or more;

WHEREAS, Extreme heat has required the opening of over seventy four cooling stations across the State;

WHEREAS, There is an urgent need to waive certain regulations related to commercial vehicles, to facilitate the deployment of resources, and to carry out other necessary acts in response;

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

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 WITHIN THE STATE OF MARYLAND. 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 30th day of June, 2012.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[12-15-41]

EXECUTIVE ORDER 01.01.2012.13

Emergency Super-Derecho Storm Event

WHEREAS, A State of Emergency has been declared due to the Super-Derecho storm event that occurred in the State of Maryland on June 29 and June 30, 2012;

WHEREAS, The delivery of supplies and equipment to areas that were struck by this storm is vital to the preservation of life and property;

WHEREAS, The facilitated movement of these supplies and equipment is in the best interests of the citizens of Maryland; and

WHEREAS, Having been advised and informed by the Maryland Emergency Management Agency that there has been severe weather and subsequent damage and power outages, that an emergency exists in the State of Maryland, and that resources may be requested.

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, HEREBY ORDER THE FOLLOWING RELIEF FOR VEHICLES TRANSPORTING EQUIPMENT OR SUPPLIES DIRECTLY RELATED TO THE SEVERE WEATHER EMERGENCY RELIEF EFFORTS:

A. The Administrator, Maryland State Highway Administration, or the Administrator's designee may temporarily waive or modify hauling permit restrictions and conditions to the extent deemed safe and appropriate in order to facilitate emergency relief efforts.

B. Carriers and drivers operating under the provisions of this Order must adhere to all roadway restrictions of the Maryland State Highway Administration, Maryland Transportation Authority and local jurisdictions regarding roadway and bridge size and weight limitations.

C. Pursuant to the Code of Federal Regulations, 49 CFR Part 390.23, carriers and drivers of commercial motor vehicles transporting equipment, supplies and commodities related to storm relief efforts (e.g., debris, propane, gasoline, etc.) and drivers of utility vehicles shall be relieved from the Hours of Service (HOS) requirements of 49 CFR part 395, as adopted under Section 25-111, of the Maryland Transportation Article. This waiver does not relieve any driver or operator from the requirements of 49 CFR part 392.3, relating to operating a commercial motor vehicle while fatigued.

D. Nothing in this Order relieves the carrier or driver of responsibility for the safe operation of the vehicle.

E. The provisions of this Order are not applicable to any part of the Interstate Highway System. Such relief is strictly under the purview of and must be independently declared by the appropriate federal agency. Any declaration so made and receiving concurrence by the Maryland Secretary of Transportation shall become part of this Order.

F. This Order shall remain in effect until modified or rescinded by the Governor.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis this 3rd Day of July, 2012.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN MCDONOUGH
Secretary of State

[12-15-42]

EXECUTIVE ORDER 01.01.2012.14

Rescission of Executive Orders 01.01.2012.12 and 01.01.2012.13

WHEREAS, I, Martin O'Malley, Governor of the State of Maryland, declared a State of Emergency by Executive Order 01.01.2012.12 and issued 01.01.2012.13 due to the threat to the public health and safety caused by the impact of severe weather; and

WHEREAS, The emergency conditions caused by the impact of severe weather no longer exist.

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, DO HEREBY PROCLAIM THAT THE STATE OF EMERGENCY IN THE STATE OF MARYLAND IS TERMINATED AND HEREBY RESCIND EXECUTIVE ORDERS 01.01.2012.12 and 01.01.2012.13.

GIVEN Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 13th day of July, 2012.

MARTIN O'MALLEY
Governor

ATTEST:

JOHN P. MCDONOUGH
Secretary of State

[12-15-45]

The Attorney General

OPINIONS

May 18, 2012

The Honorable Anne R. Kaiser
Maryland Senate

You asked for our opinion on whether the fire fighters' annual "Fill the Boot" campaign to raise money for the Muscular Dystrophy Association is prohibited by §21-507(a) of the Transportation Article, which prohibits any person from "stand[ing] in a roadway to solicit a ride, employment, or business." Specifically, you have asked whether the General Assembly intended its use of the word "business" in § 21-507(a) to include charitable solicitations. After a thorough review of the legislative history of the provision, both before and after its enactment in 1970, we now conclude that the Legislature did not intend the term "business" to include charitable solicitations. In reaching this conclusion, we depart from the interpretation we adopted in a previous opinion, *see* 93 *Opinions of the Attorney General* 31, 35-36 (2008), but do so without disturbing its ultimate determination that the local ordinance at issue in the earlier opinion was preempted by State law. We also recognize that the interpretation we reach here raises First Amendment concerns that a reviewing court might choose to avoid with a broader reading of the word "business." However, in our view, interpreting § 21-507(a) to allow charitable solicitation within the roadway does not make the law clearly unconstitutional, although additional legislation may be advisable to ensure that charitable contributions, which would include panhandling, are solicited in a manner that is consistent with the public safety goals of the statute.

I

Background

The International Association of Fire Fighters ("IAFF") is one of the national sponsors of the Muscular Dystrophy Association ("MDA") and has since 1954 supported the MDA through a variety of volunteer and fund-raising activities. Perhaps the most recognizable aspect of the IAFF's activities on behalf of the MDA is the annual Fill the Boot campaign, in which members of IAFF locals across the country invite the public at intersections, malls, and sporting events to fill a fire fighter's boot with donations for the MDA. Here in Maryland, local chapters of the IAFF have carried out the Fill the Boot campaign since at least 1986. In 2011, Fill the Boot campaigns helped fire fighters raise \$27 million—the highest yearly contribution from an MDA sponsor.

The Fill the Boot campaign involves fire fighters (or the professional fundraisers they employ) standing on the median strip at busy intersections and soliciting contributions from motorists when stopped at red lights. If the car is close enough to the median strip, the fire fighter can extend the boot and collect the contribution without ever leaving the median strip. More typically, however, the fire fighter must step into the roadway to collect the contribution, particularly when the car is in a lane that is not immediately adjacent to the median strip. The entire fundraising process—from soliciting from the median strip to entering the roadway to collect the contribution—is carried out pursuant to safety manuals that instruct fundraisers to wear orange vests or reflective material on their clothing, initiate all collections from the roadside or the median strip, and never stop traffic or approach a moving vehicle.

Section 21-507(a) of the Transportation Article

Section 21-507(a) of the Transportation Article sets forth the restrictions on roadside solicitations that are the subject of this opinion: "Except for the occupant of a disabled vehicle who seeks the aid of another vehicle, a person may not stand in a roadway to solicit a ride, employment, or business from the occupant of any vehicle." Md. Code Ann., Transp. ("TR") § 21-507(a) (2011 Supp.). For purposes of § 21-507(a), the term "roadway" refers to the portion of a road designed for vehicular travel, while the term "highway" encompasses a wider area. *See* TR §§ 11-151.1, 11-127 (2009 Repl. Vol.).¹ Additional subsections in § 21-507 regulate solicitations along the highways in particular counties. TR § 21-507(c)-(k) (2011 Supp.). Violation of § 21-507 is punishable as a misdemeanor and subject to a fine of not more than \$500.²

This Office first addressed the scope of § 21-507 in a 2004 legislative advice letter, which concluded that the statute clearly prohibited standing in the roadway for the purpose of selling things, but that it was a "closer question" whether the solicitation of donations was similarly banned. *See* Letter of Assistant Attorney General Kathryn M. Rowe to Delegate David D. Rudolph (June 28, 2004) ("2004 advice letter"). The advice letter cited the public safety purpose of the statute, case law in which courts have treated the activities of nonprofit organizations under the rubric of "business," and the conclusion that, "[f]rom the standpoint of public safety, there is little or no difference between a person standing in the roadway to sell things and one standing in the roadway to solicit money." Reasoning that the term "business" could encompass a charitable transaction as well as a commercial transaction, the advice letter concluded that the reference to soliciting business should be "read broadly" in this context to include the solicitation of donations.

Subsequently, in 2008, we were asked to opine on the constitutionality of Gaithersburg's anti-solicitation ordinance. The opinion concluded that the provisions of the ordinance addressing conduct in the roadway were preempted by State law. In the course of analyzing that issue, however, the opinion noted with respect to § 21-507(a) that "[t]his Office has taken the position that the ban on business solicitation in this statute should be interpreted broadly to encompass the solicitation of donations, given that its purpose is to promote public safety." 93 *Opinions of the Attorney General* 31, 35-36 (2008) (citing with approval the 2004 advice letter). It is that subsidiary conclusion that we now revisit.

¹ Those definitions are as follows: "Highway" means:

- (1) The entire width between the boundary lines of any way or thoroughfare of which any part is used by the public for vehicular travel, whether or not the way or thoroughfare has been dedicated to the public and accepted by any proper authority; and
- (2) For purposes of the application of State laws, the entire width between the boundary lines of any way or thoroughfare used for purposes of vehicular travel on any property owned, leased, or controlled by the United States government and located in the State.

TR § 11-127. "'Roadway' means that part of highway that is improved, designed, or ordinarily used for vehicular travel, other than the shoulder." TR § 11-151(a). In relevant part, these definitions are unchanged since their initial enactment in 1970. *Compare with* 1970 Md. Laws, ch. 534 at 1313 (§ 1-132), 1319 (§ 1-777).

² TR § 27-101(a), (b). The 2011 District Court of Maryland "Schedule of Pre-Set Fines and/or Penalty Deposits," used by law enforcement officers as a reference in issuing citations, lists the fine for violation of § 21-507(a) as \$70 with no points. *See* <http://www.courts.state.md.us/district/forms/criminal/dccr090.pdf> (last visited May 11, 2012).

II Analysis

Familiar principles guide the interpretation of statutory provisions. The Court of Appeals has instructed that “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the real and actual intent of the Legislature.” *Gardner v. State*, 420 Md. 1, 8 (2011) (internal quotation marks omitted).

To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the statute. If the language of the statute is unambiguous and clearly consistent with the statute’s apparent purpose, our inquiry as to the legislative intent ends ordinarily and we apply the statute as written without resort to other rules of construction. We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with forced or subtle interpretations that limit or extend its application.

Id. at 8-9. Other principles of statutory construction caution against “read[ing] statutory language in a vacuum” or confining an interpretation of a statute’s plain language “to the isolated section alone.” *Id.* at 9. Even when the words of a statute “are clear and unambiguous when viewed in isolation,” resort to legislative history is warranted if those words “become ambiguous when read as part of a larger statutory scheme. . . .” *Id.* At the same time, it is important not to “disregard the natural meaning of the statutory words” or “rewrite statutes to reflect [one’s own] ideas of public policy.” *BAA, PLC v. Acacia Mut. Life Ins. Co.*, 400 Md. 136, 158 (2007).

A. Ordinary Meaning of “Business”

The plain language of § 21-507(a) limits its reach to roadway solicitations for “a ride, employment, or business.” The term “business” is not defined by statute and has a number of meanings, ranging from “any purposeful activity” (*e.g.*, the business of learning) to connoting personal rights (*e.g.*, “You had no business hitting him.”). Webster’s Ninth New Collegiate Dictionary (Merriam Webster, 1989). The more common meaning of the term “business,” however, is “commercial or mercantile activity.” *Id.* That, too, is the common meaning of the term “business” in legal parlance. See *Black’s Law Dictionary* (9th ed. 2009) (listing first definition of “business” as “[a] commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain”). Because neither the fire fighters nor the Muscular Dystrophy Association is a “business” in the sense of engaging in commercial activity for profit or gain, the plain language of § 21-507(a) would not appear to reach the fire fighters’ annual Fill the Boot campaign.

B. Legislative History

Although the term “business” does not ordinarily include “charitable solicitation,” there is at least some ambiguity as to its precise meaning. To that extent, it is appropriate to consider the legislative history of § 21-507 and other interpretive aids to ascertain legislative intent. For the reasons explained below, we find that these non-textual indicia of legislative intent also indicate that the General Assembly did not mean to prohibit charitable solicitation with its use of the term “business” in § 21-507(a).

The Warnken Committee and the Uniform Vehicle Code

The circumstances surrounding the adoption of § 21-507 indicate that the General Assembly intended to prohibit solicitation of business, but not to bar all solicitation of contributions. The

predecessor of § 21-507 was enacted following a 1968 report to the Legislature by the Committee to Study Revision of the Motor Vehicle Laws, sometimes referred to as the “Warnken Committee” after its chairman, Judge S. Ralph Warnken. The Committee was convened to compare existing Maryland law to the laws of other states and to the provisions of the Uniform Vehicle Code (“UVC”)³ and recommend revisions to modernize Maryland’s vehicle laws. The Committee carried out its deliberations over an approximately four-year period, culminating in its “Proposed Revision of the Motor Vehicle Laws of the State of Maryland” issued on September 1, 1968 (“Warnken Report”). The Legislative Council considered the Warnken Report in 1969, and the Judiciary Committee of that body appointed a special committee which “studied the matter and recommended adoption of the report of the Warnken [C]ommittee.” *Covington v. Gernert*, 280 Md. 322, 324-25 (1977). The General Assembly accepted that recommendation and adopted the new motor vehicle code in 1970. See generally 1970 Md. Laws, ch. 534.

At the time the Warnken Committee began its deliberations, existing Maryland law appears to have prohibited only the placement of “any structure, building or vehicle on any State highway right-of-way for the purpose of selling or displaying any produce or merchandise in such a manner which shall constitute a traffic hazard. . . .” Md. Ann. Code Art. 66½, § 248 (1967 Repl. Vol.). The Uniform Vehicle Code, by contrast, prohibited an individual from standing in a roadway to solicit “a ride, employment, or business from the occupant of any vehicle.”⁴ Although members of the Warnken Committee “considered and discussed at great length the respective merits of [existing] Maryland [law] versus UVC provisions,” Warnken Report at iv, the new motor vehicle code that the Warnken Committee proposed followed “very closely” the Uniform Vehicle Code. *Id.* at iii; *State v. Moon*, 291 Md. 463, 486 (1981). With respect to roadside solicitation, the language the Committee proposed, and the General Assembly adopted, was substantively identical to the UVC provision and is identical to the current version of § 21-507(a). See 1970 Md. Laws, ch. 534 at 1475-76 (§ 11-507).

Even as the Warnken Committee was carrying out its review, however, the anti-solicitation provisions of the Uniform Vehicle Code were themselves under revision. The result of that revision was to split the roadside solicitation provisions of what was § 11-507 into two subsections. See NCUTLO, *Uniform Vehicle Code: Rules of the Road* at 120 (1970 Supp.). The first subsection prohibited the solicitation of a ride by a person standing in the roadway—*i.e.*, the traveled portion of the highway. *Id.* The second subsection was broadened to apply to the entire highway and barred solicitation of

³ Unlike most other “uniform” laws, the Uniform Vehicle Code is not a product of either the National Conference of Commissioners on Uniform State Laws or the American Law Institute. Rather, it was developed, and is still updated from time to time, by the National Committee on Uniform Traffic Laws and Ordinances (“NCUTLO”), a private, nonprofit organization which is located in Alexandria, Virginia, and has a website at www.ncutlo.org. The Uniform Vehicle Code has been adopted in full or in part by most states.

⁴ The complete text of § 11-507 of the Uniform Vehicle Code in place at the time provided as follows:

- (a) No person shall stand in a roadway to solicit a ride, employment or business from the occupant of any vehicle.
- (b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

NCUTLO, *Uniform Vehicle Code: Rules of the Road* at 332 (1967); see Warnken Report at 147. A provision prohibiting a person from standing in a roadway to solicit a ride had been included within the Uniform Vehicle Code since 1930, with the words “employment” and “business” added in 1952. NCUTLO, *Uniform Vehicle Code: Rules of the Road* at 333.

“employment, business, or *contributions*” from drivers. *Id.* (emphasis added). The second subsection of the uniform code thus applied to a broader geographical area, and added the word “contributions” to the terms “employment” and “business” that had appeared in the model law for 16 years.⁵

Although no legislative bill files are available for sessions prior to 1975, the Warnken Committee’s reports indicate that it was aware that the Uniform Vehicle Code was “undergoing substantial modification” as the Committee was preparing its report and recommendation to the General Assembly. Remarks of S. Ralph Warnken before the Legis. Council (Nov. 16, 1967) *reproduced in* Rep. to the Gen. Assembly of 1968, vol. 1, at 342. While the Committee reports do not specifically mention the changes to the roadside solicitation provisions of the uniform code, they do indicate that Committee members “had to evaluate the as yet tentative proposals for amendment of that Code.” *Id.* In the end, however, neither the committee, in making its recommendations, nor the General Assembly, in enacting legislation based on those recommendations, included the term “contributions” in the roadside solicitation provision that, after 1968, appeared in the Uniform Vehicle Code.

In our view, this history suggests that the legislative decision to adopt the phrase “ride, employment, or business” from the pre-1968 Uniform Vehicle Code, and not the phrase “employment, business, or contributions” that appeared after 1968, was deliberate. Its various reports demonstrate that the Warnken Committee was aware of the proposed modifications to the Uniform Vehicle Code, evaluated those modifications for adoption in Maryland, and chose not to recommend them to the Legislature.

Legislative Action Prior to the Attorney General’s 2004 and 2008 Interpretation

Legislative action and inaction since the enactment of § 21-507 further supports the conclusion that the General Assembly did not understand charitable solicitation to be prohibited by the term “business” in § 21-507(a). It is significant, for example, that the anti-solicitation provision has not been amended subsequently to conform to the 1968 changes in the Uniform Vehicle Code. In this respect, Maryland is different from the many states that, based on our limited review, have adopted anti-solicitation provisions that are identical or functionally similar to the anti-solicitation provision in the post-1968 version of the Uniform Vehicle Code. *See, e.g.,* Op. S.C. Att’y Gen., 1979 S.C. AG LEXIS 155 (Oct. 8, 1979) (discussing state law prohibition on “soliciting employment, business, or contributions” from the highway). Indeed, NCUTLO, in its 1979 *Traffic Laws Annotated*, identified Maryland as one of only 12 states that, “[l]ike the [Uniform] Code prior to 1968,” prohibit the solicitation of “employment or business,” but not charitable contributions. NCUTLO, *Traffic Laws Annotated* at 183 (1979).

The first time the Legislature revisited the issue of roadside solicitation came in 2001, when it amended §§ 21-507 and 21-313 to authorize the Charles County Commissioners to prohibit a person from soliciting “money, donations of any kind, employment,

business, or a ride from the occupant of any vehicle.” 2001 Md. Laws, ch. 585. Three aspects of this legislation are noteworthy. First, an amendment to § 21-507(a) to prohibit the solicitation of “donations of any kind” would have been largely surplusage if § 21-507(a) had already prohibited the solicitation of donations by its use of the term “business.” Second, the legislative history indicates that the General Assembly was aware of the discrepancy between the proposed county-specific provisions and § 21-507(a). The Fiscal Note for the 2001 bill states that State law at that time did “not specifically prohibit soliciting donations or money from a controlled access highway or from a median divider or intersection.” Revised Fiscal Note for S.B. 225, at 2 (2001).

Finally, the evolution of the bill’s language as it moved through the legislative process suggests strongly that the Legislature considered, but decided against, expanding the prohibition of § 21-507(a) to encompass charitable solicitation. When that bill was first introduced, the language proposed to amend § 21-507(a) in the following way:

Except for the occupant of a disabled vehicle who seeks the aid of another vehicle, a person may not stand in a roadway, MEDIAN DIVIDER, OR INTERSECTION to solicit a ride, employment, [or] business, MONEY, OR DONATIONS OF ANY KIND from the occupant of any vehicle.

S.B. 225, 2001 Gen. Assembly (first reader) (proposed amendments capitalized). In other words, the bill initially sought to broaden the statewide prohibition to include donations and extend the prohibited conduct beyond the roadway. As the bill moved through the legislative process, it was amended to make the broadened prohibition applicable only in Charles County and left § 21-507(a) unchanged. The General Assembly, thus, was aware that § 21-507(a) did not specifically prohibit charitable solicitations, considered amending the provision to include such a prohibition, but in the end chose not to do so.

In 2004, the General Assembly returned to § 21-507 to authorize Anne Arundel County to establish a licensing program for individuals and qualified charitable organizations—including fire companies—who wish to “solicit money or donations from the occupant of a vehicle by standing in a roadway, median divider, or intersection.” 2004 Md. Laws, ch. 156. The legislative history surrounding Ch. 156 is consistent with that surrounding the 2001 legislation and also supports the conclusion that the Legislature did not believe that the term “business” included charitable solicitation. Specifically, the Fiscal Note draws a distinction between the then-current State law, which prohibited solicitation for “a ride, employment, or business,” and the law applicable within Charles, Harford, and Washington Counties, which by then prohibited a person from standing “in a roadway, median divider, or intersection to solicit money or donations of any kind.”⁶ Revised Fiscal and Policy Note for H.B. 187, at 3 (2004). More importantly, the Fiscal Note makes clear that “[n]othing in the bill should be construed as prohibiting individuals or organizations from roadway solicitation if the county council does not enact an ordinance to create a licensing program.” *Id.* This caveat provides further evidence that charitable solicitation was not believed to be prohibited under § 21-507(a) as a matter of State law, for if it were, such solicitation would have remained prohibited as a matter of State law whether or not the County enacted a licensing program.

⁵ The complete text of § 11-507 of the revised version of the Uniform Vehicle Code that was adopted in 1968 provided as follows:

- (a) No person shall stand in a roadway for the purpose of soliciting a ride.
- (b) No person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.
- (c) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

NCUTLO, *Traffic Laws Annotated* 182 (1979).

⁶ As discussed above in text, Charles County was the first county in which this broader prohibition on the roadside solicitation of “donations of any kind” was prohibited, *see* 2001 Md. Laws, ch. 585. Harford County and Washington County were added in 2003. *See* 2003 Md. Laws, chs. 219 (Harford), 463 (Washington). Carroll County was subsequently added in 2005. 2005 Md. Laws, ch. 93.

Legislative Action Subsequent to the Attorney General's Advice

The history of amendments to § 21-507(a) occurring *after* this Office made known its earlier interpretation—both in the 2004 advice letter and in the 2008 opinion—do not compel the conclusion that the Legislature has adopted or ratified that interpretation. It is, of course, relevant that the General Assembly has not statutorily superseded the interpretation of § 21-507(a) provided by this Office in the 2004 advice letter and echoed in the 2008 opinion. “The Legislature is presumed to be aware of the Attorney General’s statutory interpretation and, in the absence of enacting any change to the statutory language, to acquiesce in the Attorney General’s construction.” *Potomac Valley Orthopaedic Assocs. v. State Board of Physicians*, 417 Md. 622, 637 (2011) (internal quotation marks omitted). Here, however, the Legislature has amended § 21-507 on a number of occasions after 2004 to enact county-specific roadside solicitation provisions that expressly *do* apply to charitable donations without also amending subsection (a) to modify the statewide ban in a similar manner.

Since 2004, the Legislature on several occasions has amended § 21-507 to enact county-specific provisions—some that extend the solicitation ban beyond the roadway,⁷ others that relax the ban by adopting permit programs that impose conditions on solicitors⁸—and in each instance has expressly included “donations” in the scope of regulated roadway solicitations. Yet § 21-507(a) has never been amended to include donations. And in each of the instances in which a county-specific bill was enacted, the Department of Legislative Services noted that the bill, if passed, “may affect some nonprofit organizations (e.g., local fire departments, advocacy groups, charities) . . . that conduct fund-raising activities from median dividers.” Fiscal and Policy Note for H.B. 1429, at 2 (2005); *see also* Revised Fiscal and Policy Note for H.B. 392, at 3 (2009). Again, if State law had already prohibited the roadside solicitation of donations by fire fighters and other groups under the term “business,” the county-specific legislation making that prohibition express would have had little or no effect. The history of legislative action both before and after 2004 simply does not support the proposition that the General Assembly intended its use of the word “business” in § 21-507(a) to encompass charitable solicitation.

This understanding of the meaning of the term “business” appears to be consistent with the history of the Fill the Boot campaign here in Maryland. Without purporting to have made a detailed investigation or conclusive finding, we are unaware of any evidence that § 21-507(a) has ever been applied to prohibit fire fighters from carrying out the Fill the Boot campaign from the roadway, either before or after the 2008 opinion and the earlier advice letter. To the contrary, our limited inquiry indicates that the fire fighters have been conducting the Fill the Boot campaign here in Maryland at least since 1986 without restriction or citation by local law enforcement authorities. Indeed, as recently as August 2011, the Montgomery County State’s Attorney’s Office reassured the Montgomery fire fighters that their Fill the Boot campaign, if carried out in accord with internal fire department safety guidelines, “would be in compliance with Section 21-507. . . .” Letter from John D. Lalos, Assistant State’s Attorney, to Richard Bowers, Chief, Montgomery County Fire and Rescue Service (August 17, 2011).

⁷ See 2009 Md. Laws, ch. 695 (Howard County); 2008 Md. Laws, ch. 436 (Prince George’s County); 2007 Md. Laws, ch. 537 (Anne Arundel County); 2006 Md. Laws, ch. 473 (broadening prohibition in Montgomery County to ban minors from standing on median divider or in intersection, as well as in roadway, and authorizing Anne Arundel to do the same); 2005 Md. Laws, ch. 93 (Carroll County).

⁸ See 2011 Md. Laws, ch. 586 (Frederick County); 2009 Md. Laws, ch. 698 (Prince George’s County); 2009 Md. Laws, ch. 669 (Baltimore County); 2005 Md. Laws, ch. 311 (Cecil County).

C. Prior Interpretations of the Statutory Language

Neither the 2004 advice letter nor 2008 opinion examined the legislative history to ascertain the intent behind the enactment of § 21-507(a) and its subsequent application. Our prior advice was instead based primarily on the conclusion “that the term solicitation of business should be interpreted broadly in this context to accomplish the purposes of the statute, which are to promote the public safety.”⁹ Based on a more complete analysis of § 21-507 and its relevant history, we conclude that our 2004 advice was incorrect; the Legislature did not intend to ban charitable solicitations from the roadway.¹⁰

Consistency with statutory purpose is, of course, an important element of the interpretive process, but there are other rules of construction that cut the other way. For example, interpreting the word “business” to include charitable solicitations may raise vagueness concerns within the context of individual prosecutions under § 21-507(a). *See Galloway v. State*, 365 Md. 599, 614 (2001) (“The void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.”) (internal quotation marks omitted). More importantly, resort to the Legislature’s *presumed* intent is not necessary here, where the extensive historical record indicates the General Assembly’s *actual* intent not to include charitable donations within the scope of § 21-507(a).

Our conclusion here differs from that reached by the Louisiana Attorney General, the only other state attorney general who has addressed a state-law provision which, like § 21-507(a), was based on the pre-1968 version of the Uniform Vehicle Code. He was asked whether charitable organizations, volunteer organizations, or school or other civic groups could legally solicit funds on public roadways and concluded that “it is clear that the practice of soliciting funds

⁹ The larger statutory scheme relating to motor vehicles, although of little aid here, does not suggest a legislative intent to include charitable solicitation within the term “business.” To the contrary, provisions relating to special registration plates and excise tax exemptions—like the county-specific solicitation provisions discussed in text—suggest that the General Assembly knows how to craft legislation that reaches charitable organizations. *See* TR §§ 13-619(c) (providing for issuance of special plates to “member of a nonprofit organization”), 13-810(a)(24) (exemption vehicles acquired by certain “religious, charitable, or volunteer organization[s]” from excise tax). And that charitable organizations are regulated under the Business Regulation Article, as the 2004 advice letter points out, says little about whether charitable solicitations were intended to qualify as “business” for purposes of traffic safety or other concerns. *Cf., Young v. State*, 370 Md. 686, 712 (2002) (Legislature’s placement of sex offender registry in the Criminal Procedure Article “does not necessarily indicate an intent on the part of the General Assembly to punish sex offenders”). The provisions of the Business Regulation Article are at least equivocal with respect to the status of charitable organizations as businesses. *Compare* Md. Code Ann., Bus. Reg. § 6-101(d)(2) (2010 Repl. Vol.) (addressing the “principal place of business” of a charitable organization), *with id.*, § 6-620 (drawing a distinction between the “charitable organization” to be benefitted by donations collected in a “vending machine, canister, or other device or container for the deposit of money” and the “business placing the device or container, if not the charitable organization”). Neither statute addresses charitable organizations as businesses in a manner that would overcome the presumption that the Legislature intended the term to have its commonly accepted meaning.

¹⁰ As explained in a 1987 opinion, “[w]e do not overrule a prior opinion simply because we might have resolved a close question the other way, were we first presented with it. At the same time, we will not perpetuate a significant mistake in legal reasoning.” 72 *Opinions of the Attorney General* 200, 202 (1987). The 2008 opinion is not overruled; it remains valid because it “correctly treated the questions actually presented in [it].” 76 *Opinions of the Attorney General* 287, 294 (1991), which was whether a Gaithersburg ordinance prohibiting a person from making roadway solicitations was preempted by § 21-507.

from vehicles is prohibited in the State of Louisiana on interstate highways and state roadways.” Op. La. Att’y Gen. No. 1998-487, 1998 La. AG LEXIS 545 at *4 (Dec. 29, 1998). The opinion does not analyze the specific issue, however, and does not indicate that the statutory provision in question—La. Rev. Stat. § 32:218 (2012)—had been addressed by the Louisiana Legislature in the same manner that the General Assembly has addressed § 21-507(a) here. Shortly after the opinion was issued, the Louisiana legislature amended the statute to permit solicitations by “a professional fire fighters association or other nonprofit organization . . . on behalf of bona fide charitable organizations,” subject to the permission of the local governing authority. La. Rev. Stat. § 32:218(b) (2012). The Louisiana Attorney General later recognized that the 1998 opinion had been “statutorily superseded.” Op. La. Att’y Gen. No. 03-0394, 2003 La. AG LEXIS 493 at *2 (Nov. 17, 2003).

Other states that have adopted the newer version of the Uniform Vehicle Code language have added provisions that relax the anti-solicitation ban for contributions, sometimes by creating a permitting system for solicitations by non-profit organizations. Some of these provisions allowing specified charitable solicitations in the roadway have been determined to be invalid as violating the free speech guarantee of the First Amendment, while others have withstood constitutional scrutiny. *See, e.g., Bischoff v. Florida*, 242 F. Supp. 2d 1226 (M.D. Fla. 2003) (exemption in Florida statute permitting highway solicitations on behalf of registered § 501(c)(3) charities violated U.S. Constitution); Op. Del. Att’y Gen., 2002 Del. AG LEXIS 12 (July 8, 2002) (exception in state motor vehicle law that allowed solicitations on roadway by some charitable organizations, but barred solicitations by others, was not content-neutral and therefore violated First Amendment); Op. Tex. Att’y Gen. No. DM-367, 1995 Tex. AG LEXIS 122 (Dec. 4, 1995) (state statute that permitted local governments to enact charitable exceptions to ban on roadway solicitations would be unconstitutional unless local ordinance was narrowly tailored); *but see People v. Tosch*, 501 N.E.2d 1253 (Ill. 1986) (upholding statute that banned roadway solicitation except for charitable organizations engaged in statewide campaigns).

Your question, however, focused on whether, under § 21-507(a), the fire fighters’ annual “Fill the Boot” campaign to raise money for the Muscular Dystrophy Association may continue. We answer that question in the affirmative, having concluded that, based on the plain language of the provision and its legislative history, the General Assembly did not intend its use of the term “business” to include charitable solicitation. You did not ask us to address the First Amendment issues thus presented and we consider those issues to be beyond the scope of this Opinion. Nevertheless, as the court decisions cited above suggest, giving effect to the plain language and legislative intent of § 21-507(a) does raise constitutional concerns. It is possible, therefore, that a reviewing court would elect to construe the term “business” broadly to avoid those issues. *See VNA Hospice v. Dep’t of Health & Mental Hygiene*, 406 Md. 584, 605-09 (2008) (“In light of the policy against deciding constitutional issues unnecessarily, we have consistently adhered to the principle that an interpretation which raises doubts as to a legislative enactment’s constitutionality should be avoided if the language of the act permits.”) (internal quotation marks omitted). In our view, however, that type of “saving construction” may not be necessary. “[S]tatutes carry a strong presumption of constitutionality,” *Koshko v. Haining*, 398 Md. 404, 426 (2007), and this Office will defend enactments of the Legislature unless “clearly unconstitutional.” 93 *Opinions of the Attorney General* 154, 161 n.12 (2008). Because we do not find that giving effect to the Legislature’s actual intent here would be clearly unconstitutional, it is our opinion that the fire fighters may conduct

their annual Fill the Boot campaign and enter the roadway to collect contributions without violating § 21-507(a).¹¹

III Conclusion

In our opinion, the General Assembly did not intend for its use of the term “business” in § 21-507(a) to extend the ban on roadside solicitations to the fire fighters’ annual Fill the Boot campaign and other solicitations for charitable donations. The plain language of the statute and its legislative history belie any such intent. However, a statute that prohibits solicitation for some purposes but not others does raise constitutional issues. We therefore recommend that the Legislature consider revising the statute should it wish to ensure that charitable solicitations continue and without compromising the public safety goals of the Transportation Article.

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[12-15-30]

OPINIONS

May 31, 2012

Raymond Skinner
Secretary
Maryland Department of Housing
and Community Development

You have asked for our opinion as to whether an out-of-state public housing agency, or an instrumentally thereof, may operate as a public housing agency in Maryland. More specifically, you have presented the following facts and question: A state or local government outside of Maryland creates a legal entity to act as an instrumentality of that government. In the state where the legal entity is created, it has authority to act as a “public housing agency,” as that term is defined by the United States Housing Act of 1937. *See* 42 U.S.C. § 1437a(b)(6)(A) (2006). The legal entity has also registered or qualified to conduct business in Maryland. *See* Md. Code Ann., Corps. & Ass’ns §§ 7-202, 7-203 (2011 Supp.). Does Maryland law authorize the out-of-state public housing agency or its legal instrumentality to act as a “public housing agency” within Maryland?

In our opinion, an out-of-state public housing agency or its legal instrumentality may not operate as a public housing agency within Maryland. The administration of public housing programs within Maryland constitutes an essential governmental function that only the Department of Housing and Community Development (“DHCD”), established under Division I of the Housing and Community Development Article of the Maryland Annotated Code (the “Housing Act”), and “public housing authorities” (“PHAs”) established under Division II of the Housing Act, may perform.¹² An out-of-state

¹¹ Other types of solicitation, such as panhandling, would also be allowed by § 21-507(a), as we now construe it. *See Henry v. City of Cincinnati*, 2006 U.S. Dist. LEXIS 94704, 16-20 (S.D. Ohio 2006) (“After [*Village of Schaumburg v. Citizens for a Better Envir.*, 444 U.S. 620 (1980)], lower federal courts and state courts have equated panhandling to charitable solicitations, and analyzed them under the same framework.”). We express no opinion herein about the constitutional permissibility of statewide legislation drawing a distinction between panhandling and charitable solicitations undertaken by public safety officials.

¹² We caution the reader not to confuse the terms “public housing agency,” which is a federal statutory term that relates to eligibility to administer the Section 8 program generally, and “public housing authority,”

public housing agency or its instrumentality, regardless of whether the instrumentality was properly formed under the general corporate laws of Maryland or another state, cannot qualify as a public housing authority under Maryland law.

We also address a second question that, although not specifically asked in your request for our opinion, relates to the requirements of federal law, namely, whether DHCD and PHAs authorized to act as “public housing agencies” within Maryland may exercise their authority on a statewide basis, as opposed to being limited to certain political subdivisions of the State. On this point, we conclude that only DHCD and PHAs created by Baltimore City or a Maryland municipality are empowered to act as “public housing agencies” on a statewide basis throughout Maryland. A PHA established by a Maryland county may administer rent subsidy payments and housing assistance programs only within its county.

I Background

This request arises out of the U.S. Department of Housing and Urban Development (“HUD”) 2011 solicitation of applications from entities wishing to serve as the administrator of the federal Section 8¹³ project-based housing assistance program (the “Program”) for one or more of the states, including Maryland. See HUD, Invitation of Submission of Applications: Contract Administrators for Project Based Section 8 Housing Assistance Payments (“HAP”) Contracts (March 23, 2011), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=invitationforappsfinal.pdf> (last visited May 23, 2012) (the “Solicitation”). The entities selected by HUD to administer the Program within the states are referred to as “Performance Based Contract Administrators” or “PBCAs.” A PBCA disburses federal funds allocated for rental assistance to low income residents at approved housing projects. In order to fund the administration of the Program, the PBCA retains a percentage—agreed upon by the PBCA and HUD—of the federal funds it disburses. Under the terms of the Solicitation, the PBCA would serve for a term of three years.

In order to be eligible to administer the Program, an entity must qualify as a “public housing agency,” which is defined under federal law as “any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing.” 42 U.S.C. § 1437a(b)(6)(A). Traditionally, the applicant pool for qualification as a PBCA was dominated by state housing agencies, like DHCD, that have state-law authority over housing-related matters within their own state. DHCD has served as the PBCA for Maryland continuously since 2000.

In response to the Solicitation, however, certain “out-of-state” public housing agencies or their legal instrumentalities applied to administer the Program in states other than the states in which they were formed. HUD acknowledged this type of applicant in the Solicitation, and required an applicant who proposed to serve as a PBCA in a state other than the state of its organization to provide a “supplemental letter” from an attorney containing a “reasoned (i.e. non-conclusory) analysis establishing that the laws of the State in which the applicant proposes to serve as PBCA do not prohibit the applicant from acting as a [public housing agency] throughout the

entire State.” Solicitation, §§ 2.1, 2.6. The Solicitation also required that the supplemental letter contain “a clear statement that such laws neither explicitly nor implicitly prohibit the applicant from acting as a [public housing agency] throughout the entire State.” *Id.*

In 2011, DHCD submitted a bid in response to the Solicitation, but was not selected as the PBCA for Maryland. Instead, HUD selected Summit Multi-Family Housing Corporation—a non-profit instrumentality of the Akron (Ohio) Metropolitan Housing Authority—to serve as the PBCA for Maryland. It is our understanding that out-of-state entities were selected to serve as PBCAs in several other states as well.

DHCD, along with numerous other state housing agencies involved in the Solicitation, filed protests to the awards on several different grounds, including that awards were made to out-of-state instrumentalities. In response, HUD cancelled the disputed awards and issued a Notice of Funding Availability on February 29, 2012, re-opening the application process for the PBCAs in certain states, including Maryland. See HUD’s Fiscal Year (FY) 2012 Notice of Funding Availability (NOFA) for the Performance-Based Contract Administrator (PBCA) Program for the Administration of Project-Based Section 8 Housing Assistance Payments Contracts (Feb. 29, 2012), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=pbcanofafinal.pdf> (last visited May 23, 2012) (“NOFA”). HUD stated in the NOFA that it would “consider applications from out-of-State applicants only for States for which HUD does not receive an application from a legally qualified in-State applicant.” NOFA § D.

HUD included within the NOFA separate eligibility provisions for in-state applicants (*i.e.*, a governmental entity, or instrumentality thereof, “formed under the laws of the same State for which it proposes to serve as a PBCA,” NOFA § E.1) and out-of-state applicants (*i.e.*, an instrumentality “formed under the laws of a State other than the State for which it proposes to serve as a PBCA,” NOFA § E.2).¹⁴ Under these eligibility provisions, in-state applicants must demonstrate that they have “the legal authority to operate throughout the entire State.” NOFA § E.1.b. An out-of-state applicant, by contrast, must demonstrate that it “has the legal authority, both under the law of the State of its creation and under the law of the State for which it is applying to act as PBCA, to operate throughout the entire State for which is applying.” NOFA § E.2.b. All applicants must demonstrate that they satisfy the definition of “public housing agency” set forth in the federal housing act.

HUD has subsequently indicated that, in evaluating whether an out-of-state entity has the authority to operate as a public housing agency in the state for which it is applying, it will consider the opinion of the Attorney General of the applied-for state and that, “[t]o the extent that the Attorney General’s opinion is on-point and has considered all the relevant facts about any potential in-state applicants (e.g., instrumentalities), HUD will rely on a state’s Attorney General’s opinion.” HUD, NOFA for PBCAs and ACC for NOFA Q&A (Update as of 05/11/2012), Response to Question No. 163, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=pbcanofaaccqandasumm.pdf> (last visited May 22, 2012) (“NOFA Q&A”). You have asked for this opinion in anticipation of HUD’s reliance on the same.

which is a Maryland statutory term that relates to the authority to administer federal rental assistance programs within Maryland.

¹³ “Section 8” refers to § 8 of the Housing Act of 1937, 42 U.S.C. § 1437f, but generally refers to a number of statutory provisions, 42 U.S.C. §§ 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-19, and the regulations promulgated thereunder at 24 C.F.R. §§ 880-888 (2012).

¹⁴ According to HUD, out-of-state applicants typically consist of an instrumentality of an out-of-state public housing agency because the governmental entities themselves “are typically limited in their area of operation under the law of the State of their creation to the locality or to the State that they were established to serve.” NOFA § E.2. Because the conclusions reached in this opinion apply equally to out-of-state governmental agencies and the instrumentalities they may form, we will use the term “out-of-state entity” to refer to both entities.

II Analysis

A. *Whether an Out-of-State Public Housing Agency or its Instrumentality May Serve as a Public Housing Authority in Maryland*

An out-of-state public entity may not serve as a public housing authority in Maryland even if it has registered to do business in Maryland and is authorized by its state of origin “to engage in or assist in the development or operation of public housing,” as allowed under federal law, 42 U.S.C. § 1437a(b)(6)(A). As set forth below, only DHCD or a PHA created by a Maryland political subdivision may administer federal rental assistance programs within Maryland. This conclusion flows from the Housing Act, which establishes a comprehensive legal framework for the administration of public housing in Maryland.

The Housing Act is the result of the merger of two previously existing statutes. Article 44A of the Maryland Annotated Code (the “Housing Authorities Act”) was enacted in 1937 “in anticipation of, and in order to take advantage of, the provisions of the United States Housing Act of 1937. . . .” *Jackson v. Hous. Opportunities Comm’n of Montgomery Cnty.*, 289 Md. 118, 121 (1980), *overruled in part by Brooks v. Hous. Auth. of Baltimore City*, 411 Md. 603 (2009); *see also* 1937 Md. Laws, ch. 517. The Housing Authorities Act established a housing authority in each city having a population of more than 1,000 and in each Maryland county. *Jackson*, 289 Md. at 121. Each authority was deemed “a public body corporate and politic” and given “all the powers necessary or convenient to carry out and [effectuate] the purposes and provisions of [the Act]. . . .” *Id.*, 121-22; *see also Brooks*, 411 Md. at 617-18.

The second of the merged statutes was enacted in 1970, when, finding that “a need exists to coordinate and concentrate federal, state, regional and local public and private community development efforts and resources,” the Maryland General Assembly created the Community Development Administration (“CDA”) as a division within the newly-created Maryland Department of Economic and Community Development (“DECD”)—a “principal department of the State Government,” 1970 Md. Laws, ch. 527 at 1215, and the predecessor to the present-day DHCD. CDA was tasked with, among other things, the responsibility to oversee the administration of community assistance programs in Maryland. *Id.* at 1241-48. Maryland State government was reorganized in 1987, at which time DECD was abolished, and CDA and its functions were transferred, along with other housing and community development programs, to the then newly-created DHCD. 1987 Md. Laws, ch. 311. The statutory provisions relating to DHCD were later re-codified as Division I of the Housing Act in 2005, 2005 Md. Laws, ch. 26, with the Housing Authorities Act re-codified as Division II of the Housing Act the next year. 2006 Md. Laws, ch. 63; *see Mitchell v. Hous. Auth. of Baltimore City*, 200 Md. App. 176, 187 (2011). Thus, the Housing Act now contains two divisions: Division I, Housing and Community Programs, which provides for the establishment, powers, and duties of DHCD, Md. Code Ann., Hous. & Comm. Dev. §§ 1-101 to 11-106,¹⁵ and Division II, Housing Authorities, which provides for the establishment, powers and duties of PHAs, §§ 12-101 to 23-101.

Division I: Maryland Department of Housing and Community Development

Division I gives DHCD broad authority to engage or assist in the development or operation of housing, including public housing, in

Maryland. As a “principal department of State government,” the Department has the authority to operate and exercise the authority of the State throughout Maryland. *See* § 2-101; Md. Code Ann., State Gov’t § 8-201 (2009 Repl. Vol.) (enumerating the principal departments of State government); *see also* §§ 2-102(1), 2-102(5), 2-102(8) (requiring DHCD to assist “political subdivisions” throughout the State) and § 4-211(a)(1) (requiring DHCD to “assist the Governor in coordinating the activities of governmental units of the State that affect the solution of community development problems and the implementation of community plans”). DHCD is responsible for working with political subdivisions to develop solutions to common problems, serves as a clearinghouse for information and materials on sound community assistance, provides consultative, training and education services to political subdivisions and local public agencies, and accepts gifts, grants, contributions or loans of money. *See generally* § 2-102.

DHCD has the statutory authority to “administer federal programs” relating to community assistance in Maryland, §§ 2-102(9), 1-101(b), and, through its Community Development Administration, has a broad range of other powers related to affordable housing, including the authority to “do all things necessary to qualify for assistance . . . as a public housing agency under a federal housing or renewal program.” § 4-211(a)(8). These statutorily conferred powers qualify DHCD as a public housing agency within the meaning of 42 U.S.C. § 1437a(b)(6)(A), and confer on DHCD the authority to operate and act as a public housing agency throughout the entire State. DHCD has served as the PBCA for Maryland since 2000 and at no point has HUD or any party questioned DHCD’s qualifications to serve as a PBCA by virtue of its status as a public housing agency capable of acting throughout Maryland.

Division II: Local Public Housing Authorities

Division II of the Housing Act relates to public housing authorities established at the local level. Like Division I, Division II was established to further the “public interest,” § 12-102(9), based on findings of the Maryland legislature that there is a “shortage of safe or sanitary housing that is available at rents that individuals of low and moderate income can afford,” § 12-102(2), and a public need to eliminate unsafe, unsanitary, and overcrowded living conditions in Maryland. *See generally* § 12-102. Division II provides for the establishment of a PHA for each “county or municipal corporation of the State” and gives each PHA the authority to “do all that is necessary or desirable to secure the financial aid or cooperation of political subdivisions, State government or federal government to help the authority undertake, construct, maintain or operate a housing project.” § 12-103. It provides for the establishment of two types of public housing authorities: “code authorities,” which are defined to mean “an authority activated on or after July 1, 1990,” § 12-101(f), and “pre-existing authorities,” which are those authorities “activated before July 1, 1990.” § 12-101(r). Each PHA—whether code or pre-existing—is a “public body corporate and politic” that “exercises public and essential governmental functions.” § 12-501(1).

Although the Housing Act “enabl[es]” a “political subdivision to authorize an authority to operate,” § 12-202, a Maryland political subdivision must “breathe life into each otherwise dormant agency by declaring the need for a housing authority to function in their city or county.” *Jackson*, 289 Md. at 121; *see also Hous. Auth. of College Park v. Macro Housing, Inc.*, 275 Md. 281, 282 n.1 (1975). In addition to declaring the need for a local housing authority, a Maryland political subdivision “breathe[s] life” into an authority by approving the formation of the authority, appointing its commissioners, and overseeing the finances of the PHA. A code authority (*i.e.*, an authority created after July 1, 1990) “may not do business or exercise its powers unless its articles of organization have

¹⁵ All statutory references refer to the Housing and Community Development Article of the Annotated Code of Maryland, unless otherwise provided.

been recommended in writing by the chief elected official, adopted by a resolution or ordinance of the legislative body, and filed with the Secretary of State,” who must then “issue[] a certificate of organization to the code authority.” § 12-203.¹⁶ The chief elected official also must “appoint the required number of commissioners of the authority,” whether the authority is a code authority or a pre-existing authority. § 12-302(a).

The “chief elected official” and “legislative body” that must approve the creation of the authority and appoint its commissioners are officials of the “political subdivision.” § 12-101(e), (l). Although out-of-state public housing agencies or their instrumentalities may also have been created by political subdivisions, the term “political subdivision” in the Housing Act is defined as a “county or municipal corporation of the State.” § 12-101(q) (emphasis added). Case law and common sense confirm that the phrase “of the State” conveys the meaning that the county or municipality be “locat[ed] . . . within State borders.” *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 786 (1993). Accordingly, an out-of-state public housing agency or its instrumentality formed to serve as a PBCA would not qualify under Maryland law as a public housing authority, and therefore would not be capable of serving as a PBCA in Maryland.

This conclusion is consistent with other statutory provisions and court decisions confirming that housing authorities in Maryland carry out “essential governmental functions” and are treated as governmental entities for a number of purposes. Section 12-501 establishes the principle that a housing authority within Maryland “is a public body corporate and politic that . . . exercises public and essential governmental functions.” § 12-501 (internal enumeration omitted); *Mayor of Baltimore v. BGE*, 232 Md. 123, 131 (1963) (same); see also *Gibson v. Hous. Auth. of Baltimore City*, 142 Md. App. 121, 128, cert. denied, 369 Md. 182 (2002), vacated on other grounds sub nom *Hous. Auth. of Baltimore City v. Smalls*, 369 Md. 224 (2002); *Brooks*, 411 Md. at 611 n.3 (describing procedural posture of *Gibson*). PHAs in Maryland are specifically included within the definition of “local government” for purposes of the application of the Local Government Tort Claims Act (“LGTC”), see Md. Code Ann., Cts. & Jud. Proc. § 5-301(d)(15), and are exempt from State taxes and assessments. § 12-104(b)(2); see also 55 *Opinions of the Attorney General* 391 (1970) (concluding that housing authority is exempt from recordation tax on the same grounds as a “political subdivision,” based on the determination that the decision to the contrary in *Pittman v. Housing Authority of Baltimore City*, 180 Md. 457 (1942), had been legislatively overridden by 1945 Md. Laws, ch. 253). While the Court of Appeals has yet to decide whether the operation of a housing project, as opposed to its construction, qualifies as a governmental activity for purposes of immunity under the LGTC, see *Jackson*, 289 Md. at 120 n.2, “[i]t has been generally held that housing projects are governmental.” *Baltimore v. BGE*, 232 Md. at 132.¹⁷

¹⁶ A pre-existing authority may continue to operate without having a local government adopt articles of organization, but only if it was “activated” by the local government subdivision prior to July 1, 1990. § 12-101(r). Although the term “activated” is not defined by statute, we interpret it consistently with *Jackson* to mean that the local political subdivision must “breathe life” into the authority by “declaring the need for a housing authority to function in their city or county.” *Jackson*, 289 Md. at 121.

¹⁷ This is not to say that an out-of-state instrumentality, duly organized under the laws of its state, cannot be involved in housing development projects in Maryland. For example, a nonprofit housing corporation formed under the laws of another state and registered to do business here in Maryland may be able to develop and operate low-income housing projects and, if carried out effectively and exclusively for a charitable purpose, may qualify for certain property tax exemptions under § 7-202 of the Tax-Property Article. See *Supervisor of Assess. of Baltimore City v. Har Sinai W. Corp.*, 95 Md. App. 631 (1993). A nonprofit housing corporation may also “provide[] safe and sanitary housing to persons of eligible income in such a

It is a standard legal principle that a government entity is a creature of statute and has only that authority expressly granted, or reasonably implied, by the governing statute. See *Frederick Cnty. v. Page*, 163 Md. 619, 631 (1932); *Birge v. Town of Easton*, 274 Md. 635, 639 (1975). No Maryland statute authorizes another state’s agency, or an instrumentality thereof, to perform governmental functions with respect to public housing in Maryland. Rather, the Maryland Legislature has carefully established a state-wide approach to the public housing pursuant to which DHCD functions as the State’s housing finance agency with broad authority pursuant to Division I of the Housing Act, and Maryland counties and municipalities are empowered to create public housing authorities pursuant to Division II of the Housing Act to, among other things, “administer rent subsidy payments and housing assistance programs for both eligible landlords and tenants.” § 12-105(a)(2)(i), (b)(1)(i). The statutory scheme is expressly based on the Legislature’s “concern” that “many residents of the State are living in substandard housing.” § 3-202(a)(3)(i), and the declaration that housing authorities “exercise[] public and essential governmental functions” when addressing that concern. § 12-501(1). This comprehensive approach leaves no room for out-of-state public housing agencies or their instrumentalities to exercise the governmental functions the Maryland Legislature has chosen to entrust to DHCD and Maryland public housing authorities. In sum, Maryland law does not authorize an out-of-state public housing agency or its legal instrumentality to act as a “public housing agency” within Maryland.¹⁸

B. Whether DHCD is the Only PHA Authorized to Administer the Section 8 Program Throughout the State

The second question we address—whether DHCD is the only entity that is authorized to serve as the PBCA for the Section 8 program throughout Maryland—is presented by the NOFA. NOFA § E.1. The answer to this question is dictated by statute. Section 12-105 establishes the areas of operation for PHAs in Maryland. The area of operation varies by the level of government which creates the PHA and with the type of activity the PHA is conducting.

A PHA created by Baltimore City or a municipal corporation (hereinafter, a “municipally-created PHA”)¹⁹ has the authority to

way that the corporation works essentially like an authority,” § 12-104(b)(1) (emphasis added), which would entitle the nonprofit housing corporation to a further tax exemption. § 12-104(b)(2)(i). However, nothing in the Housing Act authorizes such nonprofit housing corporations—whether in-state or out-of-state—to administer governmental subsidy programs, as it does with respect to DHCD and PHAs created by Maryland subdivisions. And because DHCD and PHAs in Maryland are government-created, subject to executive oversight, and essentially governmental in nature, the full faith and credit clause of the U.S. Constitution does not come into play. See, e.g., *Nevada v. Hall*, 440 U.S. 410, 422-23 (1979) (concluding that “the full faith and credit clause” does not “override the constitutional authority” of the state to legislate on matters “appropriately the concern of the state”).

¹⁸ This conclusion necessarily rests on an evaluation of current law, which is unlikely to change prior to the June 11, 2012 deadline for submitting applications in response to the NOFA. Maryland’s regularly scheduled 2012 legislative session ended on April 9, 2012, and a special session, devoted to certain budgetary refinements, concluded on May 16, 2012. Although media outlets have widely reported that a second special session will be convened in July, 2012, such a session has not been scheduled and, it is reported, would be focused on expanding slot machine gambling within Maryland. There is no reason to believe that the General Assembly will use a second special session, if held, to take up the criteria for qualifying as a public housing authority in Maryland.

¹⁹ Under Maryland law, Baltimore City is governed by Article XI-A of the Constitution, which is the same constitutional provision that applies to charter counties, rather than Article XI-E, which applies to municipal corporations. See 94 *Opinions of the Attorney General* 161, 168 n.13 (2009); *Pressman v. D’Alessandro*, 211 Md. 50, 57 (1956). The Housing Act,

“operate within its territorial boundaries” and, “*without regard to location . . .* administer rent subsidy payments and housing assistance programs,” own or manage pre-1990 housing projects, and “develop, own, or operate” a housing project within another political subdivision. § 12-105(a) (emphasis added). This provision enables a municipally-created PHA to perform any function of a PHA within the boundaries of the municipality that creates it, and act throughout the State to, among other things, “administer rent subsidy payments and housing assistance programs.” *Id.* (emphasis added). Accordingly, a municipally-created PHA is eligible to serve as the PBCA and administer the Program throughout Maryland.

The same does not hold true for a PHA established by a Maryland county, which may only administer rent subsidy payments and housing assistance programs “[a]nywhere in its county.” § 12-105(b)(1). Accordingly, a county-created PHA would be able to administer the Program within the boundaries of the county that created it, but it cannot serve as the PBCA throughout Maryland.²⁰

III Conclusion

In our opinion, neither an out-of-state public housing agency nor its legal instrumentality may operate as a public housing agency within Maryland. The administration of public housing programs within Maryland constitutes an essential governmental function that only DHCD and public housing authorities established under Division II of the Housing Act may perform. An out-of-state public housing agency or its instrumentality, regardless of whether the instrumentality was properly formed under the general corporate laws of Maryland or another state, cannot qualify as a public housing authority under Maryland law. With respect to in-state entities, only DHCD and municipally-created PHAs are empowered to administer public housing programs on a statewide basis throughout Maryland. A PHA established by a Maryland county may only administer rent subsidy payments and housing assistance programs in its county.

Douglas F. Gansler, Attorney General
Anthony J. Mohan, Assistant Attorney General
Adam D. Snyder, Chief Counsel, Opinions and Advice

[12-15-31]

however, includes Baltimore City within its provisions relating to both municipal corporations and counties. *Compare* § 12-105(a) (setting forth provisions relating the “authority of a municipal corporation or Baltimore City”) with § 12-101(g) (defining “county” to mean “a county of the State or Baltimore City”). Given that the Housing Act gives a Baltimore City housing authority the same powers it gives to authorities created by municipal corporations, we consider a PHA created by Baltimore City to be a municipally-created PHA for purposes of this Opinion.

²⁰ In addition to the general provisions establishing and granting specific powers to local PHAs in §§ 12-101 through 12-705, Division II of the Housing Act provides jurisdiction-specific provisions relating to the PHAs within individual political subdivisions. *See, e.g.*, §§ 13-101 to 13-111 (City of Annapolis); §§ 14-101 to 14-103 (Anne Arundel County). In enacting each of these jurisdiction-specific provisions, the Legislature preserved the applicability of the general provisions of Title 12 to the jurisdiction at issue, “except where it is inconsistent with this title.” *See, e.g.*, §§ 13-102, 14-101, 15-102. None of the jurisdiction-specific provisions is inconsistent with the requirements of § 12-105 relating to the scope of operations of municipal and county PHAs.

Open Meetings Compliance Board

SUMMARY OF OPINIONS ISSUED APRIL 1, 2012 — JUNE 29, 2012

8 Official Opinions of the Compliance Board 56 (2012)

Calvert County Board of Appeals
Ronald J. Ross, M.D., Complainant
May 4, 2012

Topics discussed: Applicability of Act only to meetings of a quorum; principles applicable when members of a public body, without discussion, adopt a pre-prepared decision on which they have not deliberated in a meeting but which they have reviewed separately; applicability of “walking quorum” doctrine to certain facts; inability of Compliance Board to investigate or find facts; availability of remedies under the Act to a person who does not object at a public body’s meeting when the members adopt a pre-prepared written decision without deliberation; applicability of Act to deliberations on specified land use matters.

8 Official Opinions of the Compliance Board 63 (2012)

Maryland Transportation Authority
Craig O’Donnell, Kent County News, Complainant
May 4, 2012

Topics discussed: Permissibility of closing session under § 10-508(a)(14) to discuss procurement matters after bid opening but pre-award, when disclosure would have a certain adverse impact; need for closing statement to reflect the elements of the exception claimed as a basis for closing the meeting; status of procurement evaluation panel as public body (or not) when formed and appointed by procurement staff; level of detail required in summary of closed session; lack of Compliance Board authority to address Public Information Act allegations.

8 Official Opinions of the Compliance Board 71 (2012)

Carroll County Utilities Advisory Council
Michele J. Fluss, Complainant
June 12, 2012

Topics discussed: Requirement that minutes be prepared and adopted within reasonable period; lack of requirement in Act that public body distribute Compliance Board opinions to each member; possible ability of public body to avoid second complaint by doing so; Compliance Board standard for reconsideration of prior opinion.

8 Official Opinions of the Compliance Board 73 (2012)

Baltimore Development Corporation
Laura Perkins, Complainant
June 12, 2012

Topics discussed: Status of private group formed by member of the public as public body (or not); status of procurement evaluation panel as public body (or not) when put together by staff; Compliance Board’s lack of authority either to address allegations of criminal conspiracy and deprivation of property rights or require public body to respond to them.

8 Official Opinions of the Compliance Board 76 (2012)

Charles County Planning Commission
Debra Zimmerman Murphey, Complainant
June 13, 2012

Topics discussed: Applicability of the Act’s notice requirement to parent public body when a quorum of its members attends the meeting of one of its committees; insufficiency of notice of meeting of committee (also a public body) by oral announcement, one day in advance, at parent public body’s meeting; appearance of secrecy given by use of oral announcement as method of giving notice when parent body regularly posts other meetings on its website; applicability of requirement that notice be “in writing,” unless a meeting is convened at the last minute and under exigent circumstances; question of exigency when the topic was a private entity’s zoning proposal on which the committee wished to make recommendations “within 1-2 months”; insufficiency of notice which states a “tentative” date, and no location, for the meeting; need to take extra efforts to publicize meetings when they must be scheduled on an emergency basis.

8 Official Opinions of the Compliance Board 84 (2012)

Mayor and Town Council of Hurlock
Monroe Quailes, Jr., Complainant
June 13, 2012

Topics discussed: Applicability of administrative function exclusion to council’s function of filling a vacancy on the council; lack of requirement in the Act that public body permit members of the public to speak.

8 Official Opinions of the Compliance Board 86 (2012)

Somerset County Board of Education
John K. Phoebus, Esq., Complainant
June 27, 2012

Topics discussed: Requirement that vote to close must be held in open session; requirement that presiding officer make written statement setting forth the statutory basis for excluding the public from the meeting, the topics to be discussed, and the reasons for discussing them in a closed meeting; lack of authority under State Government Article § 10-508(a)(7) to close a meeting to receive legal advice when counsel does not attend the session; lack of authority under § 10-508(a)(1) to close a meeting to discuss personnel matters pertaining to specific individuals when discussion turns to policies or actions affecting classes of employees; need to include summary of closed session in minutes of next open session.

*The full text of these opinions can be found at:

<http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>

[12-15-27]

The Judiciary

COURT OF APPEALS OF MARYLAND

DISCIPLINARY PROCEEDINGS

This is to certify that by an Opinion and Order of this Court dated July 10, 2012, **PERRY ALLEN LONDON**, 211 St. Paul Place, Baltimore, Maryland 21202, has been disbarred from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-760(e)).

* * * * *

This is to certify that by Order of this Court dated July 10, 2012, **HOWARD SCOTT KALIN**, Reg. #54969018-GA51, Low Security Correctional, Institution Allenwood, P.O. Box 1000, White Deer, Pennsylvania 17887, has been disbarred by consent from the further practice of law in this State and his name as an attorney at law has been stricken from the register of attorneys in this Court (Maryland Rule 16-772(d)).

[12-15-43]

Advisory Opinions

STATE ETHICS COMMISSION

Opinion No. 12-01

An employee of the State Highway Administration (“SHA”) has requested an advisory opinion pursuant to §15-501(b)(ii) of the Maryland Public Ethics Law, Md. Code Ann., State Gov’t Title 15 (Supp. 2011) to allow his participation in matters involving a utility provider and contractor (hereinafter “Provider”) that employs his brother. Based on the facts presented, the remoteness of the situation, and the SHA’s policies and procedures, we advise that the employee may participate in matters involving the Provider.

The Requestor is the Team Leader for a district for the Office of Traffic and Safety within SHA. SHA is one of the modal administrations of the Maryland Department of Transportation and operates and maintains the State’s highways. He has worked for SHA for twenty-three (23) years. The Team Leader’s duties involve supervision of inspection teams on traffic signal and lighting projects. The Team Leader’s brother is employed by the Provider in the Customer Relations and Accounting Services Division as a Manager of Strategic Customer Planning.

The Team Leader reviews invoices submitted to SHA from contractors on projects related to traffic control construction costs and utility bills. After he reviews invoices, he forwards the invoices to the Chief of Inventory. Following the second review and approval, the invoices are sent to SHA Headquarters for final approval.

The Team Leader stated that he does not have any discretion related to matters involving the Provider. He does not make determinations regarding the location where work will be done. The SHA Traffic Engineering & Design Division determines the location of new traffic signals and forwards the application for power to the Provider. The Provider sets the rates and assigns its work crews. The Provider is the only power supplier in the district where the Team Leader is assigned. The Team Leader estimates that approximately 2% of his work for SHA involves the Provider.

SHA has no concerns about the Team Leader’s participation in the SHA projects involving the Provider. The review of the Provider’s invoices submitted to SHA is a small portion of the Team Leader’s duties and he does not have final approval of these invoices. The Team Leader will have supervisory duties of district crews working with the Provider on traffic signal and lighting projects. SHA will continue to monitor this situation and contact the Commission for additional advice if the Team Leader’s brother is assigned to a different division of the Provider that has interaction with SHA.

The Team Leader’s brother is currently employed by the Provider as a Manager of Strategic Customer Planning within the Customer Relations and Account Services Division. He does not have any duties for the Provider related to SHA contracts or work. He does not supervise, directly or indirectly, any Provider employees that work on SHA projects. The Provider’s Asset Management Division and Integrated Field Services Division are responsible for the engineering, pricing, design and installation of traffic signals with SHA. The brothers do not live in the same household, nor do they hold any joint assets or joint debts.

Section 15-501(a) of the Ethics Law provides in part that an official or employee may not participate as a State employee or official in a matter if a party to that matter is a business entity that employs the official’s or employee’s spouse, parent, child, brother or sister (“qualifying relatives”). In this request, we find that §15-501(a)

would prohibit the Team Leader from participating in matters involving the Provider.

However, the law allows us to grant exceptions to this participation restriction by opinion. We have granted exceptions in situations where we found that the overall circumstances and relationships were sufficiently remote to warrant an exception.²¹ Factors we have considered in evaluating the remoteness of the circumstances and relationships include:

- The nature of the qualifying relative’s employment;
- The nature of the relationship between the employee and the qualifying relative;
- The geographical distance between the employee and the qualifying relative;
- Any prior issues related to the employee’s participation in the matter;
- Agency controls and safeguards;
- Any involvement by the qualifying relative in the matter involving the employee; and
- The nature of the employee’s participation in the matter in relation to the employee’s overall duties.

We have reviewed this request and analyzed the remoteness of the situation using the factors we have considered in prior opinions where we have granted an exception. In this instance, the brother is a Manager of Strategic Customer Planning within the Customer Relations and Account Services Division for the Provider and has no duties related to SHA traffic light installation or service contracts, MDOT contracts, or the State of Maryland. The Team Leader and his brother do not live in the same household and do not have joint assets or debts. The Team Leader will not have any interaction with his brother’s unit of the Provider in carrying out his SHA duties involving the Provider. The Team Leader’s SHA duties involving the Provider constitute a small percentage of his work for the agency.

Therefore, we conclude that the circumstances and relationships here are sufficiently remote to grant the Team Leader an exception to allow his participation in matters involving the Provider that employs his brother. This determination is consistent with the Commission’s prior opinions in similar matters and is not contrary to purposes of the Maryland Public Ethics Law. We will need to review this exception further if either the Team Leader or his brother changes positions with their respective employers. SHA should monitor the situation and, should any issues or concerns arise, contact us for further review.

Robert F. Scholz, Chair
Julian L. Lapedes
Paul M. Vettori
Jacob Yosef Miliman
Andrea Leahy-Fuchek

[12-15-26]

²¹ See Opinion Nos. 90-2, 90-15, 04-02, 05-01, 05-02, and 07-02.

Emergency Action on Regulations

Symbol Key

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

Emergency Regulations

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

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.11 Fishing in Nontidal Waters

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

Notice of Emergency Action

[12-194-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .01 under COMAR 08.02.11 Fishing in Nontidal Waters.

Emergency status began: June 26, 2012.

Emergency status expires: December 20, 2012.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Economic Impact on Small Businesses

The emergency action has a meaningful economic impact on small business. An analysis of this economic impact follows. See the assumptions in Types of Economic impact for details.

.01 Trout Fishing and Management Areas.

A. (text unchanged)

B. Put-and-Take Trout Fishing Areas.

(1) — (5) (text unchanged)

(6) Except as provided in §C(1) of this regulation the following areas are subject to the provisions in §B(1)—(4) of this regulation:

	Closure Periods
(a) Allegany County:	
(i) — (xv) (text unchanged)	
(xvi) <i>Lion's Park Pond in Frostburg</i>	0
(b) (text unchanged)	
(c) Baltimore County and Baltimore City:	
(i) — (viii) (text unchanged)	
(ix) <i>Avalon Pond (Lost Lake)</i>	0
(d) — (n) (text unchanged)	

C. — D. (text unchanged)

E. Areas Limited to Fishing by Persons Younger than 16 Years Old, Persons 65 Years Old or Older, and Blind Persons.

(1) (text unchanged)

(2) Areas subject to provisions of this section:

(a) — (b) (text unchanged)

[(c) Avalon Pond, Baltimore County.]

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

[(f) Lion's Park Pond (Frostburg), Allegany County.]

[(g)] (e) (text unchanged)

F. — H. (text unchanged)

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

09.03.12 Foreclosure Procedures for Residential Property

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

Notice of Extension of Emergency Status

[11-264-E-2]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to the repeal of existing Regulations .01 — .03 and to new Regulations .01 — .12 under COMAR 09.03.12 Foreclosure Procedures for Residential Property.

Emergency status has been extended to January 15, 2013.

Emergency status was previously extended in: 39:3 Md. R. 256 (February 10, 2012).

Emergency action was originally published in: 38:23 Md. R. 1416 (November 4, 2011).

MARK A. KAUFMAN
Commissioner of Financial Regulation

Title 10
DEPARTMENT OF HEALTH
AND MENTAL HYGIENE

Subtitle 10 LABORATORIES

10.10.13 Medical Laboratories — Testing for Hereditary and Congenital Disorders in Newborn Infants

Authority: Health-General Article, §13-111(d)(4)(iii), Annotated Code of Maryland

Notice of Emergency Action

[12-133-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .06 under **COMAR 10.10.13 Medical Laboratories — Testing for Hereditary and Congenital Disorders in Newborn Infants**.

Emergency status began: July 1, 2012.

Emergency status expires: December 27, 2012.

Editor’s Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:11 Md. R. 701—702 (June 1, 2012), referenced as [12-133-P].

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

Subtitle 15 FOOD

10.15.05 Manufacture and Sale of Frozen Dairy Foods and Ices Manufactured for Sale in Maryland

Authority: Health-General Article, §21-804, Annotated Code of Maryland

Notice of Emergency Action

[12-154-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .22 and .35 under **COMAR 10.15.05 Manufacture and Sale of Frozen Dairy Foods and Ices Manufactured for Sale in Maryland**.

Emergency status began: June 27, 2012.

Emergency status expires: November 1, 2012.

Editor’s Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 39:13 Md. R. 799—800 (June 29, 2012), referenced as [12-154-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 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 03 WILDLIFE

08.03.01 General

Authority: Natural Resources Article, §§10-205 and 10-415, Annotated Code of Maryland

Notice of Final Action

[12-129-F]

On July 17, 2012, the Secretary of Natural Resources adopted amendments to Regulation **.01** under **COMAR 08.03.01 General**. This action, which was proposed for adoption in 39:11 Md. R. 690 (June 1, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 03 WILDLIFE

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

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

Notice of Final Action

[12-128-F]

On July 17, 2012, the Secretary of Natural Resources adopted amendments to Regulations **.01**, **.06**, **.07**, and **.08**, the repeal of existing Regulations **.03**, **.04**, and **.05**, and new Regulations **.03**, **.04**, and **.05** under **COMAR 08.03.03 Open Seasons, Bag Limits for Game Birds and Game Animals**. This action, which was proposed for adoption in 39:11 Md. R. 690—698 (June 1, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 03 WILDLIFE

08.03.04 Forest Wildlife

Authority: Natural Resources Article, §§10-205 and 10-408, Annotated Code of Maryland

Notice of Final Action

[12-127-F]

On July 17, 2012, the Secretary of Natural Resources adopted amendments to Regulations **.05** and **.22** and new Regulation **.23**

under **COMAR 08.03.04 Forest Wildlife**. This action, which was proposed for adoption in 39:11 Md. R. 698—699 (June 1, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 03 WILDLIFE

08.03.06 Furbearer Wildlife

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

Notice of Final Action

[12-126-F]

On July 17, 2012, the Secretary of Natural Resources adopted amendments to Regulation **.01** under **COMAR 08.03.06 Furbearer Wildlife**. This action, which was proposed for adoption in 39:11 Md. R. 699—700 (June 1, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 37 HEALTH SERVICES COST REVIEW COMMISSION

10.37.10 Rate Application and Approval Procedures

Authority: Health-General Article, §§19-207 and 19-211, Annotated Code of Maryland

Notice of Final Action

[12-113-F]

On July 11, 2012, the Health Services Cost Review Commission adopted amendments to Regulation **.26** under **COMAR 10.37.10 Rate Application and Approval Procedures**. This action which was proposed for adoption in 39:10 Md. R. 665—666 (May 18, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

JOHN M. COLMERS
Chairman
Health Services Cost Review Commission

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.23 Unprofessional Conduct

Authority: Health Occupations Article, §§1-212, 4-315(a)(16), 4-315(b)(3), 4-205(c)(3), and 4-505(a)(2), Annotated Code of Maryland

Notice of Final Action

[12-087-F]

On July 12, 2012, the Secretary of Health and Mental Hygiene adopted the repeal of existing Regulations .01 — .03 and new Regulations .01 and .02 under **COMAR 10.44.23 Unprofessional Conduct**. This action, which was proposed for adoption in 39:6 Md. R. 438—439 (March 23, 2012), has been adopted with the nonsubstantive changes shown below.

Effective Date: August 6, 2012.

Attorney General’s Certification

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

Authority Line: Health-Occupations Article, §4-205(c)(3), Annotated Code of Maryland, was added to the authority line since that section gives the Board the authority to adopt regulations.

Regulation .01A: This is a nonsubstantive change for clarification purposes. The changes states that licensees may not perform unprofessional acts, which is implied; however, the change is being made at the request of the AELR Committee.

.01 Unprofessional or Dishonorable Conduct.

A. A dentist, dental hygienist, or dental radiation technologist may not engage in unprofessional or dishonorable conduct.

[[A.]] B.— [[B.]] C. (proposed text unchanged)

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

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

Subtitle 04 POLICE TRAINING COMMISSION

Notice of Final Action

[11-271-F]

On July 7, 2012, the Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted:

(1) Amendments to Regulations .02, .04—,12, the repeal of existing Regulations .14, .15, .17, and .20, and the recodification of existing Regulations .16, .18, .19, and .21 to be Regulations .14, .15, .16, and .17 under **COMAR 12.04.01 General Regulations**;

(2) Amendments to Regulations .01 — .03 and the repeal of existing Regulations .11 — .13 under **COMAR 12.04.02 Firearms Training**;

(3) Amendments to Regulation .01 and the repeal of existing Regulation .06 under **COMAR 12.04.05 Electronic Control Device Training and Instructor Certification**; and

(4) New Regulations .01 — .18 under a new chapter, **COMAR 12.04.06 Instructor Training and Certification**.

This action, which was proposed for adoption in 38:21 Md. R. 1297 — 1310 (October 7, 2012) and repropoed in 39:7 Md. R. 498 — 501 (April 6, 2012), has been adopted as repropoed.

Effective Date: January 1, 2013.

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

[12-090-F]

On July 12, 2012, the Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, adopted amendments to Regulation .11 under **COMAR 12.04.01 General Regulations**. This action, which was proposed for adoption in 39:7 Md. R. 501 (April 6, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

GARY D. MAYNARD

Secretary of Public Safety and Correctional Services

**Title 26
DEPARTMENT OF THE ENVIRONMENT**

Subtitle 09 MARYLAND CO₂ BUDGET TRADING PROGRAM

Notice of Final Action

[12-028-F]

On July 2, 2012, the Secretary of the Environment adopted amendments to:

(1) Regulation .02 under **COMAR 26.09.01 General Administrative Provisions**;

(2) Regulations .05 — .09 under **COMAR 26.09.02 Applicability, Determining Compliance, and Allowance Distribution**; and

(3) Regulations .02, .03, and .05 under **COMAR 26.09.04 Auctions**.

This action, which was proposed for adoption in 39:2 Md. R. 215—218 (January 27, 2012), has been adopted with the nonsubstantive changes shown below.

Effective Date: August 6, 2012.

Attorney General’s Certification

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

COMAR 26.09.04.02C: This change clarifies that the Department will meet with the Committee at regular intervals to review the status of the allowance accounts that are the subject of the proposed action.

COMAR 26.09.04.05F(1): The addition to this subsection of “for future distribution to other accounts by the Department in consultation with the Committee” clarifies that allowances in the CO₂ Allowance Contingency Account are later distributed to other accounts.

26.09.04 Auctions

Authority: Environment Article, §§1-101, 1-404, 2-103, and 2-1002(g),
Annotated Code of Maryland

.02 Multistate Auctions.

A. (text unchanged)

B. (text unchanged)

C. The Department shall convene the Committee at least quarterly to review the status of the Consumer Energy Efficiency Account, the CO₂ Allowance Contingency Account, the CO₂ Allowance Retirement Account, and the Set-aside accounts.

.05 Commencement, Frequency, and Quantity of CO₂ Allowance Auctions.

A. — E. (proposed text unchanged)

F. *CO₂ allowances left unsold in any auction shall be transferred, in quantities and in a manner determined by the Department in consultation with the Committee, to:*

(1) The CO₂ Allowance Contingency Account for future distribution to other accounts by the Department in consultation with the Committee;

(2) — (3) (proposed text unchanged)

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

Subtitle 12 RADIATION MANAGEMENT

26.12.01 Radiation Protection

Authority: Environment Article, §§8-106, 8-301, and 8-304, Annotated Code
of Maryland

Notice of Final Action

[12-116-F-I]

On July 6, 2012, the Secretary of the Environment adopted amendments to Regulation .01 under **COMAR 26.12.01 Radiation Protection**. This action, which was proposed for adoption in 39:10 Md. R. 670 (May 18, 2012), has been adopted as proposed.

Effective Date: August 6, 2012.

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

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 09 LIFE INSURANCE AND ANNUITIES

31.09.02 Variable Life Insurance

Authority: Insurance Article, §§2-109 and 16-601—16-603, Annotated Code
of Maryland

Notice of Final Action

[12-120-F]

On July 9, 2012, the Insurance Commissioner adopted amendments to Regulation .04 under **COMAR 31.09.02 Variable Life Insurance**. This action, which was proposed for adoption in 39:10 Md. R. 671 (May 18, 2012), has been adopted as proposed.

Effective Date: August 6, 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 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§4-215, 4-1013(e), and 4-1015.1(c), Annotated Code of Maryland

Notice of Proposed Action

[12-169-P]

The Secretary of Natural Resources proposes to amend Regulations .09 and .12 under **COMAR 08.02.04 Oysters**.

Statement of Purpose

The purpose of this action is to remove the requirement for a power dredge permit and clarify existing coordinates for hand tong only and power dredge areas. Currently, the Department requires oyster harvesters using a power dredge to obtain a free permit for the activity. The permit was necessary in order to determine the amount of power dredge effort. Recent regulation changes require all oyster harvesters to report activity to the Department by gear type. Therefore, the power dredge permit as a tool to determine activity is no longer needed. The proposed action removes the permit requirement and clarifies that the areas listed in regulation are the only areas where power dredges may be used. The proposed action also corrects and removes coordinates for several areas in hand tong and power dredge that overlapped with other areas. Effort has been made to remove overlapping gear areas; however, language has been added to clarify that there is no harvest from sanctuaries and, if a power dredge area and hand tong only area are located in the same space, the area is not considered hand tong only.

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 Power Dredge and Hand Tong Regulations, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.09 Areas Reserved for Hand TONGING, Exceptions.

Except in areas established as oyster sanctuaries in Regulation .15A of this chapter or power dredge areas in Regulation .12B of this chapter, oysters may be taken only by hand tongs in the following areas, except that scooping, dredging, or scraping by hand may be permitted by the Department in certain areas reserved for hand tonging when watermen are denied access to oyster taking because of icing conditions.

A. Wicomico River, Charles and St. Mary's Counties: [Up river of a line drawn from the southwesternmost point of Cobb Island, to Light "3W" off Shipping Point, to Bushwood Wharf.] *All the waters north of a line beginning at the southern tip of Cobb Island, defined by Lat. 38°15.307' N, Long. 76°50.532' W; then running 46° True to Bushwood Wharf, defined by Lat. 38°16.985' N, Long. 76°48.311' W.*

B. Breton Bay and St. Clement Bay: All the waters northerly of a line [drawn from Huggins Point following the Potomac River Fisheries Commission jurisdictional line southwesterly to buoy PRM 3E, thence northwesterly to the Orange and White Daymark south of Newton Neck, thence southwesterly to the northeast corner of a T pier on the opposite shore of Colton Point.] *beginning at Huggins Point, defined by Lat. 38°13.988' N, Long. 76°41.137' W; then running 236° True to a point defined by Lat. 38°13.103' N, Long.*

76°42.810' W; then running 336° True to a point defined by Lat. 38°13.777' N, Long. 76°43.186' W; then running 256° True to a point defined by Lat. 38°13.440' N, Long. 76°44.929' W; then running 298° True to a point on the shore defined by Lat. 38°13.475' N, Long. 76°45.013' W.

C. St. George Creek: All the waters northwesterly of a line [drawn from a steel tower located on the isthmus of St. George Island northeasterly through St. George Creek Light 4 to the opposite shore.] beginning at a tower on St. George Island defined by Lat. 38°7.738' N, Long. 76°29.582' W; then running 32° True to a point on shore defined by Lat. 38°8.316' N, Long. 76°29.130' W.

[D.] — [E.] (proposed for repeal)

[F.] D. South River: All the waters: [up river]

(1) Upstream of a line [drawn from] beginning at the northeast tip of Turkey Point [to South River Daybeacon 5 to Duvall Creek Daybeacon 3 and continuing to shore.] defined by Lat. 38°54.545' N, Long. 76°29.679' W; then running 62° True to a point defined by Lat. 38°54.642' N, Long. 76°29.448' W; then running 7° True to a point defined by Lat. 38°55.649' N, Long. 76°29.293' W; then running 26° True to a point defined by Lat. 38°55.732' N, Long. 76°29.242' W; and

(2) Downstream of a line beginning at a point defined by Lat. 38°55.910' N, Long. 76°31.927' W; then running northeasterly approximately 42° True to a point defined by Lat. 38°56.495' N, Long. 76°31.235' W.

[G.] E. Chester River: All the waters: [up river of a line drawn from the Target on Piney Point on a true bearing of 310° to the opposite shore.]

(1) Upstream of a line beginning at a point on the shore at Ringgold Point, defined by Lat. 39°03.740' N, Long. 76°12.592' W; then running approximately 126° True to a point on shore at Piney Point defined by Lat. 39°02.783' N, Long. 76°10.017' W; and

(2) Downstream of a line beginning at a point on the shore at Grays Inn Point defined by Lat. 39°5.415' N, Long. 76°11.556' W; then running 146° True to a point on the shore of Gordon Point defined by Lat. 39°3.757' N, Long. 76°10.109' W.

[H.] F. Eastern Bay, Cox Creek, and Shipping Creek: All the waters northerly of a line [drawn from the southwestern tip of Turkey Point to Cox Creek Light 2 to Cox Creek Daybeacon 1 then continuing to shore.] beginning at the southwest tip of Turkey Point defined by Lat. 38°54.125' N, Long. 76°17.980' W; then running 254° True to a point defined by Lat. 38°53.932' N, Long. 76°18.851' W; then running 283° True to a point defined by Lat. 38°54.057' N, Long. 76°19.554' W; then running 283° True to a point defined by Lat. 38°54.173' N, Long. 76°20.205' W.

[I.] G. Crab Alley Bay: All the waters northerly of a line [drawn from the southeastern tip of Turkey Point to the southernmost tip of Norman's Point.] beginning at Normans Point defined by Lat. 38°55.138' N, Long. 76°15.349' W; then running 241° True to the southeast tip of Turkey Point defined by Lat. 38°54.177' N, Long. 76°17.573' W.

[J.] H. Prospect Bay: All the waters: [northerly of a line drawn from the southernmost tip of Norman's Point easterly to Prospect Tank on Piney Neck on the opposite shore, and south of the Kent Narrows Bridge.]

(1) South of the MD Route 18 Bridge, defined by Lat. 38°58.212' N, Long. 76°14.771' W; then running 286° True to a point on the west end of the bridge defined by Lat. 38°58.242' N, Long. 76°14.906' W; and

(2) North of a line beginning on the shore of Cabin Creek defined by Lat. 38°56.510' N, Long. 76°13.610' W; then running 178° True to a point defined by Lat. 38°55.096' N, Long. 76°13.560' W; then running 272° True to a point on shore at Normans Point defined by Lat. 38°55.138' N, Long. 76°15.349' W.

[K.] I. Miles River: All the waters: [up river of a line drawn from Latitude 38°51.37' Longitude 76°15.22' a designated point on Rich Neck easterly across Eastern Bay to Latitude 38°50.28' Longitude 76°11.81', a designated point on the opposite shore.]

(1) Upstream of a line beginning on the shore of Rich Neck defined by Lat. 38°51.390' N, Long. 76°15.174' W; then running 113° True to a point defined by Lat. 38°50.298' N, Long. 76°11.810' W; and

(2) Downstream of a line beginning at a point on shore at the east entrance of Spencer Creek, defined by Lat. 38°46.539' N, Long. 76°11.920' W; then running 46° True to a point on the north shore of the Miles River, defined by Lat. 38°47.076' N, Long. 76°11.205' W.

[L.] (proposed for repeal)

[M.] J. Poplar Island Narrows: All the waters: [enclosed by a line drawn to crab line Target on Lowes Point westerly to the northern tip of North Point on Poplar Island, then southerly along shore to the southern tip of Poplar Island then southeasterly to the orange signal targets on shore at the northern end of Pawpaw Cove.]

(1) North of a line beginning at the south end of the Poplar Island dike defined by Lat. 38°44.650' N, Long. 76°22.279' W; then running 154° True to a point defined by Lat. 38°43.588' N, Long. 76°21.619' W; then running 71° True to a point defined by Lat. 38°43.908' N, Long. 76°20.436' W; and

(2) South of a line beginning at a point defined by Lat. 38°46.416' N, Long. 76°20.020' W; then running 274° True to Lowes Point defined by Lat. 38°46.553' N, Long. 76°22.343' W.

[N.] K. [Choptank River, Harris Creek,] Broad Creek[, and Irish Creek]: All the waters north of a line [drawn from Upper Bar Neck Point along the county dredge line southeasterly to Buoy "F" then northeasterly to the southwestern tip of Benoni Point.] beginning at a point on the shore at Nelson Point defined by Lat. 38°42.549' N, Long. 76°16.281' W; then running 61° True to a point on the south side of Bridge Creek, defined by Lat. 38°43.440' N, Long. 76°14.196' W.

L. Irish Creek: All the waters north of a line beginning at a point on the shore at Holland Point defined by Lat. 38°41.879' N, Long. 76°13.611' W; then running 186° True to a point defined by Lat. 38°41.838' N, Long. 76°13.617' W; then running 92° True to a point on the shore at Lucy Point defined by Lat. 38°41.825' N, Long. 76°13.178' W.

[O.] M. Tred Avon River: All the waters: [up river]

(1) North of a line [drawn from] beginning at the southeastern tip of Benoni Point [to Latitude 38°40.05' Longitude 76°10.11', a designated point on the opposite shore south of Bachelor Point.] defined by Lat. 38°40.247' N, Long. 76°11.982' W; then running 97° True to a point on the shore at the north side of Boone Creek, defined by Lat. 38°40.070' N, Long. 76°10.117' W;

(2) West of a line beginning at a point on the shore on the east side of Town Creek, defined by Lat. 38°41.835' N, Long. 76°9.923' W; then running 255° True to a point defined by Lat. 38°41.823' N, Long. 76°9.981' W; then running 0° True to a point on the shore of the east side of Plaindealing Creek, defined by Lat. 38°42.576' N, Long. 76°9.978' W; and

(3) West of a line beginning at a point defined by Lat. 38°40.965' N, Long. 76°10.407' W; then running 239° True to a point defined by Lat. 38°40.909' N, Long. 76°10.528' W; then running 210° True to a point defined by Lat. 38°40.830' N, Long. 76°10.586' W; then running 183° True to a point defined by Lat. 38°40.741' N, Long. 76°10.593' W; then running 154° True to a point defined by Lat. 38°40.641' N, Long. 76°10.531' W.

[P.] N. Choptank River: All the waters [up river of a line drawn southerly from the southern tip of Howell Point to Choptank River Daymark 19A, thence to Choptank River Light 20, thence to Buoy "B" of the no shellfishing area, and then southwesterly to shore.] north of a line beginning at Howell Point defined by Lat. 38°36.746'

N, Long. 76°6.626' W; then running 209° True to a point defined by Lat. 38°36.295' N, Long. 76°6.938' W; then running 170° True to a point defined by Lat. 38°36.006' N, Long. 76°6.871' W; then running 90° True to a point defined by Lat. 38°36.012' N, Long. 76°5.958' W; then running 88° True to a point defined by Lat. 38°36.030' N, Long. 76°5.082' W; then running 131° True to a point defined by Lat. 38°34.833' N, Long. 76°3.344' W; then running 30° True to a point on the north shore of the Choptank River, defined by Lat. 38°35.484' N, Long. 76°2.860' W.

[Q.] O. Little Choptank River: All the waters: [up stream of a line drawn from Latitude 38°32.65' Longitude 76°16.60', a designated point on shore on Hills Point Neck, southwesterly to the northeast tip of James Island.]

(1) South of a line beginning at a point on shore on Hills Point Neck defined by Lat. 38°32.678' N, Long. 76°16.528' W; then running 245° True to the northeast tip of James Island defined by Lat. 38°31.373' N, Long. 76°20.092' W; and

(2) West of a line beginning at a point on the shore of Susquehanna Point defined by Lat. 38°30.642' N, Long. 76°15.492' W; then running 329° True to a point on shore at the south end of Ragged Point Island, defined by Lat. 38°31.886' N, Long. 76°16.440' W.

[R.] (proposed for repeal)

[S.] P. Fishing Bay: All the waters northerly of a line [drawn from the southern tip of Bishops Head Point southeasterly to Sharkfin Shoal Light then northeasterly to the southwestern tip of Clay Island.] beginning at a point on shore defined by corner 9 of Natural Oyster Bar 24-7, defined by Lat. 38°19.480' N, Long. 76°01.888' W; then running approximately 182° True to a point defined by corner 10 of Natural Oyster Bar 24-7, defined by Lat. 38°19.452' N, Long. 76°01.888' W; then running approximately 144° True to a point on shore defined by corner 5 of Natural Oyster Bar 24-6, defined by Lat. 38°18.557' N, Long. 76°01.065' W.

[T.] Q. Nanticoke River [and Wicomico River Entrance]: All the waters: [of the river bound by a line drawn from the southeasterly tip of Frog Point southeasterly to Wicomico River Lighted Bell Buoy 1 then northeasterly from buoy to buoy or light to #2, #4, #7, #7A, #10, and #12 then to the southeastern tip of Mollies Point.]

(1) North of a line beginning at Sandy Point, defined by Lat. 38°14.803' N, Long. 75°56.385' W; then running approximately 96° True to a point near the shore north of Jones Creek, defined by Lat. 38°14.635' N, Long. 75°54.352' W; and

(2) South of a line beginning at a point on the shore at Sandy Point defined by Lat. 38°14.803' N, Long. 75°56.403' W; then running 43° True to a point on the shore at Roaring Point defined by Lat. 38°15.870' N, Long. 75°55.155' W.

[U.] (proposed for repeal)

[V.] R. Holland Straits: All the Somerset County waters in Holland Straits: [bound by a line drawn from Pry Island following the Dorchester-Somerset County line to Lower Island Point, then southeasterly along the Patent Tong Line to Sound Point, then southerly following the shoreline to the point of beginning.]

(1) South of a line beginning at Sedgy Point defined by Lat. 38°5.523' N, Long. 76°3.349' W; then running 310° True to the Dorchester-Somerset County line defined by Lat. 38°5.767' N, Long. 76°3.710' W; then running 21° True to a point defined by Lat. 38°6.664' N, Long. 76°3.283' W; then running 27° True to a point defined by Lat. 38°8.845' N, Long. 76°1.873' W; then running 140° True to Sound Point defined by Lat. 38°7.883' N, Long. 76°0.852' W;

(2) North of a line in Pungers Creek beginning at a point defined by Lat. 38°7.165' N, Long. 76°1.877' W; then running 257° True to a point defined by Lat. 38°7.139' N, Long. 76°2.022' W;

(3) North of a line in Little Pungers Creek beginning at a point defined by Lat. 38°6.760' N, Long. 76°2.325' W; then running 175° True to a point defined by Lat. 38°6.691' N, Long. 76°2.317' W; and

(4) North of a line in Pry Cove beginning at a point defined by Lat. 38°5.173' N, Long. 76°2.098' W; then running 267° True to a point defined by Lat. 38°5.169' N, Long. 76°2.187' W.

[W.] (proposed for repeal)

[X.] S. Island Creek, Choptank River: All the waters northeasterly of a line [drawn from Latitude 38°39.70' N, Longitude 76°09.70' W, a designated point on the western shore to Latitude 38°39.40' N, Longitude 76°09.30' W, a designated point on the eastern shore.] beginning at a point on the shore at the north side of Island Creek, defined by Lat. 38°39.697' N, Long. 76°9.699' W; then running 120° True to a point on the shore at the south side of Island Creek, defined by Lat. 38°39.517' N, Long. 76°9.300' W.

[Y.] T. La Trappe Creek, Choptank River: All the waters: [northerly of a line drawn from Latitude 38°37.68' N, Longitude 76°07.37' W, a designated point on the western shore to Latitude 38°37.61' N, Longitude 76°07.02' W, a designated point on the eastern shore.]

(1) Northerly of a line beginning at a point on the shore of Martin Point defined by Lat. 38°37.716' N, Long. 76°7.324' W; then running 109° True to a point on the west shore of Grubin Neck defined by Lat. 38°37.609' N, Long. 76°6.927' W; and

(2) Southerly of a line beginning at the south entrance of an unnamed cove on the east side of La Trappe Creek defined by Lat. 38°38.157' N, Long. 76°06.462' W; then running approximately 269° True to the north entrance of an unnamed cove on the west side of La Trappe Creek defined by Lat. 38°38.162' N, Long. 76°06.937' W.

.12 Power Dredging [Areas and Permits].

A. General.

(1) Notwithstanding Natural Resources Article, §4-1012(b), Annotated Code of Maryland, a power dredge may only be used in the following areas:

(a) Leased areas;

(b) Power Dredge Zones established in §B of this regulation; and

(c) Power Dredge Study Areas established in §C of this regulation.

(2) A person may not use or possess a power dredge bar that is more than 42 inches in length measuring from the outside teeth or that exceeds a weight of 200 pounds.

[A.] B. Power Dredge Zone.

(1) Except for the areas reserved for hand tonging in Regulation .09 of this chapter, the areas described in this section are designated as power dredge zones in which an individual may catch oysters by power dredge.]

(2) (1) Calvert County. All of the waters of the State that lie contiguous to Calvert County enclosed by a line beginning at a point at the intersection of the Calvert-Saint Mary's county line and the contiguous waters line running from Hog Point to Drum Point defined by Lat. 38°18.883' N, Long. 76°24.683' W; then running 300° True to a point at Drum Point defined by Lat. 38°19.150' N, Long. 76°25.267' W; then running northerly along the shore, excluding all creeks and coves less than 300 feet wide at the mouth, to a point on the shore at Cove Point defined by Lat. 38°23.174' N, Long. 76°22.906' W; then running 329° True to a point defined by Lat. 38°25.237' N, Long. 76°24.499' W; then running 321° True to a point defined by Lat. 38°27.127' N, Long. 76°26.455' W; then running 241° True to a point at the shore, defined by Lat. 38°26.769' N, Long. 76°27.277' W; then running northerly along the shore, excluding all creeks and coves less than 300 feet wide at the mouth, to a point defined by Lat. 38°33.482' N, Long. 76°30.924' W; then running 79° True to a point defined by Lat. 38°33.683' N, Long. 76°29.550' W; then running 346° True to a point defined by Lat. 38°34.867' N, Long. 76°29.915' W; then running 50° True to a point defined by Lat. 38°35.933' N, Long. 76°28.283' W; then running

351° True to a point defined by Lat. 38°37.450' N, Long. 76°28.582' W; then running 323° True to a point defined by Lat. 38°39.250' N, Long. 76°30.286' W; then running 256° True to a point at the shore, defined by Lat. 38°38.995' N, Long. 76°31.552' W; then running northerly along the shore, excluding all creeks and coves less than 300 feet wide at the mouth, to a point at the shore south of Chesapeake Beach, defined by Lat. 38°41.278' N, Long. 76°31.974' W; then running 92° True to a point defined by Lat. 38°41.237' N, Long. 76°30.213' W; then running 14° True to a point defined by Lat. 38°42.635' N, Long. 76°29.769' W; then running 92° True to a point at the junction of the Calvert-Anne Arundel-Talbot county line defined by Lat. 38°42.567' N, Long. 76°27.650' W; then running 172° True to a point on the Calvert-Dorchester county line, defined by Lat. 38°30.000' N, Long. 76°25.483' W; then running 147° True to a point on the Calvert-Dorchester county line, defined by Lat. 38°23.183' N, Long. 76°19.967' W; then running 172° True to a point on the Calvert-Dorchester-Saint Mary's county line, defined by Lat. 38°19.633' N, Long. 76°19.299' W; then running 270° True to a point on the Calvert-Saint Mary's county line, defined by Lat. 38°19.617' N, Long. 76°22.883' W; then running 270° True to a point on the Calvert-Saint Mary's county line, defined by Lat. 38°19.617' N, Long. 76°22.983' W; then running 247° True to a point on the Calvert-Saint Mary's county line, defined by Lat. 38°19.600' N, Long. 76°23.033' W; then running 241° True to the point of beginning[.]; *except the waters of Plum Point Sanctuary, which is described as: All of the waters of the area enclosed by a line beginning at a point defined by Lat. 38°39.050' N, Long. 76°31.283' W; then running approximately 75° True to a point defined by Lat. 38°39.250' N, Long. 76°30.300' W; then running approximately 143° True to a point defined by Lat. 38°37.450' N, Long. 76°28.583' W; then running approximately 171° True to a point defined by Lat. 38°35.933' N, Long. 76°28.283' W; then running approximately 230° True to a point defined by Lat. 38°34.867' N, Long. 76°29.917' W; then running approximately 166° True to a point defined by Lat. 38°33.683' N, Long. 76°29.550' W; then running approximately 259° True to a point defined by Lat. 38°33.500' N, Long. 76°30.800' W; then running approximately 358° True to a point defined by Lat. 38°34.900' N, Long. 76°30.867' W; then running approximately 6° True to a point defined by Lat. 38°37.483' N, Long. 76°30.500' W; then running approximately 325° True to a point defined by Lat. 38°38.300' N, Long. 76°31.217' W; then running approximately 356° True to the point of beginning.*

[(3)] (2) Dorchester and Wicomico Counties.

(a) Dorchester County. All of the waters of the State that lie contiguous to Dorchester County enclosed by a line beginning at a point on the Dorchester-Somerset County line southwest of Holland Straits, defined by Lat. 38°3.666' N, Long. 76°5.635' W; then running 351° True to a point defined by Lat. 38°9.181' N, Long. 76°6.720' W; then running 261° True to a point on the Dorchester-Saint Mary's county line, defined by Lat. 38°8.325' N, Long. 76°13.931' W; then running 338° True to a point on the Dorchester-Saint Mary's county line, defined by Lat. 38°17.967' N, Long. 76°18.967' W; then running 351° True to a point on the Dorchester-Calvert county line, defined by Lat. 38°23.183' N, Long. 76°19.967' W; then running 328° True to a point on the Dorchester-Calvert county line, defined by Lat. 38°30.000' N, Long. 76°25.483' W; then running 353° True to a point on the Dorchester-Calvert county line, defined by Lat. 38°30.032' N, Long. 76°25.488' W; then running 88° True to a point at the south end of James' Island, defined by Lat. 38°30.177' N, Long. 76°20.302' W; then running 167° True to a point at the entrance of Oyster Creek, defined by Lat. 38°29.215' N, Long. 76°20.022' W; then running southerly along the shore to a point at the north entrance of Punch Island Creek, defined by Lat. 38°25.355' N, Long. 76°17.257' W; then running 161° True to a point at the south entrance of Punch Island Creek, defined by Lat.

38°25.159' N, Long. 76°17.171' W; then running southerly along the shore to a point at the south end of Meekins Neck, defined by Lat. 38°22.039' N, Long. 76°15.771' W; then running 181° True to a point at the north end of N Barren Island, defined by Lat. 38°20.634' N, Long. 76°15.792' W; then running southerly along the shore True to a point at the south end of N Barren Island, defined by Lat. 38°20.014' N, Long. 76°15.643' W; then running 94° True to a point at the north end of S. Barren Island, defined by Lat. 38°20.001' N, Long. 76°15.425' W; then running southerly along the shore to a point at the south end of S. Barren Island, defined by Lat. 38°19.478' N, Long. 76°15.399' W; then running 124° True to a point on the shore at Pons Point defined by Lat. 38°18.425' N, Long. 76°13.394' W; then running southeasterly along the shore to a point at the north end of Narrows Ferry Bridge, defined by Lat. 38°17.917' N, Long. 76°12.389' W; then running 155° True to a point at the south end of Narrows Ferry Bridge, defined by Lat. 38°17.676' N, Long. 76°12.250' W; then running southerly along the shore to a point on the shore at Richland Point defined by Lat. 38°14.845' N, Long. 76°10.330' W; then running 132° True to a point on the shore at Cow Point defined by Lat. 38°14.553' N, Long. 76°9.922' W; then running 126° True to a point on the shore at Fishing Point defined by Lat. 38°14.065' N, Long. 76°9.065' W; then running easterly along the shore to a point at the easterly tip of Lower Hoopers Island, defined by Lat. 38°14.339' N, Long. 76°7.550' W; then running 120° True to a point defined by [Lat. 38°13.925' N, Long. 76°6.634' W] Lat. 38°13.930' N, Long. 76°6.660' W; then running [152°] 150° True to a point defined by [Lat. 38°13.230' N, Long. 76°6.170' W] Lat. 38°13.203' N, Long. 76°6.122' W; then running [163°] 165° True to a point near a Navy maintained tower, defined by [Lat. 38°11.683' N, Long. 76°5.587' W] Lat. 38°11.693' N, Long. 76°5.593' W; then running [120°] 121° True to a point [on the shore at Okahanikan Point] defined by [Lat. 38°11.536' N, Long. 76°5.258' W] Lat. 38°11.601' N, Long. 76°5.397' W; then running [184°] 182° True to a point [on the shore at the north end of Adams Island,] defined by [Lat. 38°9.084' N, Long. 76°5.482' W] Lat. 38°10.307' N, Long. 76°5.454' W; then running 181° True to a point defined by Lat. 38°9.084' N, Long. 76°5.482' W; then running 179° True to a point defined by Lat. 38°9.143' N, Long. 76°5.471' W; then running [178°] 177° True to a point on the shore at the north end of Holland Island, defined by Lat. 38°7.351' N, Long. 76°5.419' W; then running [179° True] southerly to a point on the shore at the south end of Holland Island, defined by Lat. 38°6.903' N, Long. 76°5.409' W; then running 132° True to a point at the intersection of the contiguous waters line across Holland and Kedges Straits and the Dorchester-Somerset County line, defined by Lat. 38°5.705' N, Long. 76°3.740' W; then running 201° True to a point on the Dorchester-Somerset County line, defined by Lat. 38°3.690' N, Long. 76°4.708' W; then running 268° True to the point of beginning.

(b) Dorchester County and Honga River Area. The power dredge zone consists of the waters of the State that lie within Dorchester County beginning at a point [at or near the shore of Lower Hooper Island, defined by Lat. 38°14'20.3" N. and Long. 76°07'33.0" W.; then running northwesterly along the shore of Lower Hooper Island to a point at or near the shore of Lower Hooper Island, defined by Lat. 38°14'55.9" N. and Long. 76°09'11.5" W.; then running approximately 276° True to a point at or near the shore of Middle Hooper Island, defined by Lat. 38°14'56.4" N. and Long. 76°09'16.7" W.; then running northerly along the shore of Middle Hooper Island to a point at or near the shore at the south end of Narrows Ferry Bridge, defined by Lat. 38°17'40.5" N. and Long. 76°12'15.0" W.; then running approximately 335° True to a point at or near the shore at the north end of Narrows Ferry Bridge, defined by Lat. 38°17'55.0" N. and Long. 76°12'23.4" W.; then running northerly along the shore of Upper Hooper Island to a point at or near corner 5 of Natural Oyster Bar 23-1, defined by Lat. 38°20'53.1" N.

and Long. 76°13'28.9" W.; then running approximately 332° True to a point at or near corner 6 of Natural Oyster Bar 23-1, defined by Lat. 38°21'5.7" N. and Long. 76°13'37.5" W.; then running northerly along the shore of Meekins Neck to a point at or near corner 7 of Natural Oyster Bar 23-1, defined by Lat. 38°21'23.7" N. and Long. 76°13'42.7" W.; running approximately 346° True to a point at or near corner 8 of Natural Oyster Bar 23-1, defined by Lat. 38°22'0.5" N. and Long. 76°13'54.7" W.; then running approximately 100° True to a point at or near corner 9 of Natural Oyster Bar 23-1, defined by Lat. 38°21'53.4" N. and Long. 76°13'2.7" W.; then running easterly along the shore to a point at or near corner 10 of Natural Oyster Bar 23-1, defined by Lat. 38°22'4.7" N. and Long. 76°12'24.1" W.; then running approximately 76° True to a point at or near corner 11 of Natural Oyster Bar 23-1, defined by Lat. 38°22'8.9" N. and Long. 76°12'2.3" W.; then running southerly along the shore of Kirwan Neck to a point at or near corner 12 of Natural Oyster Bar 23-1, defined by Lat. 38°21'45.3" N. and Long. 76°11'44.5" W.; then running approximately 134° True to a point at or near corner 13 of Natural Oyster Bar 23-1, defined by Lat. 38°20'41.4" N. and Long. 76°10'19.9" W.; then running southerly along the shore of Kirwan Neck to a point at or near corner 14 of Natural Oyster Bar 23-1, defined by Lat. 38°20'14.0" N. and Long. 76°10'21.7" W.; then running approximately 231° True to a point at or near corner 1 of Natural Oyster Bar 23-1, defined by Lat. 38°20'2.7" N. and Long. 76°10'39.4" W.; then running southwesterly along the north shore of Wroten Island to a point at or near the south tip of Wroten Island, defined by Lat. 38°18'58.1" N. and Long. 76°11'38.8" W.; then running easterly along the southside of Wroten Island to a point at or near corner 4 of Natural Oyster Bar 23-5, defined by Lat. 38°19'28.5" N. and Long. 76°10'27.6" W.; then running approximately 90° True to a point at or near corner 5 of Natural Oyster Bar 23-5, defined by Lat. 38°19'28.5" N. and Long. 76°10'23.9" W.; then running southerly along the shore of Parks Neck, Lakes Cove, and Asquith Island to a point at or near corner 7 of Natural Oyster Bar 23-10, defined by Lat. 38°16'17.6" N. and Long. 76°08'53.7" W.; then running easterly and southerly along the shore of Asquith Island, Fox Creek, Duck Point Cove, and Jimson Weed Marsh to a point at or near corner 1 of Natural Oyster Bar 23-9, defined by Lat. 38°15'46.2" N. and Long. 76°06'26.4" W.; then running approximately 214° True to a point at or near the intersection of the existing Hand Tong Only and Dredge lines, defined by Lat. 38°14'58.4" N. and Long. 76°07'8.0" W.; then running approximately 125° True to a point at or near Honga River Channel Bell Buoy 1A, defined by Lat. 38°14'50.7" N. and Long. 76°06'53.8" W.; then running approximately 169° True to a point at or near Honga River Light 1, defined by Lat. 38°13'55.5" N. and Long. 76°06'38.0" W.; then running approximately 300° True to the point of beginning at or near the shore of Lower Hooper Island, defined by Lat. 38°14'20.3" N. and Long. 76°07'33.0" W.] *defined by Lat. 38°14.603' N, Long. 76°07.618' W; then running 297° True to a point at or near the shore of Lower Hooper Island, defined by Lat. 38°14.674' N. and Long. 76°07.795' W.; then running northwesterly along the shore of Lower Hooper Island to a point at or near the shore of Lower Hooper Island, defined by Lat. 38°14.907' N. and Long. 76°09.172' W.; then running approximately 264° True to a point at or near the shore of Middle Hooper Island, defined by Lat. 38°14.899' N. and Long. 76°09.284' W.; then running northerly along the shore of Middle Hooper Island to a point at or near the shore at the south end of Narrows Ferry Bridge, defined by Lat. 38°17.675' N. and Long. 76°12.250' W.; then running approximately 335° True to a point at or near the shore at the north end of Narrows Ferry Bridge, defined by Lat. 38°17.917' N. and Long. 76°12.390' W.; then running northerly along the shore of Upper Hooper Island to a point at or near corner 5 of Natural Oyster Bar 23-1, defined by Lat. 38°20.885' N. and Long. 76°13.482' W.;*

then running approximately 332° True to a point at or near corner 6 of Natural Oyster Bar 23-1, defined by Lat. 38°21.095' N. and Long. 76°13.625' W.; then running northerly along the shore of Meekins Neck to a point at or near corner 7 of Natural Oyster Bar 23-1, defined by Lat. 38°21.395' N. and Long. 76°13.712' W.; running approximately 346° True to a point at or near corner 8 of Natural Oyster Bar 23-1, defined by Lat. 38°22.008' N. and Long. 76°13.912' W.; then running approximately 100° True to a point at or near corner 9 of Natural Oyster Bar 23-1, defined by Lat. 38°21.890' N. and Long. 76°13.045' W.; then running easterly along the shore to a point at or near corner 10 of Natural Oyster Bar 23-1, defined by Lat. 38°22.078' N. and Long. 76°12.402' W.; then running approximately 76° True to a point at or near corner 11 of Natural Oyster Bar 23-1, defined by Lat. 38°22.148' N, Long. 76°12.038' W; then running southerly along the shore of Kirwan Neck to a point at or near corner 12 of Natural Oyster Bar 23-1, defined by Lat. 38°21.755' N, Long. 76°11.742' W; then running approximately 134° True to a point at or near corner 13 of Natural Oyster Bar 23-1, defined by Lat. 38°20.690' N, Long. 76°10.332' W; then running southerly along the shore of Kirwan Neck to a point at or near corner 14 of Natural Oyster Bar 23-1, defined by Lat. 38°20.233' N, Long. 76°10.362' W; then running approximately 231° True to a point at or near corner 1 of Natural Oyster Bar 23-1, defined by Lat. 38°20.045' N, Long. 76°10.657' W; then running southwesterly along the north shore of Wroten Island to a point at or near the south tip of Wroten Island, defined by Lat. 38°18.968' N, Long. 76°11.647' W; then running easterly along the south side of Wroten Island to a point at or near corner 4 of Natural Oyster Bar 23-5, defined by Lat. 38°19.475' N, Long. 76°10.460' W; then running approximately 90° True to a point at or near corner 5 of Natural Oyster Bar 23-5, defined by Lat. 38°19.475' N, Long. 76°10.398' W.; then running southerly along the shore of Parks Neck, Lakes Cove, and Asquith Island to a point at or near corner 7 of Natural Oyster Bar 23-10, defined by Lat. 38°16.293' N, Long. 76°08.895' W; then running easterly and southerly along the shore of Asquith Island, Fox Creek, Duck Point Cove, and Jimson Weed Marsh to a point at or near corner 1 of Natural Oyster Bar 23-9, defined by Lat. 38°15.770' N, Long. 76°06.440' W; then running southerly along the shore of Crab Point to a point defined by Lat. 38°15.250' N, Long. 76°06.052' W; then running 242° True to the point of beginning.

(c) Fishing Bay Area. The power dredge zone consists of the waters of the State that lie within Dorchester and Wicomico Counties beginning at a point [at or near G Pile on the Dorchester-Somerset County Line, defined by Lat. 38°08'50.7" N. and Long. 76°01'52.4" W.; then running approximately 17° True to a point at or near the shore of Bloodsworth Island at Great Cove Point defined by Lat. 38°10'18.6" N. and Long. 76°01'18.9" W.; then running northerly along the shore of Bloodsworth Island to a point at or near the south entrance of Piney Island Cove, defined by Lat. 38°10'58.7" N. and Long. 76°01'34.0" W.; then running approximately 322° True to a point at or near the north entrance of Piney Island Cove, defined by Lat. 38°11'34.4" N. and Long. 76°02'9.8" W.; then running northwesterly along the shore of Bloodsworth Island to a point at or near Tigs Point, defined by Lat. 38°12'23.6" N. and Long. 76°03'41.3" W.; then running approximately 69° True along the existing Dredge Line to a point at or near Bishops Head Point, defined by Lat. 38°12'55.5" N. and Long. 76°01'56.3" W.; then running northerly along the shore of Fishing Bay to a point at or near corner 2 of Natural Oyster Bar 28-2, defined by Lat. 38°14'35.8" N. and Long. 76°02'45.3" W.; then running approximately 1° True to a point at or near corner 3 of Natural Oyster Bar 28-2, defined by Lat. 38°14'56.8" N. and Long. 76°02'44.9" W.; then running northerly along the shore of Fishing Bay to a point at or near corner 3 of Natural Oyster Bar 24-10, defined by Lat. 38°16'12.6" N. and Long. 76°01'57.4" W.; then running approximately 14° True to a point at or

near corner 4 of Natural Oyster Bar 24-10, defined by Lat. 38°16'39.8" N. and Long. 76°01'48.8" W.; then running northerly along the shore of Little Creek Marsh to a point at or near corner 3 of Natural Oyster Bar 24-7, defined by Lat. 38°18'11.5" N. and Long. 76°02'58.8" W.; then running approximately 0° True to a point at or near corner 4 of Natural Oyster Bar 24-7, defined by Lat. 38°18'32.4" N. and Long. 76°02'58.9" W.; then running northeasterly along the shore of Cedar Creek Marsh to a point at or near corner 5 of Natural Oyster Bar 24-7, defined by Lat. 38°18'51.5" N. and Long. 76°02'46.4" W.; then running approximately 4° True to a point at or near corner 6 of Natural Oyster Bar 24-7, defined by Lat. 38°18'58.6" N. and Long. 76°02'45.7" W.; then running northeasterly along the shore of Cedar Creek Marsh to a point at or near corner 7 of Natural Oyster Bar 24-7, defined by Lat. 38°19'16.6" N. and Long. 76°02'33.3" W.; then running approximately 56° True to a point at or near corner 8 of Natural Oyster Bar 24-7, defined by Lat. 38°19'18.2" N. and Long. 76°02'30.2" W.; then running easterly along the shore of Cedar Creek Marsh to a point at or near corner 9 of Natural Oyster Bar 24-7, defined by Lat. 38°19'28.8" N. and Long. 76°01'53.3" W.; then running approximately 182° True to a point at or near corner 10 of Natural Oyster Bar 24-7, defined by Lat. 38°19'27.1" N. and Long. 76°01'53.3" W.; then running approximately 144° True to a point at or near corner 5 of Natural Oyster Bar 24-6, defined by Lat. 38°18'33.4" N. and Long. 76°01'3.9" W.; then running southeasterly along the east shore of Fishing Bay to a point at or near the southwest end of Clay Island, defined by Lat. 38°13'58.2" N. and Long. 75°58'21.1" W.; then running northeasterly along the shore of Clay Island to a point at or near Sandy Point, defined by Lat. 38°14'48.2" N. and Long. 75°56'23.1" W.; then running approximately 96° True to a point at or near the shore north of Jones Creek, defined by Lat. 38°14'38.1" N. and Long. 75°54'21.1" W.; then running southeasterly along the shore of Stump Point Marsh to a point at or near Mollie Point, defined by Lat. 38°13'44.7" N. and Long. 75°53'1.7" W.; then running approximately 91° True to point at or near the Wicomico-Somerset County Line, defined by Lat. 38°13'44.2" N. and Long. 75°52'14.3" W.; then running approximately 183° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12'53.3" N. and Long. 75°52'18.1" W.; then running approximately 210° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12'50.1" N. and Long. 75°52'20.5" W.; then running approximately 255° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12'44.2" N. and Long. 75°52'48.9" W.; then running approximately 283° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12'54.8" N. and Long. 75°53'48.6" W.; then running approximately 251° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12'19.0" N. and Long. 75°55'58.3" W.; then running approximately 274° True to a point at or near the intersection of the Wicomico-Somerset County Line and the Dorchester County Line, defined by Lat. 38°12'24.2" N. and Long. 75°57'28.0" W.; then running approximately 230° True to a point at or near the Dorchester-Somerset County Line, defined by Lat. 38°11'50.2" N. and Long. 75°58'19.5" W.; then running approximately 230° True to a point at or near buoy "C" on an existing crab line south of Sharkfin Shoal Lighthouse, defined by Lat. 38°11'10.0" N. and Long. 75°59'20.3" W.; then running approximately 186° True to a point at or near buoy "A" on the intersection of an existing crab line and the Dorchester-Somerset County Line, defined by Lat. 38°09'47.5" N. and Long. 75°59'31.0" W.; then running approximately 243° True to the point of beginning at or near G Pile on the Dorchester-Somerset County Line, defined by Lat. 38°08'50.7" N. and Long. 76°01'52.4" W.] near Lower Island Point at the turn in the Dorchester-Somerset County Line, defined by

Lat. 38°08.845' N. and Long. 76°01.873' W.; then running approximately 17° True to a point at or near the shore of Bloodsworth Island at Great Cove Point defined by Lat. 38°10.310' N. and Long. 76°01.315' W.; then running northerly along the shore of Bloodsworth Island to a point at or near the south entrance of Piney Island Cove, defined by Lat. 38°10.978' N. and Long. 76°01.567' W.; then running approximately 322° True to a point at or near the north entrance of Piney Island Cove, defined by Lat. 38°11.573' N. and Long. 76°02.163' W.; then running northwesterly along the shore of Bloodsworth Island to a point at or near Tigs Point, defined by Lat. 38°12.393' N. and Long. 76°03.688' W.; then running approximately 64° True to a point at or near Bishops Head Point, defined by Lat. 38°12.918' N. and Long. 76°01.963' W.; then running northerly along the shore of Fishing Bay to a point at or near corner 2 of Natural Oyster Bar 28-2, defined by Lat. 38°14.597' N. and Long. 76°02.755' W.; then running approximately 1° True to a point at or near corner 3 of Natural Oyster Bar 28-2, defined by Lat. 38°14.947' N. and Long. 76°02.748' W.; then running northerly along the shore of Fishing Bay to a point at or near corner 3 of Natural Oyster Bar 24-10, defined by Lat. 38°16.017' N. and Long. 76°01.957' W.; then running approximately 14° True to a point at or near corner 4 of Natural Oyster Bar 24-10, defined by Lat. 38°16.633' N. and Long. 76°01.813' W.; then running northerly along the shore of Little Creek Marsh to a point at or near corner 3 of Natural Oyster Bar 24-7, defined by Lat. 38°18.025' N. and Long. 76°02.980' W.; then running approximately 0° True to a point at or near corner 4 of Natural Oyster Bar 24-7, defined by Lat. 38°18.540' N. and Long. 76°02.982' W.; then running northeasterly along the shore of Cedar Creek Marsh to a point at or near corner 5 of Natural Oyster Bar 24-7, defined by Lat. 38°18.858' N. and Long. 76°02.773' W.; then running approximately 4° True to a point at or near corner 6 of Natural Oyster Bar 24-7, defined by Lat. 38°18.977' N. and Long. 76°02.762' W.; then running northeasterly along the shore of Cedar Creek Marsh to a point at or near corner 7 of Natural Oyster Bar 24-7, defined by Lat. 38°19.267' N. and Long. 76°02.555' W.; then running approximately 56° True to a point at or near corner 8 of Natural Oyster Bar 24-7, defined by Lat. 38°19.303' N. and Long. 76°02.503' W.; then running easterly along the shore of Cedar Creek Marsh to a point at or near corner 9 of Natural Oyster Bar 24-7, defined by Lat. 38°19.480' N. and Long. 76°01.888' W.; then running approximately 182° True to a point at or near corner 10 of Natural Oyster Bar 24-7, defined by Lat. 38°19.452' N. and Long. 76°01.888' W.; then running approximately 144° True to a point at or near corner 5 of Natural Oyster Bar 24-6, defined by Lat. 38°18.557' N. and Long. 76°01.065' W.; then running southeasterly along the east shore of Fishing Bay to a point at or near the southwest end of Clay Island, defined by Lat. 38°13.970' N. and Long. 75°58.352' W.; then running northeasterly along the shore of Clay Island to a point at or near Sandy Point, defined by Lat. 38°14.803' N. and Long. 75°56.385' W.; then running approximately 96° True to a point at or near the shore north of Jones Creek, defined by Lat. 38°14.635' N. and Long. 75°54.352' W.; then running southeasterly along the shore of Stump Point Marsh to a point at or near Mollie Point, defined by Lat. 38°13.745' N. and Long. 75°53.028' W.; then running approximately 91° True to point at or near the Wicomico-Somerset County Line, defined by Lat. 38°13.737' N. and Long. 75°52.238' W.; then running approximately 183° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12.888' N. and Long. 75°52.302' W.; then running approximately 210° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12.835' N. and Long. 75°52.342' W.; then running approximately 255° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12.737' N. and Long. 75°52.815' W.; then running approximately 283° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12.913' N. and Long.

75°53.810' W.; then running approximately 251° True to a point at or near the Wicomico-Somerset County Line, defined by Lat. 38°12.317' N. and Long. 75°55.972' W.; then running approximately 274° True to a point at or near the intersection of the Wicomico-Somerset County Line and the Dorchester County Line, defined by Lat. 38°12.403' N. and Long. 75°57.467' W.; then running approximately 230° True to a point at or near the Dorchester – Somerset County Line, defined by Lat. 38°11.837' N. and Long. 75°58.325' W.; then running approximately 230° True to a point at or near buoy “C” on an existing crab line south of Sharkfin Shoal Lighthouse, defined by Lat. 38°11.167' N. and Long. 75°59.338' W; then running approximately 186° True to a point at or near buoy “A” on the intersection of an existing crab line and the Dorchester-Somerset County Line, defined by Lat. 38°09.792' N. and Long. 75°59.517' W.; then running approximately 243° True to the point of beginning.

[(4)] (3) St. Mary’s County and St. Mary’s River.

(a) St. Mary’s County. All of the waters of the State that lie contiguous to Saint Mary’s County enclosed by a line beginning at a point on the shore at the north side of the north jetty at Smith Point defined by Lat. 37°53.383' N, Long. 76°14.217' W; then running 335° True to a point on the shore at Point Lookout, defined by Lat. 38°2.250' N, Long. 76°19.332' W; then running 107° True to a point defined by Lat. 38°2.172' N, Long. 76°19.016' W; then running 90° True to a point defined by Lat. 38°2.169' N, Long. 76°18.358' W; then running 22° True to a point defined by Lat. 38°3.009' N, Long. 76°17.932' W; then running 271° True to a point on the shore, defined by Lat. 38°3.020' N, Long. 76°19.268' W; then running northerly along the shore, excluding all creeks and coves less than 300 feet in width to a point on the shore south of Cedar Point defined by Lat. 38°15.005' N, Long. 76°23.805' W; then running 90° True to a point defined by Lat. 38°15.007' N, Long. 76°22.456' W; then running 44° True to a point defined by Lat. 38°15.723' N, Long. 76°21.578' W; then running 353° True to a point defined by Lat. 38°17.936' N, Long. 76°21.913' W; then running 269° True to a point on the shore at Cedar Point defined by Lat. 38°17.932' N, Long. 76°22.384' W; then running 76° True to a point at the intersection of the Saint Mary’s-Calvert-Dorchester county line, defined by Lat. 38°18.602' N, Long. 76°19.088' W; then running 171° True to a point Saint Mary’s-Dorchester county line, defined by Lat. 38°17.967' N, Long. 76°18.967' W; then running 158° True to a point Saint Mary’s-Dorchester county line, defined by Lat. 38°4.583' N, Long. 76°11.983' W; then running 189° True to a point Saint Mary’s-Somerset county line at the south jetty at Smith Point defined by Lat. 37°53.400' N, Long. 76°14.167' W; then running 247° True to the point of beginning; *except the waters of Point Lookout Sanctuary which is described as: All of the waters of the area enclosed by a line beginning at a point defined by Lat. 38°2.169' N, Long. 76°18.358' W; then running 270° True to a point defined by Lat. 38°2.172' N, Long. 76°19.016' W; then running 358° True to a point defined by Lat. 38°3.018' N, Long. 76°19.056' W; then running 91° True to a point defined by Lat. 38°3.009' N, Long. 76°17.932' W; then running 202° True to the point of beginning.*

(b) St. Mary’s River. All of the waters of the State that lie in Saint Mary’s County, enclosed by a line beginning at a point Jurisdictional Marker PRM2A, defined by Lat. 38°6.360' N, Long. 76°25.301' W; then running 272° True to a point Jurisdictional Marker PRM2B, defined by Lat. 38°6.426' N, Long. 76°27.899' W; then running 272° True to a point on the shore at St. George’s Island, defined by Lat. 38°6.427' N, Long. 76°27.937' W; then running northeasterly along the shore to a point at the northeast end of a jetty, defined by Lat. 38°6.637' N, Long. 76°27.750' W; then running 269° True to a point on the shore of St. George’s Island, defined by Lat. 38°6.635' N, Long. 76°27.966' W; then running northwesterly along the shore to a point on the shore at Ball Point defined by Lat.

38°7.252' N, Long. 76°28.377' W; then running 30° True to a point on the shore at Cherryfield Point defined by Lat. 38°7.742' N, Long. 76°28.022' W; then running 111° True to a point at Natural Oyster Bar corner 27-16-2, defined by Lat. 38°7.685' N, Long. 76°27.832' W; then running 39° True to a point defined by Lat. 38°7.971' N, Long. 76°27.534' W; then running 353° True to a point at Natural Oyster Bar corner 27-16-4, defined by Lat. 38°8.371' N, Long. 76°27.594' W; then running westerly along the shore to a point on the shore at [the south end of the MDE conditional line at] Edmund Point defined by Lat. 38°8.370' N, Long. 76°27.677' W; then running [330° True] northwesterly along the shore to a point defined by Lat. 38°8.934' N, Long. 76°28.084' W; then running 335° True to [a point at the north end of the MDE restricted line at] Josh Point defined by Lat. 38°9.178' N, Long. 76°28.227' W; then running northeasterly along the shore to a point on the shore south of Pagan Point defined by Lat. 38°11.279' N, Long. 76°26.639' W; then running 89° True to a point on the shore at Church Point defined by Lat. 38°11.286' N, Long. 76°26.263' W; then running southerly along the shore to a point on the shore at Rosecroft Point defined by Lat. 38°9.582' N, Long. 76°26.256' W; then running 141° True to a point on the south side of Saint Ingoes Creek, defined by Lat. 38°9.312' N, Long. 76°25.981' W; then running southerly along the shore to a point on the shore at Kitts Point defined by Lat. 38°6.365' N, Long. 76°25.280' W; then running 252° True to the point of beginning.

[(5)] (4) Somerset County.

(a) Kedges Straits. The power dredge zone consists of the waters of the State that lie within Somerset County beginning at a point at or near [the shore of Smith Island at Fog Point, defined by Lat. 038°02'2.4"N., Long. 076°02'29.7" W., then running approximately 57° True to a point at or near Solomons Lump Lighthouse, defined by Lat. 038°02'53.0" N., Long. 076°00'53.0" W., then running approximately 3° True to a point at or near Sheepshead Point, defined by Lat. 038°04'17.0" N., Long. 076°00'47.3" W., then running approximately 285° True to a point at or near the westerly entrance of Sheepshead Bay, defined by Lat. 038°04'32.0" N., Long. 076°01'58.5" W., then running approximately 311° True along the west side of South Marsh Island to a point at or near Sedgy Point defined by Lat. 038°05'30.5" N., Long. 076°03'23.8" W. then running approximately 305° True to a point at or near Pry Island defined by Lat. 038°05'40.5" N., Long. 076°03'42.0" W., then running approximately 203° to a point at or near the intersection of the Somerset-Dorchester county line and the line demarcating the waters contiguous to Somerset County depicted on Chart 32 of the Oyster Survey of 1906—1912 and amendments, defined by Lat. 038°04'46.8" N., Long. 076°04'10.8" W., then running approximately 150° True to the point of beginning at or near the shore of Smith Island at Fog Point, defined by Lat. 038°02'2.4" N., Long. 076°02'29.7" W.] Fog Point, defined by Lat. 38°02.193' N., Long. 76°02.588' W., then running approximately 63° True to a point at or near Solomons Lump Lighthouse, defined by Lat. 38°02.883' N, Long. 76°00.883' W, then running approximately 3° True to a point at or near Sheepshead Point, defined by Lat. 38°04.283' N, Long. 76°00.788 W; then running approximately 285° True to a point at or near the westerly entrance of Sheepshead Bay, defined by Lat. 38°04.533' N., Long. 76°01.975 W., then running approximately 311° True along the west side of South Marsh Island to a point at or near Sedgy Point defined by Lat. 38°05.484 N., Long. 76°03.352 W; then running approximately 305° True to a point at or near Pry Island defined by Lat. 38°05.675 N., Long. 76°03.700' W., then running approximately 203° to a point at or near the intersection of the Somerset-Dorchester county line and the line demarcating the waters contiguous to Somerset County depicted on Chart 32 of the Oyster Survey of 1906—1912 and amendments,

defined by Lat. 38°04.780' N., Long. 76°04.180' W., then running approximately 150° True to the point of beginning.

(b) Contiguous Waters. All of the waters of the State that lie contiguous to Somerset County, enclosed by a line beginning at a point at Maryland-Virginia Boundary defined by Lat. 37°53.193' N, Long. 76°14.198' W; then running 7° True to a point on the shore on the north side of the north jetty at Smith Point defined by Lat. 37°53.401' N, Long. 76°14.166' W; then running 9° True to a point on the Somerset-Dorchester-Saint Mary's county line, defined by Lat. 38°3.498' N, Long. 76°12.198' W; then running 88° True to a point on the Somerset-Dorchester county line, defined by Lat. 38°3.517' N, Long. 76°11.532' W; then running 162° True to a point defined by Lat. 37°59.798' N, Long. 76°9.965' W; then running 103° True to a point defined by Lat. 37°58.800' N, Long. 76°4.680' W; then running 351° True to a point on the Somerset-Dorchester county line, defined by Lat. 38°3.667' N, Long. 76°5.636' W; then running 88° True to a point on the Somerset-Dorchester County line, defined by Lat. 38°3.690' N, Long. 76°4.707' W; then running 21° True to a point on the intersection of the Somerset-Dorchester county line and the contiguous waters line, defined by Lat. 38°4.781' N, Long. 76°4.181' W; then running [154°] 161° True to a point on the shore at Fog Point defined by [Lat. 38°2.040' N, Long. 76°2.495' W] Lat. 38°1.984' N, Long. 76°2.496' W; then running southerly along the shore to a point on the shore at Channel Point defined by [Lat. 38°0.567' N, Long. 76°2.956' W] Lat. 38°0.585' N, Long. 76°2.952' W; then running [183°] 194° True to a point defined by Lat. 38°0.030' N, Long. 76°3.129' W; then running 175° True to [a point on the shore at Goose Point defined by Lat. 37°59.454' N, Long. 76°3.039' W; then running southerly along the shore to a point on the shore, at its intersection with] the Maryland-Virginia line, defined by Lat. 37°57.212' N, [Long. 76°2.819' W] Long. 76°2.836' W; then running 270° True to a point defined by Lat. 37°57.213' N, Long. 76°3.119' W; then running 245° True to the point of beginning.

(c) Great Rock. The power dredge zone consists of the waters of the State that lie within Somerset County beginning at a point [at or near the United States Coast Guard-maintained Buoy 8, defined by Lat. 037°57'55.7" N., Long. 075°55'47.6" W., then running approximately 103° True to a point at or near Janes Island Light, defined by Lat. 037°57'48.2" N., Long. 075°55'6.5" W., then running approximately 105° True to a point at or near the north end of Great Point, defined by Lat. 037°57'27.7" N., Long. 075°53'31.2" W., then running approximately 188° True to a point at or near the Maryland-Virginia state line, defined by Lat. 037°54'36.6" N., Long. 075°54'1.0" W., then running approximately 266° True to a point at or near the Maryland-Virginia state line, defined by Lat. 037°54'27.7" N., Long. 075°56'25.8" W., then running approximately 8° True to the point of beginning at or near the United States Coast Guard-maintained Buoy 8, defined by Lat. 037°57'55.7" N., Long. 075°55'47.6" W.] defined by Lat. 37°57.707' N., Long. 75°55.834' W., then running approximately 81° True to a point at or near Janes Island Light, defined by Lat. 37°57.803' N., Long. 75°55.108' W., then running approximately 105° True to a point defined by Lat. 37°57.462' N., Long. 75°53.520' W., then running approximately 188° True to a point at or near the Maryland-Virginia state line, defined by Lat. 37°54.610' N., Long. 75°54.016' W., then running approximately 266° True to a point at or near the Maryland-Virginia state line, defined by Lat. 37°54.462' N., Long. 75°56.430' W., then running approximately 8° True to the point of beginning.

(d) Smith Island. The power dredge zone consists of the waters of the State that lie within Somerset County beginning at a point [at or near the United States Coast Guard-maintained Buoy RG at the entrance of the Manokin River, defined by Lat. 038°02'14.6" N., Long. 075°55'26.3" W., then running approximately 177° True to a point at or near Janes Island Light, defined by Lat. 037°57'48.2" N., Long. 075°55'6.5" W., then running approximately 260° True to

a point at or near the State-maintained front range marker at the corner of the Maryland-Virginia state line at Horse Hammock, defined by Lat. 037°57'12.2" N., Long. 075°59'36.7" W., then running approximately 21° True to a point at or near Terrapin Sands Point, defined by Lat. 038°00'13.8" N., Long. 075°58'10.7" W., then running approximately 318° True to a point at or near the east end of Fishing Point, defined by Lat. 038°02'12.4" N., Long. 076°00'26.6" W., then running approximately 39° True to a point at or near the United States Coast Guard-maintained Buoy 5 in Kedges Strait defined by Lat. 038°02'59.5" N., Long. 075°59'38.2" W., then running approximately 103° True to the point of beginning at or near the United States Coast Guard-maintained Buoy RG at the entrance of the Manokin River, defined by Lat. 038°02'14.6" N., Long. 075°55'26.3" W.] defined by Lat. 38°02.243' N., Long. 75°55.438' W., then running approximately 177° True to a point at or near Janes Island Light, defined by Lat. 37°57.803' N., Long. 75°55.108' W., then running approximately 260° True to a point near the corner of the Maryland-Virginia state line at Horse Hammock, defined by Lat. 37°57.221' N., Long. 75°59.478' W., then running approximately 19° True to a point near Terrapin Sands Point, defined by Lat. 38°00.247' N., Long. 75°58.181' W., then running approximately 331° True to a point defined by Lat. 38°01.424' N., Long. 75°58.993' W., then running approximately 307° True to a point defined by Lat. 38°02.211' N., Long. 76°00.305' W., then running approximately 34° True to a point defined by Lat. 38°02.992' N., Long. 75°59.637' W., then running approximately 103° True to the point of beginning.

(e) (text unchanged)

(f) Pocomoke Sound. The power dredge zone consists of the waters of the State that lie within Somerset County beginning at a point at or near Maryland-Virginia Line Corner A in Pocomoke Sound, defined by [Lat. 37°54'43.9" N. and Long. 75°48'3.8" W.; then running approximately 330° True to a point at or near the shore on Ware Point, defined by Lat. 37°56'20.7" N. and Long. 75°49'14.8" W.; then running along the north shore of Pocomoke Sound, including Ape Hole Creek and East Creek then running along the shore to a point at or near Tulls Point at the west end of an existing Maryland Department of the Environment conditional line, defined by Lat. 37°57'46.5" N. and Long. 75°44'14.4" W., then running approximately 83° True to a point, defined by Lat. 37°57'51.9" N. and Long. 75°43'16.6" W.; then running approximately 85° True to a point, defined by Lat. 37°57'55.4" N. and Long. 75°42'26.4" W.; then running approximately 84° True to a point at or near the shore near the Handy Lodge, defined by Lat. 37°58'0.2" N. and Long. 75°41'25.2" W.; then running along the north shore of Pocomoke Sound to a point at or near the shore on the northeasterly entrance to Fair Island Channel, defined by Lat. 37°57'47.5" N. and Long. 75°39'19.7" W.; then running approximately 60° True to a point at or near Maryland-Virginia Line Corner N, defined by Lat. 37°57'59.1" N. and Long. 75°38'54.9" W.; then running approximately 179° True to a point at or near Maryland-Virginia Line Corner M, defined by Lat. 37°56'48.1" N. and Long. 75°38'53.6" W.; then running approximately 256° True to a point at or near Maryland-Virginia Line Corner L, defined by Lat. 37°56'42.6" N. and Long. 75°39'22.2" W.; then running approximately 298° True to a point at or near Maryland-Virginia Line Corner K, defined by Lat. 37°56'59.6" N. and Long. 75°40'2.6" W.; then running approximately 286° True to a point at or near Maryland-Virginia Line Corner J, defined by Lat. 37°57'19.1" N. and Long. 75°41'30.1" W.; then running approximately 266° True to a point or near Maryland-Virginia Line Corner H, defined by Lat. 37°57'16.3" N. and Long. 75°42'17.2" W.; then running approximately 254° True to a point at or near Maryland-Virginia Line Corner D, defined by Lat. 37°56'28.4" N. and Long. 75°45'42.3" W.; then running approximately 227° True to the point of beginning at or near Maryland-Virginia Line Corner Ain

Pocomoke Sound, defined by Lat. 37°54'43.9" N. and Long. 75°48'3.8" W.] Lat. 37°54.732' N. and Long. 75°48.063' W.; then running approximately 330° True to a point at or near the shore on Ware Point, defined by Lat. 37°56.345' N, Long. 75°49.247' W.; then running along the north shore of Pocomoke Sound, including Ape Hole Creek and East Creek then running along the shore to a point at or near Tulls Point at the west end of an existing Maryland Department of the Environment conditional line, defined by Lat. 37°57.775' N. and Long. 75°44.240' W., then running approximately 83° True to a point, defined by Lat. 37°57.865' N. and Long. 75°43.277' W.; then running approximately 85° True to a point, defined by Lat. 37°57.923' N. and Long. 75°42.440' W.; then running approximately 84° True to a point at or near the shore near the Handy Lodge, defined by Lat. 37°58.003' N. and Long. 75°41.420' W.; then running along the north shore of Pocomoke Sound to a point at or near the shore on the northeasterly entrance to Fair Island Channel, defined by Lat. 37°57.792' N. and Long. 75°39.328' W.; then running approximately 60° True to a point at or near Maryland-Virginia Line Corner N, defined by Lat. 37°57.985' N. and Long. 75°38.915' W.; then running approximately 179° True to a point at or near Maryland-Virginia Line Corner M, defined by Lat. 37°56.802' N. and Long. 75°38.893' W.; then running approximately 256° True to a point at or near Maryland-Virginia Line Corner L, defined by Lat. 37°56.710' N. and Long. 75°39.370' W.; then running approximately 298° True to a point at or near Maryland-Virginia Line Corner K, defined by Lat. 37°56.993' N. and Long. 75°40.043' W.; then running approximately 286° True to a point at or near Maryland-Virginia Line Corner J, defined by Lat. 37°57.318' N. and Long. 75°41.502' W.; then running approximately 266° True to a point at or near Maryland-Virginia Line Corner H, defined by Lat. 37°57.272' N. and Long. 75°42.287' W.; then running approximately 254° True to a point at or near Maryland-Virginia Line Corner D, defined by Lat. 37°56.473' N. and Long. 75°45.705' W.; then running approximately 227° True to the point of beginning.

[(6)] (5) Talbot County. All of the waters of the State that lie in Talbot County, enclosed by a line beginning at a point on the shore at Chlora Point defined by Lat. 38°38.225' N, Long. 76°8.818' W; then running 302° True to a point at Choptank River Lighthouse, defined by Lat. 38°39.344' N, Long. 76°11.069' W; then running 287° True to a point on the shore at Upper Bar Neck Point defined by Lat. 38°41.366' N, Long. 76°19.333' W; then running northwesterly along the shore to a point on the shore, defined by Lat. 38°42.240' N, Long. 76°19.998' W; then running 67° True to a point defined by Lat. 38°42.825' N, Long. 76°18.214' W; then running 193° True to a point defined by Lat. 38°42.667' N, Long. 76°18.262' W; then running 86° True to a point on the shore west of Nelson Point defined by Lat. 38°42.767' N, Long. 76°16.527' W; then running southeasterly along the shore to a point on the shore at Nelson Point defined by Lat. 38°42.549' N, Long. 76°16.281' W; then running 61° True to a point on the south side of Bridge Creek, defined by Lat. 38°43.440' N, Long. 76°14.196' W; then running southerly along the shore to a point on the shore at Holland Point defined by Lat. 38°41.879' N, Long. 76°13.611' W; then running 186° True to a point defined by Lat. 38°41.838' N, Long. 76°13.617' W; then running 92° True to a point on the shore at Lucy Point defined by Lat. 38°41.825' N, Long. 76°13.178' W; then running [150° True] southeasterly to a point on the shore of Ferry Neck, defined by Lat. 38°40.354' N, Long. 76°12.083' W; then running 144° True to a point on the shore at Benoni Point defined by [Lat. 38°40.247' N, Long. 76°11.982' W] Lat. 38°40.249' N, Long. 76°11.969' W; then running [97°] 96° True to a point on the shore at the north side of Boone Creek, defined by [Lat. 38°40.070' N, Long. 76°10.117' W] Lat. 38°40.090' N, Long. 76°10.138' W; then running [115°] 118° True to a point on the shore at the south side of Boone Creek, defined by Lat. 38°40.011' N, Long. 76°9.954' W; then running then running southeasterly along the shore to a point on the shore at the north side of Island Creek, defined by

[Lat. 38°39.696' N, Long. 76°9.694' W] Lat. 38°39.697' N, Long. 76°9.699' W; then running [133°] 120° True to a point on the shore at the south side of Island Creek, defined by [Lat. 38°39.410' N, Long. 76°9.298' W] Lat. 38°39.517' N, Long. 76°9.300' W; then running southeasterly along the shore to the point of beginning.

[B.] — [C.] (proposed for repeal)

[D.] C. Power Dredge Study Areas. An individual may catch oysters only by power dredge in the areas listed in [§D(1)—(3)] §C(1)—(3) of this regulation.

(1)—(3) (text unchanged)

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§4-215 and 4-11A-04, Annotated Code of Maryland

Notice of Proposed Action

[12-170-P-I]

The Secretary of Natural Resources proposes to amend Regulation .17 under **COMAR 08.02.04 Oysters**.

Statement of Purpose

The purpose of this action is to incorporate by reference “Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (June 2012)”. This document contains coordinates for all public shellfish fishery areas (PSFA) in the Chesapeake Bay and its tidal tributaries.

Coordinates for PSFAs 17, 22, 33, 102, 112, 118, 132, 157, and 164 have been corrected. The coordinates were incorrect and overlapped with sanctuary coordinates or crossed jurisdictional boundary lines that are currently in place. This action corrects those coordinates to align with the sanctuary and jurisdiction lines.

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 PSFA, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

Editor’s Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (June 2012) has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 39:2 Md. R. 104 (January 27, 2012), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.17 Public Shellfish Fishery Area.

A. [Public Shellfish Areas of the Chesapeake Bay and Its Tidal Tributaries (August 2011)] *Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (June 2012)* designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries and is hereby incorporated by reference.

B. (text unchanged)

JOHN R. GRIFFIN
Secretary of Natural Resources

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

Subtitle 02 FISHERIES SERVICE

08.02.10 Horseshoe Crabs

Authority: Natural Resources Article, §§4-206[,] and 4-215[, and 4-701], Annotated Code of Maryland

Notice of Proposed Action

[12-171-P]

The Secretary of Natural Resources proposes to amend Regulation **.01** under **COMAR 08.02.10 Horseshoe Crabs**.

Statement of Purpose

The purpose of this action is to allow clarification and some flexibility in Horseshoe Crab permits. The proposed action adds flexibility to the coastal permitted fisheries by opening a 14-day period during which licensees could seek to declare late.

Clarifying the regulations will make it easier for those involved in the fishery to understand the requirements. Specifically, the proposed action clarifies: how overages will be deducted from future quotas, the declaration period and requirements for a licensee to declare their intent to fish, the limit of two quotas that may be fished off the same vessel, and the reporting and penalties associated with failing to report. The proposed action establishes a cap of 10 horseshoe crab landing permits at the current number based on the criteria previously established to obtain a permit. The action also updates the public notice provision to include the reasons for making changes to the fishery by public notice. The proposed action also modifies the method of dispersing public notices by requiring public notices to be posted on the Fisheries Service’s website rather than in the newspaper. Social media (Twitter, Facebook, text messaging, etc.) will also be used. Stakeholder comments have indicated that the legal section of the newspapers is not an effective means for communicating fishing rule changes. In addition, newspaper notices are very expensive, and this change will allow the Department to use funds to promote other electronic means of disseminating the information.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. There may be a small economic benefit to the Department.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Public notices	(E-)	\$840/year
B. On other State agencies:	NONE	
C. On local governments:	NONE	

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

A. The average cost of printing a horseshoe crab notice in a major newspaper is approximately \$280 per day. The Department issues an average of three horseshoe crab notices per year. The Department would save that amount by printing the notice on its website. The Department will use the saved funds to promote other means of disseminating the information.

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 Horseshoe Crabs, Regulatory Staff, Department of Natural Resources, Fisheries Service B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.01 Horseshoe Crabs.

A. Quota.

(1) The annual total allowable landings of horseshoe crabs for the commercial fishery is 170,653 horseshoe crabs.

(2) Any annual overages in the fishery will be deducted from the total fishery allotment for the following year.

B. — C. (text unchanged)

D. Catch Limits.

[(1) A person may not catch or land more than 25 horseshoe crabs daily, except as follows:

(a) From June 8 through July 12, inclusive, the daily catch limit for this period for a permittee shall be 100 horseshoe crabs; and

(b) From July 13 through November 30, inclusive, the daily catch limit for this period for a permittee shall be based on the ratio of landings reported by the permittee in Maryland during 1996 to the total reported landings for 1996 as applied to the annual total allowable landings for the present year.

(2) A permittee may not catch or land more than the daily catch limit specified on the horseshoe crab landing permit issued by the Department.]

(1) A person that does not possess a valid Maryland horseshoe crab landing permit may not catch, possess, or land more than 25 horseshoe crabs per day.

(2) From June 8 through July 12, inclusive, an individual in possession of a valid horseshoe crab landing permit may not land more than 100 horseshoe crabs per day.

(3) From July 13 through November 30 inclusive, an individual in possession of a valid horseshoe crab landing permit may not land more than the daily catch limit specified on the permit and regardless of the statewide catch limit specified on the permit, no more than 150

horseshoe crabs per permit per day may harvested from the Chesapeake Bay and its tidal tributaries.

E. Horseshoe Crab Landing Permit.

[(1) The Department may issue a permit to catch and land horseshoe crabs in Maryland to a person who:

(a) Is licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland; and

(b) Reported catching and landing horseshoe crabs in Maryland during 1996.]

(1) *No more than ten horseshoe crab landing permits may be issued by the Department. The number of horseshoe crab landing permits is based on the reported catch and landing records of horseshoe crabs in Maryland during 1996.*

(2) *The Department may issue a permit to catch and land horseshoe crabs in Maryland to a person who is licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, and:*

(a) *Declared or was eligible to declare, in the previous year, an intent to fish for horseshoe crabs in accordance with this section and has not transferred the permit; or*

(b) *Received a horseshoe crab landing permit through a permanent business transfer in accordance with §E(6) of this regulation.*

(3) *Declaration.*

(a) *Tidal fish licensees shall declare their intent to fish for horseshoe crabs by May 1 of each year.*

(b) *A tidal fish licensee who has not declared by May 1 of the current year, and who has not declared by the May 1 deadline in any of the 3 preceding years, may apply until May 14 of the current year, or the next business day if May 14 occurs on a weekend, to the Director of Fisheries Service, provided the licensee shows good reason why the application should be processed.*

(c) *An exception to the May 14 deadline will be considered only for an individual who can provide satisfactory documentation of a physical or mental incapacity that prevented that individual from meeting the registration time period established in this subsection.*

[(2)] (4) — [(3)] (5) (text unchanged)

[(4)] (6) Transfer of a Landing Permit.

(a) The Department may approve the permanent or temporary transfer of a landing permit to a person who[:] *applies to the Department requesting the transfer on forms provided by the Department.*

(b) *At the end of the specified temporary transfer time period the permit automatically returns to the original permittee.*

[(a) Is the permittee's spouse, daughter, son, stepchild, grandchild, step-grandchild, parent, sister, brother, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, or brother-in-law;

(b) Upon death of the permittee, has been indicated as the transferee to the Department by the permittee or authorized representative of the permittee;

(c) Has purchased a vessel used for commercial fishing from the permit holder; or

(d) Provides a notarized bill of sale for the purchase of equipment and assets with a minimum value of \$2,000 and the commercial fishing business from the permit holder.

(5) Temporary Transfer of a Landing Permit.

(a) The Department may approve the temporary transfer of a landing permit to a person for not less than 30 days and not more than 90 days.

(b) A person may not transfer a permit in exchange for any type of remuneration.

(c) *At the end of the specified transfer time period the permit automatically returns to the original permittee.]*

[(6)] (7) (text unchanged)

[(7)] (8) [An applicant for a Maryland horseshoe crab landing permit shall declare an intent to harvest by May 1 of each year.] *Regardless of the number of authorized individuals with Maryland horseshoe crab permits on board any one vessel, no more than two horseshoe crab quotas may be harvested from one vessel per trip.*

F. [General] Reporting and Penalties.

[(1) A person who catches or lands horseshoe crabs in Maryland shall:

(a) Accurately record their catches or landings:

(i) On the horseshoe crab landing permit; and

(ii) On the daily commercial fisheries catch log in accordance with COMAR 08.02.13.06; and

(b) Submit:

(i) The completed horseshoe crab landing permit as required by the Department; and

(ii) The daily commercial fisheries catch log in accordance with COMAR 08.02.13.06.]

(1) *In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, an individual in possession of a horseshoe crab landing permit shall record the harvest of horseshoe crabs on the permit daily and submit the completed permit to the Department in the time frame specified on the form.*

(2) The Department may deny an application for a horseshoe crab landing permit [to a person who has failed] *for failing to comply with [the horseshoe crab landing permit reporting requirements] §F(1) of this regulation during the previous season.*

G. General.

[(3)] (1) — [(4)] (2) (text unchanged)

[(5)] (3) The Secretary may modify catch limits or quotas, or open or close a season *as required by the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab* by publishing notice [in a daily newspaper of general circulation] *on the Fisheries Service website* at least 48 hours in advance, stating the effective hour and date.

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

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 05 FREESTANDING AMBULATORY CARE FACILITIES

10.05.05 Freestanding Ambulatory Surgical Facilities

Authority: Health-General Article, §19-3B-01, et seq., Annotated Code of Maryland

Notice of Proposed Action

[12-184-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .03 under **COMAR 10.05.05 Freestanding Ambulatory Surgery Facilities**.

Statement of Purpose

The purpose of this action is to increase the licensure fee for ambulatory surgery facilities in accordance with the Governor's fiscal

year 2013 budget plan. These new fees will offset the cost of surveying the 300 plus ambulatory surgery center (ASC) providers as well as the costs associated with investigation complains and other survey and administrative activities.

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 for an ASC license in Maryland would increase from \$700 for a 3-year license to \$4,000 for a 3-year license, which is a revenue increase to the State of \$3,300 per license.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$382,800
	(E+)	Minimal
B. On other State agencies:	NONE	
C. On local governments:	NONE	
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	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$382,800
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. 116 providers (the approximate number of providers that will apply for licensure annually) × \$3,300 = \$382,800. The amount of expenditures have not been determined however; it is assumed that the Department will be capable of absorbing any expenses incurred using its present budget.

F. The fee increase could be passed along to consumers.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.03 Licensing Procedure.

In addition to meeting all of the requirements of COMAR 10.05.01.03A—C, the applicant shall submit a nonrefundable fee of [\$700] \$4,000 for a 3 year period, with an application for initial

licensure, or submit a nonrefundable fee of [\$700] \$4,000 with an application for license renewal for a 3 year period.

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

Subtitle 07 HOSPITALS

10.07.05 Residential Service Agencies

Authority: Health-General Article, Title 19, Subtitle 4A, Annotated Code of Maryland

Notice of Proposed Action

[12-192-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .04 under **COMAR 10.07.05 Residential Service Agencies.**

Statement of Purpose

The purpose of this action is to increase the licensure fee for Residential Service Agencies (RSA) in accordance with the Governor’s fiscal year 2013 budget plan. These new fees will offset the cost of surveying and conducting compliant investigations regarding the licensed RSAs. Additionally, the fee increase will also help to fund the increasing administrative support activities. RSA have increased in numbers since 2004 from approximately 300 licensed RSA providers to over 900 licensed RSA providers in 2012. The increase in the number of RSA providers requires more administrative support and Health Facility Nurse Survey II’s clinical knowledge to survey the providers.

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 for licensure of an RSA will increase from \$500 annually to \$1,000 annually. The \$363,500 in additional revenue is based on licensing 727 RSA providers. DHMH will hire a Health Facility Nurse Surveyor I to focus on surveying and investigating complaints of RSAs, increasing expenditures approximately \$87,861.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$363,500
	(E+)	\$87,861
B. On other State agencies:	NONE	
C. On local governments:	NONE	
<hr/>		
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$363,500
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. \$500 fee increase x 727 Providers = \$363,500 in fees from Residential Service Agencies.

The Department will spend \$87,861 from General Funds to hire Health Facility Nurse Surveyor I (Salary, \$51,175; Fringe Benefits, \$10,911; Health Insurance; \$14,000. Other Operating Expenses, \$11,775).

D. \$500 fee increase x 727 Providers = \$363,500 increase in costs to Residential Service Agencies.

F. While there is no direct effect on the public, RSA providers could pass the fee increase on to the consumer.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.04 Licensing Procedures.

A. Application for License.

(1) (text unchanged)

(2) An applicant shall submit:

(a)—(k) (text unchanged)

(l) A nonrefundable 1-year license fee of [\$500] \$1,000 made payable to the Department.

B.—H. (text unchanged)

I. License Renewal. A licensee shall submit to the Department:

(1) (text unchanged)

(2) A nonrefundable 1-year license renewal fee of [\$500] \$1,000 payable to the Department;

(3)—(5) (text unchanged)

J.—K. (text unchanged)

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

Subtitle 07 HOSPITALS

10.07.14 Assisted Living Programs

Authority: Health-General Article, Title 19, Subtitle 18, Annotated Code of Maryland

Notice of Proposed Action

[12-183-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .07 under **COMAR 10.07.14 Assisted Living Programs.**

Statement of Purpose

The purpose of this action is to increase the licensure fee for assisted living providers in accordance with the Governor's fiscal year 2013 budget plan. These new fees will offset the cost of surveying the nearly 1,400 assisted living providers as well as the costs associated with investigation complaints and other survey and administrative activities.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Assisted Living Programs licensing fees increased by \$485,200, of which the Department's expenditures will increase approximately \$87,861.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-) Magnitude	
A. On issuing agency:	(R+)	\$484,900
	(E+)	\$87,861
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	
	Magnitude	
D. On regulated industries or trade groups:	(-)	\$484,900
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A(1). The Department will receive \$485,200 in fees from Assisted Living Program as follows: 1—4 beds \$100 fee x 420 Providers = \$42,000; 5—15 beds \$400 fee x 714 Providers = \$285,600; 16—49 beds \$500 fee x 148 Providers = \$74,000; 50—99 beds \$650 fee x 70 Providers = \$45,500; 100—149 beds \$1,050 fee x 26 Providers = \$27,300; and 150+ beds \$1,350 fee x 8 Providers = \$10,800.

A(2). The Department will spend \$87,861 from General Funds to hire a Health Facility Nurse Surveyor I (Salary, \$51,175; Fringe Benefits, \$10,911; Health Insurance, \$14,000; Other Operating Expenses, \$11,775).

D. See A(1) above.

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, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.07 Licensing Procedure.

A. Application for License.

(1)—(2) (text unchanged)

(3) Fees. The annual license fee schedule for assisted living programs is as follows:

(a) 1—[3] 4 beds: [\$100] \$200 annually;

- (b) [4] 5—15 beds: [\$150; and] \$550 annually;
- 15.] [(c) 16 or more beds: \$150 plus \$8 per bed for each bed over
- (c) 16—49 beds: \$650 annually;
- (d) 50—99 beds: \$800 annually;
- (e) 100—149 beds: \$1,200 annually; and
- (f) 150 plus beds: \$1,500 annually.
- (4)—(5) (text unchanged)
- B.—D. (text unchanged)

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

Subtitle 10 LABORATORIES ADMINISTRATION

10.10.04 Medical Laboratories — Fees

Authority: Health-General Article, §§17-204, 17-205, 17-207, 17-209, 17-502, 17-503, 17-506, Annotated Code of Maryland

Notice of Proposed Action [12-172-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .02 under **COMAR 10.10.04 Medical Laboratories — Fees**.

Statement of Purpose

The purpose of this action is to amend the existing regulation due to a need to increase fees imposed on the provider community. In the past several years the number of letters of exception in Maryland have increased more than 100 percent to 2,835, increasing the demands of Office of Health Care Quality support staff to process, invoice, and mail the licenses to the laboratories.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The cost of the letter of permit exception will increase from \$100 to \$300 for a 2-year license.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$283,400
	(E+)	Minimal
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	
	Magnitude	
D. On regulated industries or trade groups:	(-)	\$283,400
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A and D. Increase of letter of permit exception is \$200. The impact on the regulated industries assumes 1,417 permits being issued. $200 \times 1,417 = \$283,400$. The amount of expenditures have not been determined; however, it is assumed that the Department will be capable of absorbing any expenses incurred using its present budget.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.02 Licensing — Letter of Exception and Permit.

A. Letter of Exception. Except as set forth in §C (4) of this regulation, a person applying for a letter of exception for a POL or POCL shall submit a [licensing fee of \$100 with each initial application and biennially after that with each renewal application] *licensing fee of \$300*.

B. Letter of Exception—Limited Testing for Rare Diseases. A person applying for a letter of exception-limited testing for rare diseases for a laboratory shall submit a licensing fee of [\$100] *\$300* with an initial application and biennially after that with each renewal application.

C. Permit—General.

(1) A person applying for a permit to operate a laboratory shall submit with each initial application a partial licensing fee of:

(a) (text unchanged)

(b) [\$100] *\$300* when the application covers more than three disciplines.

(2)—(3) (text unchanged)

(4) A person who qualifies for a letter of exception as set forth in COMAR 10.10.03.02 and performs one or more tests that require obtaining or renewing a permit shall pay initially, and biennially after that, a licensing fee of:

(a) [\$100] *\$300* as set forth in §A of this regulation; and

(b) (text unchanged)

(5) (text unchanged)

D. (text unchanged)

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: [Ambulatory] General Surgical Services

Authority: Health-General Article, [§ 19-101 et seq.] §§19-109(a)(1) and 19-118, Annotated Code of Maryland

Notice of Proposed Action

[12-193-P-I]

The Maryland Health Care Commission proposes to amend 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 May 31, 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 amend the title of the document incorporated by reference in COMAR 10.24.11.01, which will govern Certificate of Need decision by the Maryland Health Care Commission for surgical facilities projects in all settings.

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 21515, or call (410) 764-3261, or fax to (410) 358-1311. Comments will be accepted through 4:30 p.m. on August 27, 2012. A public hearing has not been scheduled.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the State Health Plan for Facilities and Services: General Surgical Services has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 39:2 Md. R. 104 (January 27, 2012), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.01 Incorporation by Reference.

[A. The State Health Plan: Ambulatory Surgical Services] *The State Health Plan for Facilities and Services: General Surgical Services* is incorporated by reference.

MARILYN MOON, Ph.D.
Chair

Maryland Health Care Commission

Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY

10.28.02 Continuing Education Requirements

Authority: Health Occupations Article, §§11-205 and 11-309, Annotated Code of Maryland

Notice of Proposed Action

[12-190-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .05 under **COMAR 10.28.02 Continuing Education Requirements**. This action was considered at a public meeting held on March 28, 2012, notice of which was given by publication in 39:5 Md. R. 392 (March 9, 2012), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to waive continuing education requirements for licensees who apply for licensure within 1 year of graduation from an accredited school or college of optometry and who are renewing their license for the first time.

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 regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.05 Course Credit.

A.—F. (text unchanged)

[G.] — [H.] (proposed for repeal)

G. The Board shall waive continuing education requirements for licensees who:

(1) Have applied for licensure within 1 year of graduation from an accredited school or college of optometry; and

(2) Are renewing their license for the first time.

[I.] H. — [J.] I. (text unchanged)

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

Subtitle 32 BOARD OF PHYSICIANS

10.32.03 Delegation of Duties by a Licensed Physician — Physician Assistant

Authority: Health Occupations Article, §§1-606, 14-205, 14-306, and 15-101—15-403, 15-314—15-316, and 15-401, Annotated Code of Maryland

Notice of Proposed Action

[12-188-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .17 and .18 under **COMAR 10.32.03 Delegation of Duties by a Licensed Physician—Physician Assistant**. This action was considered at a public meeting held on April 25, 2012, notice of which was given by publication in 39:7 Md. R. 514 (April 6, 2012) pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to adopt sanctioning guidelines which will be used by the Board of Physicians in sanctioning physician assistants.

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 regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.17 Sanctioning and Imposition of Fines.

A. General Application of Sanctioning Guidelines.

(1) Sections A and B of this regulation and Regulation .18A and B 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 the sections of the Medical Practice Act listed in the sanctioning guidelines, 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. If a minimum fine is listed, at least the minimum fine shall be imposed in addition to the sanction listed.

(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 shall 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 .18 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.

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(4) and (5) 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) 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.

(4) 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.

(5) 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 as a Physician Assistant.

- (1) *The Board may impose a fine not exceeding \$5,000 as provided in §C(2) of this regulation for unauthorized practice as a physician assistant in violation of Health Occupations Article, §15-401, Annotated Code of Maryland.*
- (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) *The Board shall pay all monies collected pursuant to §C of this regulation into the Board's fund.*

D. Employment of Unauthorized Individuals.

- (1) *A licensed physician, hospital, related institution, alternative health system, or employer may not employ an individual practicing as a physician assistant who does not have a license.*
- (2) *A licensed physician may not supervise an individual practicing as a physician assistant who does not have a license.*
- (3) *The Board may impose a fine of up to \$1,000 for a violation of §D(1) or (2) of this regulation.*
- (4) *Any funds collected under §D(3) of this regulation shall be deposited into the State's General Fund.*

E. Other Fines.

- (1) *The Board may impose a fine of \$100 for a violation of Health Occupations Article, §15-309, Annotated Code of Maryland.*
- (2) *The Board shall pay all monies collected pursuant to §E(1) of this regulation into the Board's fund.*

F. Offenses Related to Continuing Medical Education Credits.

- (1) **First Offense of Failure to Document Credits.**
 - (a) *Except as provided in §F(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, §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, §15-314, Annotated Code of Maryland.*
 - (b) *Section F(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, §15-314(a)(3), Annotated Code of Maryland;*
 - (ii) *Health Occupations Article, §15-314(a)(11), Annotated Code of Maryland; and*
 - (iii) *Health Occupations Article, §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, §15-314 or 15-316, Annotated Code of Maryland, and the sanctioning guidelines.*

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

- (a) *If a licensee has been previously fined or otherwise disciplined under §F(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, §15-314(a)(3), Annotated Code of Maryland;*
 - (ii) *Health Occupations Article, §15-314(a)(11), Annotated Code of Maryland; and*
 - (iii) *Health Occupations Article, §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, §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 §F(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 §F of this regulation into the State's General Fund.*

G. 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.*

.18 Sanctioning Guidelines for Physician Assistants.

- A. *Subject to provisions of Regulation .17A 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, §15-314(a), Annotated Code of Maryland.*

B. Range of Sanctions.

<i>Ground</i>	<i>Maximum Penalty</i>	<i>Minimum Penalty</i>	<i>Maximum Fine</i>	<i>Minimum Fine</i>
<i>(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another</i>	<i>Revocation</i>	<i>Reprimand with probation for 2 years</i>	<i>\$25,000</i>	<i>\$5,000</i>
<i>(2) Fraudulently or deceptively uses a license</i>	<i>Revocation</i>	<i>Probation</i>	<i>\$25,000</i>	<i>\$5,000</i>
<i>(3) Is guilty of: (a) Immoral conduct in the practice of medicine; or (b) Unprofessional conduct in the practice of medicine</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$25,000</i>	<i>\$5,000</i>
<i>(4) Incompetence. (a) Is physically or mentally incompetent</i>	<i>Revocation</i>	<i>Suspension until physical or mental incompetence is addressed to Board's satisfaction</i>	<i>\$25,000</i>	<i>0</i>
<i>(b) Is professionally incompetent</i>	<i>Revocation</i>	<i>Suspension until professional incompetence is addressed to Board's satisfaction</i>	<i>\$25,000</i>	<i>\$2,500</i>
<i>(5) Solicits or advertises in violation of Health Occupations Article, §14-503, Annotated Code of Maryland</i>	<i>Reprimand with probation</i>	<i>Reprimand</i>	<i>\$25,000</i>	<i>\$2,500</i>
<i>(6) Abandons a patient</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$25,000</i>	<i>\$5,000</i>
<i>(7) Habitually is intoxicated</i>	<i>Revocation</i>	<i>Suspension until the physician assistant is in treatment and abstinent for 6 months</i>	<i>\$25,000</i>	<i>\$0</i>
<i>(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</i>	<i>Revocation</i>	<i>Suspension until the physician assistant is in treatment and abstinent for 6 months</i>	<i>\$25,000</i>	<i>\$0</i>
<i>(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</i>	<i>Revocation</i>	<i>Suspension until the physician assistant is in treatment and abstinent for 6 months</i>	<i>\$50,000</i>	<i>\$5,000</i>
<i>(10) Promotes the sale of drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain</i>	<i>Suspension for 5 years</i>	<i>Reprimand</i>	<i>\$25,000</i>	<i>\$5,000</i>
<i>(11) Willfully makes or files a false report or record in the practice of medicine</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$25,000</i>	<i>\$5,000</i>
<i>(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</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$25,000</i>	<i>\$5,000</i>

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(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	\$5,000	\$500
(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	\$25,000	\$2,500
(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	Suspension for 3 years	Reprimand	\$50,000	\$2,500
(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 assistant 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	Suspension for 1 year	Reprimand	\$25,000	\$5,000
(17) Makes a willful misrepresentation in treatment	Revocation	Reprimand	\$25,000	\$5,000
(18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine	Suspension for 1 year	Reprimand	\$25,000	\$5,000
(19) Grossly overutilizes health care services	Revocation	Reprimand and probation for 2 years	\$25,000	\$5,000
(20) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine	Revocation	Reprimand	\$25,000	\$5,000
(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 U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under this section	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Penalty comparable to that imposed by original licensing authority if this is less than the Board sanction would be	Fine comparable to what MBP imposes under equivalent physician ground for discipline	Fine equivalent to that imposed by original licensing authority if this is less than the Board sanction would be
(22) Fails to meet appropriate standards 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	\$25,000	\$2,500
(23) Willfully submits false statements to collect fees for which services are not provided	Revocation	Reprimand	\$25,000	\$5,000

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(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 the Board imposes under equivalent Maryland ground for discipline	Penalty comparable to that imposed by original licensing authority if this is less than the Board sanction would be.	Fine comparable to what the Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing authority if this is less than the Board sanction would be
(25) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland	Revocation	Reprimand	\$50,000	\$2,500
(26) Fails to educate a patient being treated for breast cancer of alternative methods of treatment as required by Health-General Article, §20-113, Annotated Code of Maryland	Reprimand and probation for 1 year with mandatory CME's	Reprimand	\$25,000	\$2,500
(27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	Revocation	Reprimand and probation for 3 years with practice oversight	\$50,000	\$5,000
(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	\$25,000	\$1,250
(29) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the physician assistant is licensed and qualified to render because the individual is HIV positive	Suspension for 1 year	Reprimand	\$25,000	\$2,500
(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	Suspension for 3 years	Reprimand	\$25,000	\$5,000
(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	Revocation	Reprimand	\$50,000	\$5,000
(32) Fails to display the notice required under Health Occupations Article, §14-415, Annotated Code of Maryland	Suspension	Reprimand	\$5,000	\$500
(33) Fails to cooperate with a lawful investigation conducted by the Board	Revocation	Reprimand	\$25,000	\$5,000
(34) Is convicted of insurance fraud as defined in Insurance Article, §27-801, Annotated Code of Maryland	Revocation	Suspension for 6 months	\$25,000	\$5,000
(35) Is in breach of a service obligation resulting from the applicant's or licensee's receipt of State or federal funding for the physician assistant's medical education	Revocation	Reprimand	\$50,000	\$5,000

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(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine	Revocation	Reprimand	\$25,000	\$5,000
(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	Revocation	Suspension for 3 years	\$25,000	\$5,000
(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	Revocation	Suspension for 3 years	\$25,000	\$5,000
(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	\$25,000	\$5,000
(40) Fails to keep adequate medical records	Suspension of 1 year	Reprimand	\$25,000	\$1,250
(41) Performs delegated medical acts beyond the scope of the delegation agreement filed with the Board or after notification from the Board that an advanced duty has been disapproved	Revocation	Suspension for 3 months	\$5,000	\$5,000
(42) Performs delegated medical acts without the supervision of a physician	Revocation	Suspension for 3 months	\$5,000	\$5,000

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

Subtitle 32 BOARD OF PHYSICIANS

10.32.06 Licensure of Polysomnographic Technologists

Authority: Health Occupations Article, §§1-606, 14-205, 14-306, and 14-5C-17, Annotated Code of Maryland

Notice of Proposed Action

[12-187-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .12 and adopt new Regulation .13 under **COMAR 10.32.06 Licensure of Polysomnographic Technologists**. This action was considered at a public meeting on April 25, 2012, notice of which was given by publication in 39:7 Md. R. 514 (April 6, 2012) pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to adopt sanctioning guidelines which will be used by the Board of Physicians in sanctioning polysomnographic technologists.

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 St., Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.12 Penalties, Fines, and Sanctioning Guidelines.

A.—C. (text unchanged)

D. *Failure to Make a Required Report.*

(1) *The Board may impose a fine up to \$1,000 for a hospital, related institution, alternative health system, or employer who fails to make a report to the Board required by Regulation .11 of this chapter.*

(2) The Board shall deposit any funds collected under §D(1) of this regulation into the State's General Fund.

E. General Application of Sanctioning Guidelines.

(1) Sections E and F of this regulation and Regulation .16A and B of this chapter do not apply to offenses for which a mandatory sanction is set by statute or regulation.

(2) Except as provided in §F of this regulation, for violations of the sections of the Medical Practice Act listed in the sanctioning guidelines, 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 §F(3)(b) of this regulation is ranked as a reprimand.

(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 shall 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 .13 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 and sanction agreed to by the Board, the administrative prosecutor, and the licensee.

F. 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 §G(4) and (5) 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) 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.

(4) 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.

(5) 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.

G. Offenses Related to Continuing Medical Education Credits.

(1) 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 licensee may be charged under one or more of the following, as appropriate:

(a) Health Occupations Article, §14-5C-17(a)(3), Annotated Code of Maryland;

(b) Health Occupations Article, §14-5C-17(a)(10), Annotated Code of Maryland; and

(c) Health Occupations Article, §14-5C-17(a)(11), Annotated Code of Maryland.

(2) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-5C-17, Annotated Code of Maryland, and the sanctioning guidelines.

H. 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.

PROPOSED ACTION ON REGULATIONS

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.13 Sanctioning Guidelines for Polysomnographic Technologists.

A. Subject to provisions of Regulation .12E and F of this chapter, the Board may impose sanctions as outlined in §B of this regulation

on polysomnographic technologists for violations of Health Occupations Article, §14-5C-17(a), Annotated Code of Maryland.

B. Range of Sanctions.

<i>Ground</i>	<i>Maximum Sanction</i>	<i>Minimum Sanction</i>
<i>(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant, licensee, or for another</i>	<i>Revocation</i>	<i>Reprimand with probation for 2 years</i>
<i>(2) Fraudulently or deceptively uses a license</i>	<i>Revocation</i>	<i>Probation</i>
<i>(3) Is guilty of unprofessional or immoral conduct in the practice of polysomnography</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(4) Incompetence. (a) Is physically or mentally incompetent</i>	<i>Revocation</i>	<i>Suspension until physical or mental incompetence is addressed to the Board's satisfaction</i>
<i>(b) Is professionally incompetent</i>	<i>Revocation</i>	<i>Suspension until professional incompetence is addressed to the Board's satisfaction</i>
<i>(5) Abandons a patient</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(6) Is habitually intoxicated</i>	<i>Revocation</i>	<i>Suspension until polysomnographic technologist is in treatment and has been abstinent for 6 months</i>
<i>(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland</i>	<i>Revocation</i>	<i>Suspension until polysomnographic technologist is in treatment and has been abstinent for 6 months</i>
<i>(8) Provides professional services while: (a) Under the influence of alcohol; or (b) Using any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or any other drug that is in excess of therapeutic amounts or without valid medical indication</i>	<i>Revocation</i>	<i>Suspension until polysomnographic technologist is in treatment and has been abstinent for 6 months</i>
<i>(9) Promotes the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain</i>	<i>Suspension for 5 years</i>	<i>Reprimand</i>
<i>(10) Willfully makes or files a false report or record in the practice of polysomnography</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(12) Breaches patient confidentiality</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(13) Pays or agrees to pay any sum or provide any form of remuneration or material benefit to any person for bringing or referring a patient or accepts or agrees to accept any sum or any form of remuneration or material benefit from an individual for bringing or referring a patient</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(14) Knowingly makes a misrepresentation while practicing polysomnography</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(15) Knowingly practices polysomnography with an unauthorized individual or aids an unauthorized individual in the practice of polysomnography</i>	<i>Suspension for 1 year</i>	<i>Reprimand</i>
<i>(16) Knowingly delegates a polysomnographic duty to an unlicensed individual</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(17) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine</i>	<i>Revocation</i>	<i>Reprimand</i>

PROPOSED ACTION ON REGULATIONS

<i>(18) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under the Board's disciplinary statutes</i>	<i>Penalty comparable to what the Board imposes under equivalent Maryland grounds for discipline</i>	<i>Penalty equivalent to that imposed by the original licensing authority if this is less than the Maryland Board sanction would be</i>
<i>(19) Fails to meet appropriate standards for the delivery of polysomnographic services performed in a hospital sleep laboratory or a stand-alone sleep center</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(20) Knowingly submits false statements to collect fees for which services are not provided</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(21) Has been 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 the Board's disciplinary statutes and has: (a) Surrendered the license, if any, issued by the state or country; or (b) Allowed the license, if any, issued by the state or country to expire or lapse</i>	<i>Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline</i>	<i>Penalty equivalent to that imposed by original licensing authority if this is less than sanction would be from the Board</i>
<i>(22) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland</i>	<i>Revocation</i>	<i>Reprimand</i>
<i>(23) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes</i>	<i>Revocation</i>	<i>Reprimand and probation for 3 years with practice oversight</i>
<i>(24) Practices or attempts to practice beyond the authorized scope of practice</i>	<i>Revocation</i>	<i>Suspension for 3 months</i>
<i>(25) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside</i>	<i>Revocation</i>	<i>Suspension</i>
<i>(26) 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</i>	<i>Suspension for 1 year</i>	<i>Reprimand</i>
<i>(27) Practices or attempts to practice a polysomnography procedure or uses or attempts to use polysomnography equipment if the applicant or licensee has not received education and training in the performance of the procedure or the use of the equipment</i>	<i>Revocation</i>	<i>Suspension for 3 months</i>

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

Subtitle 32 BOARD OF PHYSICIANS

10.32.10 Licensure of Radiation Therapists, Radiographers, Nuclear Medicine Technologists, and Radiologist Assistants

Authority: Health Occupations Article, §§1-606, 14-306, 14-5B-12, 14-5B-12.1, 14-5B-14, 14-5B-15, 14-5B-18, 14-5B-18.1, and 14-5B-19, Annotated Code of Maryland

Notice of Proposed Action

[12-185-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .16 and adopt new Regulation .19 under **COMAR 10.32.10 Licensure of Radiation Therapists, Radiographers, Nuclear Medicine Technologists, and Radiologist Assistants**. This action was considered at a public meeting held on April 25, 2012, notice of which was given by publication in 39:7 Md. R. 514 (April 6, 2012) pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to adopt sanctioning guidelines which will be used by the Board of Physicians in sanctioning radiation therapists, radiographers, nuclear medicine technologists, and radiologist assistants.

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, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.16 Penalties, Fines, and Sanctioning Guidelines.

A. The Board may impose a civil fine of not more than \$5,000 on an individual who[:

(1) Is] is not licensed to practice radiation therapy, radiography, nuclear medical technology, or radiology assistance in Maryland[; and] if the individual:

[2)] (1) Represents to the public in any way that the individual is authorized to practice radiation therapy, radiography, nuclear [medical] medicine technology, or radiology assistance [in Maryland.];

(2) Practices or attempts to practice radiation therapy, radiography, nuclear medicine technology, or radiology assistance; or

[B.] (3) [The Board may impose a civil fine of not more than \$5,000 on an individual who violates] Violates any provision of Health Occupations Article, Title 14, Subtitle 5B, Annotated Code of Maryland, or any regulation in this chapter.

[C.] B. The Board shall deposit a penalty collected under §A [or B] of this regulation into the Board of Physicians fund.

[D.] C.—[F.] E. (text unchanged)

F. General Application of Sanctioning Guidelines.

(1) Sections F and G of this regulation and Regulation .19 of this chapter do not apply to offenses for which a mandatory sanction is set by statute or regulation.

(2) Except as provided in §G of this regulation, for violations of the sections of the Medical Practice Act listed in the sanctioning guidelines, 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 §F(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. If a minimum fine is listed, at least the minimum fine shall be imposed in addition to the sanction listed.

(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 shall 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 .19 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.

G. 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 §G(4) and (5) 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) 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.

(4) 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.

(5) 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.

H. The Board may impose a fine of \$100 for a violation of Health Occupations Article, §14-5B-12.1, Annotated Code of Maryland.

I. Offenses Related to Continuing Medical Education Credits.

(1) First Offense of Failure to Document Credits.

(a) Except as provided in §I(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, §14-5B-12, Annotated Code of Maryland, of up to \$100 per missing continuing medical education credit in lieu of a sanction under Health Occupations Article, §14-5B-17, Annotated Code of Maryland.

(b) Section I(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, §14-5B-14(a)(3), Annotated Code of Maryland;
- (ii) Health Occupations Article, §14-5B-14(a)(10), Annotated Code of Maryland; and
- (iii) Health Occupations Article, §14-5B-14(a)(11), Annotated Code of Maryland.

(b) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-5A-14, Annotated Code of Maryland, and the sanctioning guidelines.

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

(a) If a licensee has been previously fined or otherwise disciplined under §I(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, §14-5B-14(a)(3), Annotated Code of Maryland;
- (ii) Health Occupations Article, §14-5B-14(a)(10), Annotated Code of Maryland; and
- (iii) Health Occupations Article, §14-5B-14(a)(11), Annotated Code of Maryland.

(b) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-5B-14, Annotated Code of Maryland, and the sanctioning guidelines for a subsequent offense.

(c) The Board may not apply the sanction described in §I(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 §I of this regulation into the Board of Physicians Fund.

J. 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.

.19 Sanctioning Guidelines for Radiation Therapists, Radiographers, Nuclear Radiation Technologists, and Radiologist Assistants.

A. Subject to provisions of Regulation .16F and G of this chapter, the Board may impose sanctions as outlined in §B of this regulation on a radiation therapist, radiographer, nuclear medicine technologist, or radiologist assistant for violations of Health Occupations Article, §14-5B-14(a), Annotated Code of Maryland.

PROPOSED ACTION ON REGULATIONS

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B. Range of Sanctions.

<i>Ground</i>	<i>Maximum Sanction</i>	<i>Minimum Sanction</i>	<i>Maximum Fine</i>	<i>Minimum Fine</i>
<i>(1) Fraudulently or deceptively obtains or attempts to obtain a license or temporary license for the applicant, licensed individual, holder of a temporary license, or for another</i>	<i>Revocation</i>	<i>Reprimand with probation for 2 years</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(2) Fraudulently or deceptively uses a license or temporary license</i>	<i>Revocation</i>	<i>Probation</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(3) Is guilty of unprofessional or immoral conduct in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance</i>	<i>Revocation</i>	<i>Reprimand with probation for 2 years</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(4) Incompetence.</i> <i>(a) Is professionally incompetent</i>	<i>Revocation</i>	<i>Suspension until professional incompetence is addressed to Board's satisfaction</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(b) Is physically, or mentally incompetent</i>	<i>Revocation</i>	<i>Suspension until physical or mental incompetence is addressed to Board's satisfaction</i>	<i>\$5,000</i>	<i>\$0</i>
<i>(5) Abandons a patient</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(6) Is habitually intoxicated</i>	<i>Revocation</i>	<i>Suspension until licensee is in treatment and has been abstinent for 6 months</i>	<i>\$5,000</i>	<i>\$0</i>
<i>(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland</i>	<i>Revocation</i>	<i>Suspension until licensee is in treatment and has been abstinent for 6 months</i>	<i>\$5,000</i>	<i>\$0</i>
<i>(8) Provides professional services while:</i> <i>(a) Under the influence of alcohol; or</i> <i>(b) Using any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or any other drug that is in excess of therapeutic amounts or without valid medical indication</i>	<i>Revocation</i>	<i>Suspension until licensee is in treatment and has been abstinent for 6 months</i>	<i>\$5,000</i>	<i>\$500</i>
<i>(9) Promotes the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain</i>	<i>Suspension for 5 years</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(10) Willfully makes or files a false report or record in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(12) Breaches patient confidentiality</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>

PROPOSED ACTION ON REGULATIONS

(13) Pays or agrees to pay any sum or provide any form of remuneration or material benefit to any person for bringing or referring a patient or accepts or agrees to accept any sum or any form of remuneration or material benefit from an individual for bringing or referring a patient	Revocation	Reprimand	\$5,000	\$500
(14) Knowingly makes a misrepresentation while practicing radiation therapy, radiography, nuclear medicine technology, or radiology assistance	Revocation	Reprimand	\$5,000	\$1,000
(15) Knowingly practices radiation therapy, radiography, nuclear medicine technology, or radiology assistance with an unauthorized individual or aids an unauthorized individual in the practice of radiation therapy, radiography, nuclear medicine technology, or radiology assistance	Suspension for 1 year	Reprimand	\$5,000	\$1,000
(16) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine	Revocation	Reprimand	\$5,000	\$1,000
(17) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under the Board's disciplinary statutes	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is less than the Board sanction would be	Fine comparable to what the Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by the original licensing authority if this is lesser than the Board sanction would be
(18) Fails to meet appropriate standards for the delivery of quality radiation therapy, radiography, nuclear medicine technology, or radiology assistance care performed in any outpatient surgical facility, office, hospital or related institution, or any other location in this State	Revocation	Reprimand	\$5,000	\$500
(19) Knowingly submits false statements to collect fees for which services are not provided	Revocation	Reprimand	\$5,000	\$1,000
(20) Has been 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 the Board's disciplinary statutes and the licensed individual: (a) Surrendered the license issued by the state or country; or (b) Allowed the license issued by the state or country to expire or lapse	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is less than the sanction would be from the Board	Fine comparable to what the Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by the original licensing authority if this is less than the Board sanction would be
(21) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland	Revocation	Reprimand	\$5,000	\$500
(22) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	Revocation	Reprimand, probation for 3 years with practice oversight	\$5,000	\$500
(23) Practices or attempts to practice beyond the authorized scope of practice	Revocation	Suspension for 3 months	\$5,000	\$2,500

(24) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee or holder of a temporary license is licensed and qualified to render because the individual is HIV positive	Suspension for 1 year	Reprimand	\$5,000	\$500
(25) Practices or attempts to practice a radiation therapy, radiography, nuclear medicine technology, or radiology assistance procedure or uses radiation therapy, radiography, nuclear medicine technology, or radiology assistance equipment if the applicant or licensee or holder of a temporary license has not received education, internship, training, or experience in the performance of the procedure or the use of the equipment	Revocation	Suspension for 3 months	\$5,000	\$2,500
(26) Fails to cooperate with a lawful investigation conducted by the Board	Revocation	Reprimand	\$5,000	\$1,000
(27) Fails to practice under the supervision of a physician or violates a supervisory order of a supervising physician	Revocation	Suspension for 3 months	\$5,000	\$2,500

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

Subtitle 32 BOARD OF PHYSICIANS

10.32.11 Licensing of Respiratory Care Practitioners

Authority: Health Occupations Article, §§ 1-606, 14-5A-03, 14-5A-13, 14-5A-14, 14-5A-17, 14-5A-18, and 14-5A-20—14-5A-23, Annotated Code of Maryland

Notice of Proposed Action
[12-186-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .15 and adopt new Regulation .16 under **COMAR 10.32.11 Licensing of Respiratory Care Practitioners**. This action was considered at a public meeting held on April 25, 2012, notice of which was given by publication in 39:7 Md. R. 514 (April 6, 2012) pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to adopt sanctioning guidelines which will be used by the Board of Physicians in sanctioning licensed respiratory care practitioners.

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 regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.15 Penalties, Fines and Sanctioning Guidelines.

A.—E. (text unchanged)

F. *General Application of Sanctioning Guidelines.*

(1) Sections F and G of this regulation and Regulation .16 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 the sections of the Medical Practice Act listed in the sanctioning guidelines, 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 §F(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. If a minimum fine is listed, at least the minimum fine shall be imposed in addition to the sanction listed.

(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 shall 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 .16 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.*

G. 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 §G(4) and (5) 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) *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.*

(4) *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.*

(5) *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.*

H. The Board may impose a fine of \$100 for a violation of Health Occupations Article, §14-5A-14, Annotated Code of Maryland.

I. Offenses Related to Continuing Medical Education Credits.

(1) *First Offense of Failure to Document Credits.*

(a) *Except as provided in §I(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, §14-5A-13, Annotated Code of Maryland, of up to \$100 per missing continuing medical education credit in lieu of a sanction under Health Occupations Article, §14-5A-17, Annotated Code of Maryland.*

(b) *Section I(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, §14-5A-17(a)(3), Annotated Code of Maryland;*

(ii) *Health Occupations Article, §14-5A-17(a)(10), Annotated Code of Maryland; and*

(iii) *Health Occupations Article, §14-5A-17(a)(11), Annotated Code of Maryland.*

(b) *Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-5A-17, Annotated Code of Maryland, and the sanctioning guidelines.*

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

(a) *If a licensee has been previously fined or otherwise disciplined under §I(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, §14-5A-17(a)(3), Annotated Code of Maryland;*

(ii) *Health Occupations Article, §14-5A-17(a)(10), Annotated Code of Maryland; and*

(iii) *Health Occupations Article, §14-5A-17(a)(11), Annotated Code of Maryland.*

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

(c) *The Board may not apply the sanction described in §I(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 §I of this regulation into the Board of Physicians Fund.*

J. 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.*

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(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.

.16 Sanctioning Guidelines for Respiratory Care Practitioners.

A. Subject to provisions of Regulation .15F and G of this chapter, the Board may impose sanctions as outlined in §B of this regulation on respiratory care practitioners for violations of Health Occupations Article, §14-5A-17(a), Annotated Code of Maryland.

B. Range of Sanctions.

<i>Ground</i>	<i>Maximum Sanction</i>	<i>Minimum Sanction</i>	<i>Maximum Fine</i>	<i>Minimum Fine</i>
<i>(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant, licensee, or for another</i>	<i>Revocation</i>	<i>Reprimand with probation for 2 years</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(2) Fraudulently or deceptively uses a license</i>	<i>Revocation</i>	<i>Probation</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(3) Is guilty of unprofessional or immoral conduct in the practice of respiratory care</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(4) Incompetence. (a) Is professionally incompetent</i>	<i>Revocation</i>	<i>Suspension until professional incompetence is addressed to the Board's satisfaction</i>	<i>\$5,000</i>	<i>\$500</i>
<i>(b) Is physically or mentally incompetent</i>	<i>Revocation</i>	<i>Suspension until physical or mental incompetence is addressed to the Board's satisfaction</i>	<i>\$5,000</i>	<i>\$0</i>
<i>(5) Abandons a patient</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(6) Is habitually intoxicated</i>	<i>Revocation</i>	<i>Suspension until licensee is in treatment and has been abstinent for 6 months</i>	<i>\$5,000</i>	<i>\$0</i>
<i>(7) Is addicted to or habitually abuses any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland</i>	<i>Revocation</i>	<i>Suspension until licensee is in treatment and has been abstinent for 6 months</i>	<i>\$5,000</i>	<i>\$0</i>
<i>(8) Provides professional services while: (a) Under the influence of alcohol; or (b) Using any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland or any other drug that is in excess of therapeutic amounts or without valid medical indication</i>	<i>Revocation</i>	<i>Suspension until licensee is in treatment and has been abstinent for 6 months</i>	<i>\$5,000</i>	<i>\$500</i>
<i>(9) Promotes the sale of services, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain</i>	<i>Suspension for 5 years</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>
<i>(10) Willfully makes or files a false report or record in the practice of respiratory care</i>	<i>Revocation</i>	<i>Reprimand</i>	<i>\$5,000</i>	<i>\$1,000</i>

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(11) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of a report, or induces another to fail to file or record a report	Revocation	Reprimand	\$5,000	\$1,000
(12) Breaches patient confidentiality	Revocation	Reprimand	\$5,000	\$1,000
(13) Pays or agrees to pay any sum or provide any form of remuneration or material benefit to any person for bringing or referring a patient or accepts or agrees to accept any sum or any form of remuneration or material benefit from an individual for bringing or referring a patient	Suspension for 1 year	Reprimand	\$5,000	\$500
(14) Knowingly makes a misrepresentation while practicing respiratory care	Revocation	Reprimand	\$5,000	\$1,000
(15) Knowingly practices respiratory care with an unauthorized individual or aids an unauthorized individual in the practice of respiratory care	Suspension for 1 year	Reprimand	\$5,000	\$1,000
(16) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine	Revocation	Reprimand	\$5,000	\$1,000
(17) Is disciplined by a licensing or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the U.S. Department of Veterans Affairs for an act that would be grounds for disciplinary action under the Board's disciplinary statutes	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing board if this is less than the Board sanction would be	Fine comparable to what the Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing board if this is less than the Board fine would be
(18) Fails to meet appropriate standards for the delivery of respiratory care performed in any inpatient or outpatient facility, office, hospital or related institution, domiciliary care facility, patient's home, or any other location in this State	Revocation	Reprimand	\$5,000	\$500
(19) Knowingly submits false statements to collect fees for which services are not provided	Revocation	Reprimand	\$5,000	\$1,000
(20) 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 the Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing board if this is less than the Maryland Board sanction would be	Penalty comparable to what the Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing board if this is less than the Board fine would be
(21) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland	Revocation	Reprimand	\$5,000	\$500
(22) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	Revocation	Reprimand with 3 years of probation with practice oversight	\$5,000	\$500
(23) Practices or attempts to practice beyond the authorized scope of practice	Revocation	Suspension for 3 months	\$5,000	\$2,500
(24) 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	\$5,000	\$500

(25) Practices or attempts to practice a respiratory care procedure or uses or attempts to use respiratory care equipment if the applicant or licensee has not received education and training in the performance of the procedure or the use of the equipment	Revocation	Suspension for 3 months	\$5,000	\$2,500
(26) Fails to cooperate with a lawful investigation conducted by the Board	Revocation	Reprimand	\$5,000	\$1,000
(27) Fails to practice under the supervision of a physician or violates a supervisory order of a supervising physician	Revocation	Suspension for 3 months	\$5,000	\$2,500

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

Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS

Notice of Proposed Action [12-191-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulations **.02** and **.03** under **COMAR 10.40.02 Licensing and Continuing Education Requirements**; and
- (2) Regulation **.02** under **COMAR 10.40.03 Collection of Fees**.

This action was considered at a public meeting held on May 10, 2012, notice of which was given since January 1, 2012, on the website of the Board of Podiatric Medical Examiners located at <http://dhmh.maryland.gov/mbpme/SitePages/Home.aspx>, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to:

- (1) Require new licensees and licensees applying for license renewal to obtain CPR certification through a Board-approved course that includes a practical hands-on component;
- (2) Prohibit a licensee from letting their CPR certification lapse at any time while licensed by the Board;
- (3) Repeal an obsolete provision related to continuing education units (CEUs); and
- (4) Allow the Board to charge one installment of the renewal fee to a licensee who applies for an original license in the same year as their license would have to be renewed.

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 regs@dhmh.state.md.us, or fax to 410-767-6483. Comments

will be accepted through August 27, 2012. A public hearing has not been scheduled.

10.40.02 Licensing and Continuing Education Requirements

Authority: Health Occupations Article, §16-307, Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.

[(1) “Blue registration card” means a registration document provided by the Board to a licensee which is signed by an authorized individual to verify the licensee’s attendance at the continuing education program.]

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

.03 Initial Licensing and License Renewal.

A. Initial Licensing. To qualify for licensure an individual shall:

- (1) (text unchanged)
- (2) Possess a current cardiopulmonary resuscitation (CPR) certification that was attained through completion of a Board-approved cardiopulmonary resuscitation (CPR) course that includes a hands-on practical component.

B. License Renewal.

- (1) — (5) (text unchanged)
- (6) To qualify for renewal, a licensee shall possess a current cardiopulmonary resuscitation (CPR) certification that was attained through completion of a Board-approved cardiopulmonary resuscitation (CPR) course that includes a hands-on practical component.

C. A licensee may not allow the required cardiopulmonary resuscitation (CPR) certification to lapse at any time while licensed by the Board.

10.40.03 Collection of Fees

Authority: Health Occupations Article, §16-206, Annotated Code of Maryland

.02 Fees.

The following fees are established by the Board:

- A.—C. (text unchanged)
- D. Other Fees:
 - (1) — (6) (text unchanged)
 - (7) Request for copy of public orders — \$50[.];

E. If an individual pays the original license fee under §A(1-2) of this regulation in a year of renewal, the Board shall charge one installment of the license renewal fee under §B(1) of this regulation.

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

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

10.54.02 Local Agency

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

Notice of Proposed Action
[12-182-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .18 under **COMAR 10.54.02 Local Agency**.

Statement of Purpose

The purpose of this action is to reflect 1) an increase in federal funding that will affect the amounts local agencies will be paid for base funding and for each participant enrolled, and 2) a decrease in funding available from the Breastfeeding Peer Counselor Funding Grant that will affect the amount local agencies will be paid to support breastfeeding through the use of breastfeeding peer counselors per pregnant or breastfeeding participant enrolled.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The State WIC Office has increased the rates local agencies will be paid for base funding and per participant enrolled because of an increase in federal WIC funding. The State WIC Office has decreased the rate local agencies will be paid to support breastfeeding through the use of breastfeeding peer counselors per pregnant or breastfeeding participant enrolled because of a decrease in funds available from the Breastfeeding Peer Counselor Funding Grant.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$1,158,875
B. On other State agencies:	NONE	
C. On local governments:	(E+)	\$814,867
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	
(1) The Johns Hopkins University Bloomberg School of Public Health		\$89,520
(2) Community Clinic, Inc.	(+)	\$158,559
(3) Greater Baden Medical Services, Inc.	(+)	\$95,929
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 figure of \$1,158,875 represents an increase in the cost of administering the WIC Program in FY 2013. The State will distribute an estimated \$25,397,103 in the FY 2013 budget as compared to \$24,238,228 in FY 2012. This increase in expenditure is based on: serving 151,120 participants at \$102 per participant for a total of \$15,414,420 (an increase of 2,895 participants with a rate increase of \$2 per participant), and total base funding to local agencies in the amount of \$8,850,000 (an increase of \$900,000 from FY 2012). Funds provided for breastfeeding promotion and support through a Breastfeeding Peer Counselor Funding Grant will decrease by \$298,081 to \$1,132,865 (a decrease of \$12.50 per person; FY 2012 total was \$1,430,946). Despite decreased funding for enrollment of breastfeeding participants, total expenditures will increase by \$1,158,875. This amount has been requested in the FY 2013 budget.

C. Fifteen Local Health Departments (LHDs) serve as local agencies and receive operating funds through the DHMH Unified Grant Award (UGA) process.

D(1). The Johns Hopkins University Bloomberg School of Public Health serves WIC participants in several designated geographic areas of Baltimore City. This organization receives operating funds under the provisions of contracts awarded in accordance with contractual agreements with DHMH.

D(2). Community Clinic, Inc. serves WIC participants in Montgomery County. This organization receives operating funds under the provisions of contracts awarded in accordance with contractual agreements with DHMH.

D(3). Greater Baden Medical Services, Inc. serves WIC participants in designated geographic areas of Prince George's County. This organization receives operating funds under the provisions of contracts awarded in accordance with contractual agreements with DHMH.

F. Combined, local agencies will serve an average of 151,120 participants monthly, providing supplemental food and nutrition education to improve dietary habits of qualifying women, infants, and children under age 5.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.18 Payment to a Local Agency.

A. (text unchanged)

B. Effective July 1, [2011] 2012, the Department shall award to the local agency a base funding of:

(1) [\$400,000] \$450,000 for a case load up to 8,999 participants; and

(2) [\$525,000] \$575,000 for a case load of 9,000 or more participants.

C. Effective July 1, [2011] 2012, the Department shall award to the local agency:

(1) [\$100] \$102 per participant annually, based on case load assignment; and

(2) [\$25.00] \$25.50 per quarter for each additional participant added by the Department to the initial case load assignment.

D. (text unchanged)

E. [The] *Effective July 1, 2012, the* Department shall award to the local agency the following additional funds to promote and support breastfeeding by breastfeeding peer counselors:

(1) [\$66] \$53.50 per pregnant or breastfeeding participant annually, based on caseload assignment; and

(2) [\$16.50] \$13.375 per quarter for each additional pregnant or breastfeeding participant added by the Department to the initial caseload assignment.

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

Title 11 DEPARTMENT OF TRANSPORTATION

Subtitle 11 MOTOR VEHICLE ADMINISTRATION — ADMINISTRATIVE PROCEDURES

11.11.02 Administrative Hearings

Authority: Transportation Article, §§12-104(b) and (c), 12-108, and 12-201—12-209; State Government Article, §§10-201—10-222; Annotated Code of Maryland
Ch. 14, Acts of 2004

Notice of Proposed Action

[12-174-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulations .02, .07, .10, and .13 and repeal Regulations .04 and .06 under **COMAR 11.11.02 Administrative Hearings**.

Statement of Purpose

The purpose of this action is to eliminate outdated and repetitive regulatory requirements to make the regulations consistent with current practices. Also, this action streamlines and simplifies the appeal process, fee impositions, and other related administrative tasks at both the Motor Vehicle Administration (MVA) and the Office of Administrative Hearings (OAH).

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, Motor Vehicle Administration, 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 August 27, 2012. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (4) (text unchanged)

[(5) “Designee” means the Deputy Administrator, an Associate Administrator, or any other executive staff member designated by the Administrator.]

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

[(8) “Trier of fact” means the person responsible for conducting the hearing and for accepting evidence and testimony from the parties.]

.07 Delegation of Hearing Authority.

A. Pursuant to State Government Article, §10-205, and Transportation Article, §12-104, Annotated Code of Maryland, the Administrator delegates authority to hear contested administrative hearings *and issue final orders* to certain administrative law judges appointed by the Office of Administrative Hearings.

B. *Unless specifically provided elsewhere in Transportation Article, Annotated Code of Maryland, or other Motor Vehicle regulations, administrative hearing procedures shall be in accordance with the procedures in COMAR 28.02.01.*

.10 Evidence.

[A.] — [F.] (proposed for repeal)

[G.] A. — [H.] B. (text unchanged)

.13 Cost of Transcript.

Testimony presented at any hearing may be transcribed. However, a party requesting a transcript prepared by the Administration shall pay for its cost [at a rate of \$2 per page]. A party requesting a transcript prepared by a private stenographic service shall pay whatever cost is assessed by the private service.

JOHN T. KUO

Administrator

Motor Vehicle Administration

Notice of Proposed Action

[12-173-P]

The Administrator of the Motor Vehicle Administration proposes to:

(1) Amend Regulation .06 under **COMAR 11.11.05 Motor Vehicle Fees**;

(2) Repeal existing Regulations .01—.03 under **COMAR 11.11.07 Gratis and Complimentary Records**;

(3) Amend Regulations .01—.07 and adopt new Regulations .02-1 and .08 under **COMAR 11.11.09 Access to Public Motor Vehicle Administration Records**; and

(4) Repeal existing Regulations .01—.05 under **COMAR 11.17.10 Drivers’ Records**.

Statement of Purpose

The purpose of this action is to redefine, organize, and clarify regulations by repealing duplicative regulations and consolidating and simplifying the regulations relating to disclosure of public and private MVA records. This action also consolidates all fees relating to records requests under the Public Information Act by removing inaccurate fees and by clarifying specific fees currently being charged for public information requests.

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, Motor Vehicle Administration, 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 August 27, 2012. A public hearing has not been scheduled.

Subtitle 11 MOTOR VEHICLE ADMINISTRATION — ADMINISTRATIVE PROCEDURES

11.11.05 Motor Vehicle Fees

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

.06 Miscellaneous Fees.

Service	Section	Fee
A. — O. (text unchanged)		
P. Copies of [Motor Vehicle Administration]driver or vehicle records as follows:	12-113	
(1) — (2) (text unchanged)		
Q. (text unchanged)		
[R. In addition to the fees established in §§P and Q of this regulation and as authorized under State Government Article, §10-621, Annotated Code of Maryland, clients requesting records or listing shall pay:	[12-112]	
(1) A fee for the initial set-up that will vary depending on the cost of software, hardware, etc., necessary for the set-up;		
(2) A \$150 per hour cost for programming and for making changes to existing programs.]		
[S.] R. —[T.] S. (text unchanged)		

11.11.09 Access to Public Motor Vehicle Administration Records

Authority: Transportation Article, §§12-104(b), 12-111—12-113, 16-117, [and] 16-118, 16-819, and 16-904; State Government Article, §§10-611[, 10-616, 10-626, and 10-627] *et seq.*; Annotated Code of Maryland

.01 Purpose and Scope.

The purpose of this chapter is to comply with [Chapters 338 and 339, Acts of 1997, effective September 1, 1997, with Chapters 349 and 350, Acts of 1999, effective July 1, 2000,] *the Maryland Public Information Act, State Government Article, §10-611 et seq.* and with the federal Driver’s Privacy Protection Act of 1994 (18 U.S.C. §§2721[—2725] *et seq.*), effective September 13, 1997, in order to:

A. — B. (text unchanged)

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) “Act” means the Maryland Public Information Act, State Government Article, §10-611 *et seq.*, Annotated Code of Maryland.

[(1)] (2) (text unchanged)

[(2)] (3) —[(4)] (5) (text unchanged)

[(5) “MVA record subscription service” means a service provided by contract between the Administration and authorized entities to monitor and provide conviction data or updates after an initial 3-year record has been purchased.]

(6) “Government agency” means an agency or unit of the federal, state, or local government, including a law enforcement agency.

[(6)] (7) (text unchanged)

[(7) “Partial record or listing” means informational data or updates provided by the Administration from its database by using a specific identifier supplied by the requestor.]

(8) — (10) (text unchanged)

(11) “Records” means:

(a) Accident reports;

(b) Administrative hearing records and exhibits;

(c) Alcohol education client records;

(d) Applications and other related documents;

(e) Certificates or other documents issued by the Administration;

(f) Correspondence and reports related to the records listed in §B(11)(a)—(e) and (g)—(m) of this regulation;

(g) Driver improvement client records;

(h) Driver record histories or other related documents;

- (i) *Financial responsibility judgment case records;*
- (j) *Insurance certification documents and uninsured motorist complaint records;*
- (k) *Vehicle identification numbers;*
- (l) *Vehicle registration records; and*
- (m) *Vehicle titles.*

[(11)] (12) “Specific identifier” means personal information that identifies an individual or person of interest including that individual’s *name*, address, *telephone number*, driver’s license number, *email address*, [vehicle information number, tag or title number,] or any other identifying data or number.

.02-1 Records.

A. Pursuant to Transportation Article, §12-111, Annotated Code of Maryland, the Administration shall keep a record of each application or other document with it and each certificate or other official document that it issues.

B. Pursuant to Transportation Article, §16-117, Annotated Code of Maryland, the Administration shall keep a drivers’ record file, which, except as otherwise provided, shall be open for public inspection.

.03 Record Request.

A. (text unchanged)

B. To determine the applicant’s eligibility for release of personal information when appearing in person, the applicant shall furnish a driver’s license or State identification card and, if the application is for personal information for a different individual, upon request by the Administration, another form of personal identification such as a:

- (1) — (2) (text unchanged)
- (3) [Maryland State Bar Security Card;
- (4)] Law enforcement identification;
- [(5)](4)—[(6)](5) (text unchanged)

.04 Record Access.

A. In General. Pursuant to Transportation Article, §12-111, Annotated Code of Maryland, subject to § 10-616(p) of the State Government Article, and except as otherwise provided by law, all records of the Administration are public records and open to public inspection during office hours.

B. Records Not Open to Public Inspection. Pursuant to Transportation Article, §§12-111, 16-117, and 16-118, Annotated Code of Maryland, the following records are not open to public inspection:

- (1) A driving record entry that is over 3 years old;
- (2) A digital or photographic image or signature;
- (3) A record or notation of probation before judgment;
- (4) A record of a first offense of driving with an alcohol concentration of 0.08 or more under Transportation Article, §16-205.1, Annotated Code of Maryland; and
- (5) Records of the Medical Advisory Board.

C. Exceptions.

(1) Records of Any Age. Subject to the provisions of §§B, D and E of this regulation and pursuant to Transportation Article § 12-111(b)(3), a driving record entry of any age shall be open to inspection by authorized representatives of any federal, State, or local government agency.

(2) Photographic Images and Signatures. A digital photographic image or signature of an individual shall be open to inspection only as set forth in Transportation Article § 12-111, Annotated Code of Maryland.

(3) Probation Before Judgment Records and Records of a First Offense of Driving With an Alcohol Concentration of 0.08 or More. A record or notation of probation before judgment and a record of a first offense of driving with an alcohol concentration of 0.08 or more

shall be open to inspection only as set forth in Transportation Article § 16-117, Annotated Code of Maryland.

(4) Medical Advisory Board Records. Records of the Medical Advisory Board shall be open to inspection only as set forth in Transportation Article § 16-118, Annotated Code of Maryland.

D. [Individuals’ Public Record.] Public Records Containing Personal Information. Personal information referred to in State Government Article, [§10-616(n)(5)(ii)] §10-616(p)(5)(ii), Annotated Code of Maryland, shall generally be used in conformity with the purposes of State and federal law, as amended, and specifically in compliance with the following statutes:

- (1) Federal Automobile Information Disclosure Act (15 U.S.C. §1231 *et seq.*);
- (2) Motor Vehicle Information and Cost Saving Act ([15 U.S.C. §1901] 49 U.S.C. §32101 *et seq.*);
- (3) National Traffic and Motor Vehicle Safety Act of 1996 ([15 U.S.C. §1381] 49 U.S.C. §30101 *et seq.*);
- (4) Anti-Car Theft Act of 1992 ([15 U.S.C. §2021] 49 U.S.C. §33101 *et seq.*);
- (5) Clean Air Act (42 U.S.C. §7401 *et seq.*); [and]
- (6) Driver’s Privacy Protection Act of 1994 (18 U.S.C. §2721 *et seq.*); and
- (7) State Government Article, §§10-611[—10-628] *et seq.*, Annotated Code of Maryland.

[B. Inclusion in Lists. An applicant desiring personal information shall enter into a contract with the Administration in order to receive information for surveying, marketing, and solicitation purposes under Transportation Article, §12-112, Annotated Code of Maryland.]

.05 Waiver Procedures.

[A.] At the discretion of the custodian, a public record containing personal information may be released to an applicant not otherwise authorized to receive the information [, after the person in interest prohibits disclosure,] when [an] the applicant:

- [(1)] A. — [(3)] C. (text unchanged)
- [[a]] (1) — [(b)] (2) (text unchanged)

[B. Under Transportation Article, §§12-111, 16-117, and 16-118, Annotated Code of Maryland, the following records are not open to public inspection:

- (1) A driving record entry that is over 3 years old;
- (2) A record or notation of probation before judgment;
- (3) A record of a first offense of driving with an alcohol concentration of 0.08 or more under Transportation Article, §16-205.1, Annotated Code of Maryland; and
- (4) Records of the Medical Advisory Board.

C. Subject to the provisions of §B of this regulation, a driving record entry of any age is open to inspection by:

- (1) The Administration;
- (2) Persons in interest or their attorneys;
- (3) Courts;
- (4) Employers, with written consent from employees or prospective employees;
- (5) Federal, state, or local government agency representatives, including law enforcement officers;
- (6) Persons entitled to review the record pursuant to subpoena;
- (7) Other driver licensing authorities;
- (8) The United States Secretary of Transportation; and
- (9) Current and prospective employers, as defined in Transportation Article, §16-803, Annotated Code of Maryland, of drivers required to hold a commercial driver’s license.]

.06 Disclosure Denial.

A. Except as provided in State Government Article, §10-616(p), Annotated Code of Maryland, the Administration shall deny disclosure of personal information and specific identifiers.

B. Disclosure of [public] *personal* information may be denied if the custodian determines that the requested information is to be used for purposes other than those specified in State Government Article, §10-616(p)(4)(v) and (5), Annotated Code of Maryland.

C. *Except as provided in State Government Article, §10-616(p), Annotated Code of Maryland, if a record subject to disclosure contains personal information or specific identifiers, the personal information and specific identifiers shall be redacted prior to disclosing the record.*

.07 Disclosure Consent or Withdrawal of Consent.

A. (text unchanged)

B. The consent or withdrawal of consent shall be in writing and mailed or delivered to the Administration’s [Driver Records Unit] *Official Custodian*. The request shall include:

(1) — (5) (text unchanged)

C. (text unchanged)

.08 Fees.

A. *Fees for Driver and Vehicle Records. The fees for individual driver and vehicle records shall be as set forth in COMAR 11.11.05.06.*

B. *Fees for Copies of Records Requested Under the Maryland Public Information Act.*

(1) *The fee schedule for copying records is as follows.*

(a) *Black and White Copies. The fee for each black and white copy of a noncertified record is 3.5 cents per page if reproduction is made by a photocopying machine within the Administration.*

(b) *Color Copies. The fee for each color copy of a noncertified record is 15 cents per page if reproduction is made by a photocopying machine within the Administration.*

(c) *Certified Copies. If an applicant requests a certified record, an additional fee of \$3 per record shall be charged.*

(d) *Other Reproductions. If records are not susceptible to photocopying (for example, punch cards, magnetic tapes, blueprints, and microfilm), the fee for copies shall be based on the actual cost of reproduction.*

(e) *Minimum Fee Charged. A charge may not be made if the total amount of the fee is less than \$10.*

(2) *Notwithstanding subsection (1) of this section, if the fees for copies, printouts, other reproductions, or certified copies of any record are specifically prescribed by a law or regulation other than the Act or this regulation, the prescribed fee shall be charged.*

(3) *Before copying a record, the custodian shall estimate the cost of reproduction and obtain prepayment of any estimated fee before reproducing the record.*

C. *Fees for Search and Retrieval of Records Requested Under the Maryland Public Information Act.*

(1) *Except as provided in subsection (2) of this section, the official custodian may charge reasonable fees for officials’ or employees’ time expended searching for requested records or for any time expended preparing records for inspection and copying.*

(2) *The official custodian may not charge any search or preparation fee for the first 2 hours of official or employee time needed to respond to a request for information.*

(3) *The fee schedule for search and preparation is as follows:*

(a) *Computer Programming and Retrieval. The fee for computer programming and electronic retrieval of records is \$250 per hour.*

(b) *Clerical. The fee for clerical time expended for search and retrieval of documents is \$30 per hour.*

D. *Waiver of Fees.*

(1) *Upon request, the official custodian may waive or reduce any fee charged pursuant to the regulation if:*

(a) *When requesting an individual’s own driving record, the individual displays identification acceptable to the Administration; or*

(b) *When requesting all other records, the custodian determines that the waiver or reduction is in the public interest, considering, among other relevant factors, the ability of the applicant to pay the cost or fee.*

(2) *Records for Government Agencies.*

(a) *On request, the Administration may provide certified or noncertified records to government agencies without charge.*

(b) *The Administration may provide up to five records to government agency representatives who provide official identification at the time of making the request.*

(c) *Multiple Requests. Requests from government agencies for more than five records without charge shall be made on the agency’s letterhead, and shall be addressed to the Motor Vehicle Administration, Custodian of Records, 6601 Ritchie Highway, Glen Burnie, Maryland 21062.*

E. *If the applicant requests that copies be mailed or delivered to the applicant, the custodian may charge the applicant for the cost of postage or delivery to the applicant.*

JOHN T. KUO
Administrator
Motor Vehicle Administration

Notice of Proposed Action

[12-177-P]

The Administrator of the Motor Vehicle Administration proposes to:

(1) Repeal existing Regulations **.19** and **.24** under **COMAR 11.12.01 Dealers and Salesmen**; and

(2) Amend Regulation **.01**, adopt new Regulation **.02**, and recodify existing Regulation **.02** to be Regulation **.03** under **COMAR 11.15.25 Certificate of Origin**.

Statement of Purpose

The purpose of this action is to repeal obsolete language regarding payment bonds and to repeal and reorganize existing regulations regarding Certificates of Origin and to clarify the definition of a Certificate of Origin. Also, this action adds language to simplify the process for small trailer manufacturers in Maryland to sell and title trailers.

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, Motor Vehicle Administration, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call (410) 768-7545, or email to tshellfield@mdot.state.md.us, or fax to (410) 768-7506. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

**Subtitle 12 MOTOR VEHICLE
ADMINISTRATION — LICENSING OF
BUSINESSES AND OCCUPATIONS**

11.12.01 Dealers and Salesmen

Authority: Transportation Article, §§12-104(b), 13-503, 13-621, 15-102, 15-103, 15-105, 15-107, 15-108, [15-114,] 15-305.1, 15-307—15-309, 15-311.1, 15-312, 15-313, 15-406, 15-408, 15-409, and 15-411; Commercial Law Article, §14-1502; Annotated Code of Maryland

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

11.15.25 Certificate of Origin

Authority: Transportation Article, §§12-104(b), 13-101, and 13-104.1(1), Annotated Code of Maryland

.01 Definition.

In this chapter, “certificate of origin” [means a certification by which a manufacturer transfers ownership of a new vehicle described in the certificate of origin to a distributor or dealer] *has the meaning stated in Transportation Article, §13-101, Annotated Code of Maryland.*

.02 Uniform Manufacturer’s Certificate of Origin.

A. *The Manufacturer’s Certificate of Origin for a new motor vehicle shall have the security features and be in the form recommended by the American Association of Motor Vehicle Administrators.*

B. *A distributor of motor vehicles, licensed under Transportation Article, Title 15, Annotated Code of Maryland, may issue the uniform certificate of origin on behalf of the manufacturer of a new motor vehicle.*

C. *The Manufacturer’s Certificate of Origin for trailers, with a gross vehicle weight of 3,000 pounds or less, may be exempt from the security features required in §A of this regulation.*

JOHN T. KUO
Administrator
Motor Vehicle Administration

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

**11.15.12 Titling and Multiyear Registration for
Fleet Vehicles**

Authority: Transportation Article, §§12-104, 13-405, [and] 13-413, and 13-502.1, Annotated Code of Maryland

Notice of Proposed Action
[12-176-P]

The Administrator of the Motor Vehicle Administration proposes to repeal existing Regulations **.01—05** and adopt new Regulations **.01—06** under **COMAR 11.15.12 Titling and Multiyear Registration for Fleet Vehicles.**

Statement of Purpose

The purpose of this action is to streamline and enhance the multi-year registration and title process for companies with fleet vehicles

by creating a variable registration period and temporary titling. Also, this action expands the program’s scope in order to reach smaller businesses by lowering the number of vehicles required to meet the definition of fleet.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The fiscal impact is not able to be determined at this time. It is unknown whether fleet eligible customers will choose longer or shorter initial registration periods. To the extent that more fleet managers choose a longer registration period, there would be a minimal revenue increase. The fiscal impact is expected to be minimal.

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

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

A. The fiscal impact is not able to be determined at this time. It is unknown whether fleet eligible customers will choose longer or shorter initial registration periods. To the extent that more fleet managers choose a longer registration period, there would be a minimal revenue increase. The fiscal impact is expected to be minimal.

F. The fiscal impact is not able to be determined at this time. It is unknown whether fleet eligible customers will choose longer or shorter initial registration periods. To the extent that more fleet managers choose a longer registration period, there would be a minimal revenue increase. The fiscal impact is expected to be minimal.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Tracey C. Sheffield, Regulations Coordinator, Motor Vehicle Administration, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call (410) 768-7575, or email to tsheffield@mdot.state.md.us, or fax to (410) 768-7506. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.01 Purpose.

The purpose of this chapter is to establish regulations to govern the issuance of titles and multiyear registrations for fleet vehicles.

.02 Definitions.

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

B. Terms Defined.

- (1) "Administration" means the Motor Vehicle Administration.
- (2) "Administrator" means the Administrator of the Motor Vehicle Administration.
- (3) "Fleet" means 10 or more vehicles.
- (4) "Multiyear registration period" means a period of up to 4 years.
- (5) "Owner" means a person, or persons, in whose name, or names, a vehicle is properly registered.

.03 Title Process.

A. The owner of fleet vehicles may apply electronically for a Maryland title.

B. All paperwork and fees shall be submitted to the Administration within 5 days of submission of the electronic title application.

C. The Administration may suspend the fleet registration privileges of any owner who does not submit the paperwork and fees within 5 days from submission of the electronic title application.

.04 Temporary Authorization Certificate.

A. A temporary authorization certificate may be obtained for a fleet vehicle upon receipt of an electronic application for title.

B. A temporary authorization certificate issued under this regulation is:

- (1) Not transferable; and
- (2) Not subject to a fee.

.05 Multiyear Registration.

A. Fleet vehicles are eligible for a multiyear registration period.

(1) Except as provided in §§A(2) and (3) of this regulation, the owner of a fleet vehicle may renew a fleet vehicle registration for a period of 2, 3 or 4 years.

(2) The following classes of fleet vehicle registrations may be renewed for a period of 1, 2, or 3 years:

(a) Class E, trucks with a gross vehicle weight of 10,000 pounds to 54,000 pounds; and

(b) Class F, tractors with a gross vehicle weight of up to 54,000 pounds.

(3) The following classes of fleet vehicle registrations shall be renewed annually:

(a) Class E, trucks with a gross vehicle weight of 55,000 pounds or more;

(b) Class F, tractors with a gross vehicle weight of 55,000 pounds or more;

(c) Class J, van pool;

(d) Class P, passenger buses; and

(e) Class T, tow trucks.

B. The annual registration fees are as set forth in Transportation Article, Title 13, Annotated Code of Maryland.

C. Whenever a prorated fee is assessed, the amount shall be calculated by dividing the annual registration fee by the number of months for which the issuance or renewal is made.

D. If a vehicle issued a multiyear fleet registration is sold or traded:

(1) The registration plates shall be:

(a) Removed from the vehicle and returned to the Administration for cancellation; or

(b) Transferred to another vehicle as provided in Transportation Article, §13-502.1, Annotated Code of Maryland.

(2) A refund shall be issued as provided in Transportation Article, §13-413, Annotated Code of Maryland.

.06 Lost or Damaged Plates.

A. The owner shall immediately notify the Administration, in writing, when any multiyear registration plates are lost or stolen.

B. When multiyear registration plates become damaged, mutilated, or illegible, the owner shall:

- (1) Return the plates to the Administration;
- (2) Make application for substitute plates; and
- (3) Pay the required fee as set forth in COMAR 11.11.05.

JOHN T. KUO
Administrator
Motor Vehicle Administration

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

11.15.13 Issuance of a Nonresident Permit

Authority: Transportation Article, §§12-104(b) and 13-402.1, Annotated Code of Maryland

Notice of Proposed Action

[12-175-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulations .01 and .02 under **COMAR 11.15.13 Issuance of a Nonresident Permit**.

Statement of Purpose

The purpose of this action is to allow immediate family members of those serving on active duty in the Armed Forces of the United States to obtain a nonresident permit for their vehicle registration.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. Transportation Trust Fund (TTF) would be a revenue loss of approximately \$5,372. In addition, the estimated impact to the public is approximately \$5,372 in annual savings. Assuming a September 1, 2012 implementation date, the impact in FY 2013 is approximately \$4,477. (See Section III for assumptions made in these calculations)

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
MVA/MDOT	(R-)	\$ 4,572
B. On other State agencies:		
EMS	(R-)	\$ 486
C. On local governments:	(R+)	\$ 314
	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:	(+)	\$ 5,372

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

A. In FY 2011, there were 24 nonresident permits issued for vehicles to military personnel. It is not known how many additional vehicles would be eligible for a nonresident permit under this proposal. This fiscal note is making the assumption that for every permit currently issued to a member of the armed forces, an average of 1.5 additional nonresident permits would now be issued for vehicles owned by members of his/her immediate family (ex. spouse, child, etc.). Based on the above, a total of 36 (24 × 1.5) additional nonresident permits would be issued for vehicles under this proposed change. Therefore, the estimated annual revenue derived specifically from the sale of nonresident permits would be \$972 (36 vehicles × \$27 per permit).

According to current law, these vehicles would be subject to titling (@ \$100), excise tax (@ \$100), recording of a lien (@ \$20, if applicable) and the vehicle registration fee (plus EMS surcharge) when first entering the State. As mentioned above, this fiscal note is making the assumption that 50% of these vehicles (or 18) are owned by an individual that is new to the State each year and would now be subject to the above fees under current law. (Individuals receiving a second nonresident permit would have presumably paid these fees in the previous year.)

To calculate the revenue loss that would result specifically from these vehicles no longer being subject to the registration fee, this fiscal note is making the assumption that of these 18 vehicles, 75% (or 13) would be Class A/M vehicles weighing up to 3,700 pounds and 25% (or 5) would be Class A/M vehicles weighing in excess of 3,700 pounds. It should be noted that fees from excise taxes and vehicle registration are shared with local jurisdictions. The percentage of excise taxes designated for local jurisdictions is 6.4% beginning in FY 2014 and the share of registration fees designated for local jurisdictions is 9.6% beginning in FY 2014. Therefore, the estimated annual revenue to MVA/MDOT loss is calculated as follows:

- a. Title fees = \$1,800 (18 vehicles × \$100/ea.);
- b. Excise taxes = \$1,800 (18 vehicles × \$100/ea.). This figure is reduced by the 6.4% share designated for local jurisdictions; net revenue loss to MVA/MDOT is \$1,685;
- c. Security Interest Filing (lien) fees = \$180 (9 vehicles (18 vehicles × 50% × \$20/ea.));
- d. Registration fees = \$2,078 (see calculations below). This figure is reduced by the 9.6% share designated for local jurisdictions; net revenue loss to MVA/MDOT is \$1,879 (\$1,187 + \$692)
 - 13 Class A/M vehicles up to 3,700 pounds × \$101 (2-yr. registration fee not including EMS surcharge) = \$1,313. This figure is reduced by the 9.6% share designated for local jurisdictions; net revenue loss to MVA/MDOT is \$1,187.
 - 5 (18 × 25%) Class A/M vehicles more than 3,700 pounds × \$153 (2-yr. registration fee not including EMS surcharge) = \$765. This figure is reduced by the 9.6% share designated for local jurisdictions; net revenue loss to MVA/MDOT is \$692.

In summary, the net effect to the Administration is an annual revenue loss of \$4,572 (\$1,800 title fees + \$1,685 excise taxes + \$180 security interest filing fees + \$1,879 registration fees partially offset by \$972 revenue realized from sale of nonresident permits). The estimated net revenue loss in FY 2013 is \$3,798.

B. The EMS system (coordinated by the Maryland Institute for Emergency Medical Services Systems) would lose negligible revenue

from this proposed change. Included as part of the vehicle registration fee, this surcharge would no longer be collected for the vehicles impacted under this proposed change. The EMS surcharge is \$13.50 annually (\$27 for biennial registration). Therefore, the estimated annual revenue loss for the EMS system is \$486 (18 vehicles × \$27/ea.). The estimated revenue loss in FY 2013 is \$405.

C. As mentioned in III(A) above, a percentage of excise tax and registration fee revenue collected is designated for local jurisdictions. The percentage of excise taxes designated for local jurisdictions is 6.4% beginning in FY 2014 and the share of registration fees designated for local jurisdictions is 9.6% beginning in FY 2014. Therefore, the estimated annual revenue loss is calculated as follows:

- Excise taxes = \$1,800 (18 vehicles × \$100/ea.). Net loss to local jurisdictions = \$115 (\$1,800 × 6.4%);
- Registration Fees = \$2,078 (see calculations above). Net loss to local jurisdictions = \$199 (\$2,078 × 9.6%).

In summary, the net overall annual loss to local jurisdictions is \$314 (\$115 + \$199). The estimated net revenue loss in FY 2013 is \$274.

F. This proposed change results in a positive fiscal impact on the families of those serving on active duty in the U.S. armed forces. This proposal results in a cost savings to military families. The total cost savings is estimated at \$5,372 (\$4,572 + \$486 + \$314). Allowing immediate family members of those in the military to obtain a nonresident permit for their vehicle as opposed to applying for vehicle registration results in an approximate \$149 average annual savings per vehicle (\$5,372 total projected savings divided by estimated 36 vehicles). NOTE: This fiscal impact statement does not take into account other potential savings that may result from this proposal (costs related to vehicle inspections, etc.). Taking these additional savings into consideration would produce a slightly higher savings than what is outlined in this fiscal impact statement.

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, Motor Vehicle Administration, 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 August 27, 2012. A public hearing has not been scheduled.

.01 Purpose and Scope.

- A. (text unchanged)
- B. This chapter applies to the following:
 - (1) — (3) (text unchanged)
 - (4) A member of the armed forces of the United States or of the United States Public Health Service serving on active duty in this State, an adjoining state, or the District of Columbia, or a member of his or her family as described in Transportation Article, §13-810(c)(1)(i), Annotated Code of Maryland; or
 - (5) (text unchanged)

.02 Certification of Nonresidency.

- A. (text unchanged)
- B. Proof of Nonresidency.
 - (1) — (2) (text unchanged)
 - (3) An applicant, or family member of the applicant as described in Transportation Article, §13-810(c)(1)(i), Annotated

Code of Maryland, who is a member of the armed forces of the United States shall provide:

- (a) — (b) (text unchanged)
- (4) (text unchanged)

JOHN T. KUO
Administrator
Motor Vehicle Administration

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 Proposed Action [12-180-P]

The Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission (Commission), proposes to amend Regulation .09 under **COMAR 12.04.01 General Regulations**. This action was considered by the Police Training Commission at a public meeting held on April 17, 2012.

Statement of Purpose

The purpose of this action is to require that an individual complete a Driving Under the Influence Detection and Standardized Field Sobriety Test course recognized by the Police Training Commission and other requirements approved by the Commission if the individual has been certified as a police officer by the federal government or another State and is granted an exemption from the full police entrance-level training required by the Commission for the individual to be certified as a police officer in Maryland.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

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

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Thomas C. Smith, Director Policy and Process Review, Maryland Police and Correctional Training Commissions, 6852 4th Street, Sykeville, MD 21784, or call 410 875 3605, or email to tcsmith@dpscs.state.md.us, or fax to 410 875 3584. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.09 Minimum Standards for Entrance-Level Training for Police Officers.

- A. — F. (text unchanged)

- G. Waiver of Commission Entrance-Level Training Requirements.
 - (1) — (2) (text unchanged)
 - (3) An applicant for certification by the Commission as a police officer who has completed entrance-level training in another state or for the federal government may be eligible for an exemption from a portion of the Commission-required entrance-level training upon [meeting]:
 - (a) Meeting the requirements under Regulation .16E(7) of this chapter;
 - (b) Successfully completing a Driving Under the Influence Detection and Standardized Field Sobriety Test course approved by the Commission; and
 - (c) Meeting other requirements approved by the Commission.
- H. — I. (text unchanged)

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

Title 14

INDEPENDENT AGENCIES

Subtitle 09 WORKERS' COMPENSATION COMMISSION

14.09.01 Procedural Regulations

Authority: Health-General Article, §4-303; Labor and Employment Article, §§9-307, 9-309, 9-310.2, 9-314, 9-404, 9-405, 9-410, 9-602, 9-603, 9-610.1, 9-625, 9-635, 9-689, 9-701, 9-709, 9-710, 9-711, 9-721, 9-731, 9-736, 9-739, and 9-6A-07; Insurance Article, §§19-405 and 19-406; State Government Article, §10-1103; Annotated Code of Maryland

Notice of Proposed Action [12-179-P]

The Workers' Compensation Commission proposes to amend Regulation .07 under **COMAR 14.09.01 Procedural Regulations**. This action was considered at a public meeting held on June 14, 2012, notice of which was given by publication in 39:9 Md. R. 636 (May 4, 2012) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish a clear procedure and time line for determining the average weekly wage. Specifically, that the average weekly wage be adjudicated at the first hearing before the Commission, and that if the Commission finds that an inaccurate weekly wage resulted in an overpayment or under payment of benefits the Commission may order a credit against future permanent disability benefits, the payment of additional compensation, or any other relief the Commission determines is appropriate.

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 Amy S. Lackington, Administrator, Workers' Compensation Commission, 10 E. Baltimore Street, Baltimore, MD 21202, or call 410-864-5300, or email to alackington@wcc.state.md.us, or fax to 410-864-5301. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Workers' Compensation Commission during a public meeting to be held on September 13, 2012, at 9 a.m., at 10 E. Baltimore Street, Baltimore, MD 21202.

.07 Average Weekly Wage.

A. (text unchanged)

B. [Subsequent] Determination *at First Hearing*.

(1) Amount Disputed. If the employer, employer's insurer, or the Uninsured Employers' Fund asserts that the average weekly wage determined by the Commission under §A of this regulation exceeds the actual average weekly wage of the claimant, that party, before paying benefits at the lower rate, shall file with the Commission, with a copy to the claimant, or the claimant's attorney if the claimant is represented, a statement containing the basis of the assertion that the actual average weekly wage is less than the amount determined by the Commission. The statement shall be filed within 60 days after the date of the initial award.

(2) Waiver. The failure to file the statement in compliance with § B(1) of this regulation constitutes a waiver of the right to dispute the average wage as originally determined.]

(1) *Calculation of the average weekly wage shall be adjudicated and determined at the first hearing before the Commission.*

(2) *All parties shall be prepared to produce evidence from which the Commission can determine an accurate average weekly wage at the first hearing.*

(3) *If the Commission determines that an inaccurate average weekly wage resulted in the overpayment or underpayment of benefits, the Commission may order:*

(a) *A credit against future permanent disability benefits;*

(b) *The payment of additional compensation; or*

(c) *Any other relief the Commission determines is appropriate under the circumstances.*

C. *Uninsured Employers' Fund. The Uninsured Employers' Fund may contest the average weekly wage determined by the Commission under §A or B of this regulation, along with other issues as authorized by Labor and Employment Article, §9-1002, Annotated Code of Maryland, by filing issues on the form prescribed by the Commission.*

R. KARL AUMANN
Chairman

Workers' Compensation Commission

Title 22

STATE RETIREMENT AND PENSION SYSTEM

Subtitle 06 DISABILITY RETIREMENT

Notice of Proposed Action

[12-189-P]

The Board of Trustees for the State Retirement and Pension System proposes to:

(1) Amend Regulation .02, repeal existing Regulations .03— .06, .09, and .10, adopt new Regulations .03 and .04, and amend and recodify existing Regulations .07 and .08 to be Regulations .05 and .06 under **COMAR 22.06.01 Definitions and General Provisions**;

(2) Repeal existing Regulations .01— .03, .05, and .07, adopt new Regulations .01— .03 and .05, amend Regulation .04, and amend and recodify existing Regulation .08 to be Regulation .06 under **COMAR 22.06.02 Filing for Disability Retirement**;

(3) Repeal existing Regulations .01 and .03, adopt new Regulations .01 and .03, and amend Regulation .02 under **COMAR 22.06.03 Review of Claims for Disability Retirement**;

(4) Repeal existing Regulations .01— .04 and adopt new Regulation .01 under **COMAR 22.06.04 Reconsideration**;

(5) Amend Regulations .01— .06 under **COMAR 22.06.05 Board of Trustees Review**;

(6) Amend Regulation .02 under **COMAR 22.06.06 Hearings Before the Office**; and

(7) Amend Regulations .01 and .07— .10, repeal existing Regulation .02, recodify existing Regulation .03 to be Regulation .02, amend and recodify existing Regulations .04— .06 to be Regulations .03— .05, and adopt new Regulation .06 under **COMAR 22.06.07 Final Decision by the Board of Trustees**.

This action was considered by the Board of Trustees for the State Retirement and Pension System at an open meeting held on March 20, 2012, notice of which was given by publication in 39:5 Md. R. 359-392 (March 9, 2012) pursuant to State Government Article § 10-506(c) of the State Government Article of the Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to update the current disability retirement regulations since these regulations have not been reviewed or amended for many years. The process for filing for a disability retirement has not changed substantially over the years; however, from time to time the process has been modified to meet administrative or legislative requirements. These proposed disability retirement regulations detail the step-by-step process for a member to file for a disability retirement (i.e., the member's initial application, the disability unit's administrative review for eligibility, the medical board's review of the claim and recommendation to the Board of Trustees, the Board of Trustees' approval, and the member's appeal rights if the claim is denied). These proposed regulations are aimed at removing obsolete language or references, clarifying current administrative procedures, and refining the timelines associated with responding to requests for additional information from the agency.

In general, these proposed regulations:

- Clarify that disability forms must be submitted to the Retirement Agency to be received (not to the employer);
- Define all the required additional documentation needed from a member and an employer (including but not limited to position description, injury reports, leave records, performance evaluations, etc.);

- Clarify that a claim is not accepted and opened until all required documentation is submitted;
- Clarify the effect of not diligently pursuing claim or accepting disability retirement within the 120-day period;
- Reduce the number of extension periods permitted;
- Outline the Disability Unit’s role in review of the file and the medical board’s review; and
- Provide that cases are not automatically sent to OAH for an evidentiary hearing if filed late or if a member does not meet eligibility requirements; instead, these cases will come directly to the Board of Trustees.

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 Anne E. Gawthrop, Director, Legislative Affairs, State Retirement Agency, 120 East Baltimore Street, Baltimore, Maryland 21202, or call 410-625-5602, or email to agawthrop@sra.state.md.us, or fax to 410-468-1710. Comments will be accepted through July 27, 2012. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Board of Trustees for the State Retirement and Pension System during a public meeting to be held on August 21, 2012, at 120 East Baltimore Street, Baltimore, Maryland 21202.

22.06.01 Definitions and General Provisions

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1) [Accidental Disability Retirement Allowance.

(a) “Accidental disability retirement [allowance]” means:

(a) [an] *An accidental disability retirement allowance [payable as provided in] granted in accordance with State Personnel and Pensions Article, §29-109, Annotated Code of Maryland[.]; or*

(b) [“Accidental disability retirement allowance” includes a] *A special disability retirement allowance [payable] granted to a member of the State Police Retirement System [as provided] in accordance with State Personnel and Pensions Article, §29-111, Annotated Code of Maryland.*

(2) [Applicant.

(a) [“Applicant” means a member or former member who [applies for] *is the subject of a claim for disability retirement.*

(b) [“Applicant” includes a member for whom a disability form may be completed and submitted as provided in COMAR 22.06.02.01.]

(3) [“Application for Disability Retirement” means the form available from the Retirement Agency that:

(a) *Is submitted to the Retirement Agency after the Board of Trustees grants a disability retirement to an applicant;*

(b) *Signifies the applicant’s acceptance of a disability retirement; and*

(c) *If permitted under State Personnel and Pensions Article, §21-401(a), Annotated Code of Maryland, includes:*

(i) *The applicant’s election of the basic allowance or one of the optional forms of allowance payable in accordance with State Personnel and Pensions Article, §21-403, Annotated Code of Maryland; and*

(ii) *The applicant’s designation of beneficiary.*

(4) [“Board Secretary” means the Secretary for the Board of Trustees.

[(4)] (5) [“Disability form” [means the form provided by the Retirement Agency that:] *means:*

(a) *Contains the applicant’s name, current address, and Social Security number;*

(b) *Authorizes release to the Retirement Agency and to the physicians designated by the Retirement Agency of:*

(i) *Pertinent medical records of the applicant, and*

(ii) *Relevant employment records of the applicant if the applicant seeks accidental disability retirement; and*

(c) *Is executed by or on behalf of the applicant.]*

(a) *An Application for Disability Retirement;*

(b) *A Preliminary Application for Disability Retirement; or*

(c) *A Statement of Disability.*

(6) [“Disability retirement” means an accidental disability retirement or an ordinary disability retirement.

[(5)] (7) [“Disability Unit” means the unit established within the Member [Relations] Services Division of the Retirement Agency.

[(6)] (8) [“Disabled” means the:

(a) — (c) (text unchanged)

[(7) Filing Period.

(a) [“Filing period” means the period before the date that membership in a State system ends as provided in Regulation .06 of this chapter.

(b) [“Filing period” includes the 2-year period after paid employment ends for a member of the Employees’ Pension System, Local Fire and Police System, Natural Resources Pension System, or the Teachers’ Pension System who is filing an application for a disability retirement allowance.]

(9) [“Former member” has the meaning stated in State Personnel and Pensions Article, §20-101(t), Annotated Code of Maryland.

[(8)] (10) [“Independent medical [examiner] examination” means an examination by a [independent] medical practitioner [who has] *who:*

(a) *Has expertise in the diagnosis and treatment of the [illness] medical condition of the applicant;*

(b) *Is not a treating physician of the applicant; and*

(c) *Is retained by the Retirement Agency to provide an independent medical opinion.*

[(9)] (11) — [(11)] (13) (text unchanged)

(14) [“Ordinary disability retirement” means an ordinary disability retirement allowance granted in accordance with State Personnel and Pensions Article, §29-105, Annotated Code of Maryland.

[(12)] (15) [“Party” means the Retirement Agency or the applicant whose rights are being adjudicated:

(a) — (b) (text unchanged)

(16) [“Preliminary Application for Disability Retirement” means the form available from the Retirement Agency that:

(a) *Is submitted to the Retirement Agency contemporaneously with the Statement of Disability;*

(b) Signifies an applicant's acceptance of a disability retirement in the event that the applicant is awarded a disability retirement but dies before the first to occur of the following:

(i) The date the applicant submits an Application for Disability Retirement; or

(ii) The date required for submitting an Application for Disability Retirement under COMAR 22.06.05.03 or .04; and

(c) If permitted under State Personnel and Pensions Article, §21-401(a), Annotated Code of Maryland, includes:

(i) The applicant's election of one of the optional forms of allowance payable in accordance with State Personnel and Pensions Article, §21-403(a) or (b), Annotated Code of Maryland; and

(ii) The applicant's designation of beneficiary.

(17) "Service retirement" means a service retirement allowance or a vested allowance payable under State Personnel and Pensions Article, Division II, Annotated Code of Maryland.

(18) "Statement of Disability" means the form available from the Retirement Agency that:

(a) Is submitted to the Retirement Agency to request an ordinary disability retirement;

(b) States whether or not the applicant seeks an accidental disability retirement; and

(c) Provides the information and documentation required under COMAR 22.06.02.02.

.03 Completion and Submission of a Disability Form.

A. Completion of a Disability Form.

(1) A disability form is properly completed only if the form:

(a) Is dated and signed in accordance with §A(2) of this regulation;

(b) If the form is an Application for Disability Retirement or Preliminary Application for Disability Retirement, is properly acknowledged by a notary public; and

(c) Is completed in accordance with:

(i) The form's instructions; and

(ii) If the form is a Statement of Disability, the requirements set forth in COMAR 22.06.02.02.

(2) Signature Requirements.

(a) Except as provided in §A(2)(b) of this regulation, a disability form shall be signed and dated by the applicant.

(b) If a disability form is completed for an applicant in accordance with State Personnel and Pensions Article, §29-103, Annotated Code of Maryland, and COMAR 22.06.02.03, the form shall be dated and signed by the individual with authority to submit the form on behalf of the applicant.

B. Submission of a Disability Form.

(1) A disability form is submitted on the date that it is received by the Retirement Agency at the mailing address provided on the form.

(2) A disability form is not considered submitted if it is provided to the employer of an applicant.

.04 When Membership in a State System Ends.

A. Membership in a State system ends in accordance with the provisions of State Personnel and Pensions Article, Division II, Annotated Code of Maryland.

B. In the event of the death of a member, membership continues until the end of the date of death of the member.

[.07] .05 Effect of Not Diligently Pursuing Claim or Accepting Disability Award.

A. (text unchanged)

B. [The] Subject to §C of this regulation, the Retirement Agency shall close an applicant's file if the [applicant does] applicant:

(1) Does not provide the Retirement Agency [with any] information or documentation requested by the Retirement Agency or the medical board within [6 months] 45 days of the date of the request [or earlier if the notice from the Retirement Agency specifies.];

(2) Does not agree to report for an independent medical examination;

(3) Fails to report for a scheduled independent medical examination and does not request a postponement at least 5 business days before the date of the examination;

(4) If the Board of Trustees awards the applicant a disability retirement, fails to accept a disability retirement or a service retirement within 120 days of the date of the Board of Trustees' award;

(5) Fails to comply with any time requirement in this subtitle; or

(6) Otherwise fails to diligently pursue the applicant's claim for disability retirement.

[C. The Retirement Agency may extend the date for responding to a request for information for a period not to exceed 6 months.]

C. Extensions.

(1) The Retirement Agency may provide not more than one extension of the date to respond to a request under §B1 of this regulation, for a period not to exceed 45 days, if an emergency or other extenuating circumstances prevented an applicant from timely responding to the request.

(2) In the case of a request to postpone an appointment for an independent medical examination that is received fewer than 5 business days of the date of the scheduled examination, the Retirement Agency may only grant the request upon a showing of an emergency or other extenuating circumstances that prevented the applicant's attendance at the examination. The Retirement Agency may require that the applicant make the postponement request in writing and provide documentation to support the request.

D. Effect of Closing File.

(1) If the Retirement Agency closes an applicant's file, the applicant's disability claim is terminated.

(2) Closing an applicant's file is not a final decision. The applicant may file a new disability claim if the applicant is eligible to apply at the time that the new disability claim is filed.

(3) If an applicant chooses to file a new disability claim, a new Statement of Disability and Preliminary Application for Disability Retirement must be properly completed and timely submitted in accordance with the requirements of State Personnel and Pensions Article, Title 29, Annotated Code of Maryland, and this subtitle.

[.08] .06 Access to File.

[An] On written request, an applicant may review the applicant's record on file at the Retirement Agency during normal business hours.

22.06.02 Filing for Disability Retirement

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.01 Filing for Disability Retirement.

Except as provided in State Personnel and Pensions Article, §29-104, Annotated Code of Maryland, and Regulations .03 and .04 of this chapter, to apply for disability retirement, a member must properly complete and submit a Statement of Disability and Preliminary Application for Disability Retirement before the date membership ends.

.02 Statement of Disability.

A. A Statement of Disability submitted to the Retirement Agency shall:

(1) Identify the mental or physical condition that is claimed to have permanently incapacitated the applicant for the further performance of the normal duties of the applicant's position;

(2) Give the applicant's consent to report for one or more independent medical examinations at the request of the Retirement Agency; and

(3) Provide the information and documents requested by the Retirement Agency, including but not limited to:

(a) A report completed by the applicant's physician in the format required by the Retirement Agency;

(b) A written authorization for the release of medical records and personnel records to the Retirement Agency, medical board, and the physicians designated by the Retirement Agency;

(c) A copy of the applicant's position description that is signed and dated by the applicant's employer;

(d) Any reports of injury filed with the applicant's employer;

(e) Any disability determinations rendered by the Social Security Administration;

(f) The applicant's attendance record for the 12-month period preceding the submission of the Statement of Disability; and

(g) The applicant's most recent written employment performance evaluation, if any.

B. In addition to the requirements set forth in §A of this regulation, if accidental disability retirement is requested, a Statement of Disability shall:

(1) Identify:

(a) Every work-related accident that is claimed to entitle the applicant to accidental disability retirement; or

(b) If the applicant is in the State Police Retirement System or Law Enforcement Officers' Pension System, every work-related accident or work-related condition that is claimed to entitle the applicant to accidental disability retirement; and

(2) Provide any workers' compensation awards related to the claim for accidental disability retirement.

C. An applicant who, at the time of submission of a Statement of Disability, fails to request accidental disability retirement or fails to identify a work-related accident in accordance with §B of this regulation may not later request accidental disability retirement or submit a new claim for accidental disability retirement based upon a work-related accident that took place before the date the applicant submitted the Statement of Disability.

.03 Filing for Disability Retirement for a Member.

A. In this regulation, "department head" means the individual who has the power to make appointments and terminate employment with regard to the member's position.

B. Except as provided in §§C and D of this regulation, and subject to §E of this regulation, if a member is unable to apply for disability retirement, the member's department head may apply for disability retirement for the member.

C. If a member of the Teachers' Pension System or Teachers' Retirement System is unable to apply for disability retirement, subject to §E of this regulation, the member's State or county superintendent may file for disability retirement for the member.

D. State Police Retirement System.

(1) Subject to §E of this regulation, the Secretary of State Police may apply for disability retirement for a member of the State Police Retirement System if the following criteria are satisfied:

(a) The member:

(i) Is unable to apply for disability retirement; or

(ii) Refuses a request of the Secretary of State Police to apply for disability retirement;

(b) The Secretary of State Police has determined that the member is permanently disabled based on sufficient medical evidence in the form of a written professional opinion from an independent medical practitioner who has recognized expertise in the diagnosis and treatment of the medical condition of the member;

(c) The onset of the disability occurred at least 1 year before filing for disability retirement; and

(d) The member has used any administrative leave granted under Public Safety Article, §2-410, Annotated Code of Maryland.

(2) Procedures upon Submission of Application.

(a) When submitting an application for disability for a member, the Secretary of State Police shall:

(i) Submit the medical records and other documentation relied upon for the determination; and

(ii) Provide a copy of the application and documentation submitted in support of the application to the member.

(b) The member may submit additional documentation to the Retirement Agency regarding the application for disability.

(3) If the Board of Trustees approves an application for disability retirement filed by the Secretary of State Police on behalf of a member of the State Police Retirement System, the member on whose behalf the application is filed shall be entitled to a hearing to contest a finding of disability in accordance with COMAR 22.06.06.02A(2), unless the member waives the hearing in writing.

E. Filing Requirements.

(1) To apply for disability retirement for a member, a Statement of Disability and Preliminary Application for Disability Retirement must be properly completed and submitted to the Retirement Agency before the date membership ends.

(2) Beneficiary and Option Election.

(a) If a Preliminary Application for Disability Retirement is submitted for a member who is unable to apply, and if the election of an option and designation of beneficiary is permitted under State Personnel and Pensions Article, §21-401(a), Annotated Code of Maryland:

(i) The last designation of beneficiary form that was properly completed and filed with the Retirement Agency by the member shall serve as the designation of beneficiary for purposes of the Preliminary Application for Disability Retirement; and

(ii) If the member's spouse or disabled child as defined under §72(m)(7) of the Internal Revenue Code is the sole primary beneficiary, then the member will be deemed to have selected option 2, payable under State Personnel and Pensions Article, §21-403(b), Annotated Code of Maryland; otherwise, the member will be deemed to have selected option 1, payable under State Personnel and Pensions Article, §21-403(a), Annotated Code of Maryland.

(b) In the event that the member is later able to apply for disability retirement, the member may submit a revised Preliminary Application for Disability Retirement to update the member's option election and beneficiary designation; however, the member may change the option election only if the member notifies the Retirement Agency before the first allowance payment normally becomes due.

.04 Disability Form Filed [after the Expiration of the Filing Period] by a Former Member.

A. [This regulation does not apply to a member or former member of the State Police Retirement System or the Teachers' Retirement System.

B. The Retirement Agency shall accept a disability form submitted within 36 months after the expiration of the filing period if the applicant] A former member who satisfies the requirements set forth in §B of this regulation may apply for disability retirement only if the former member proves to the satisfaction of the medical board that the failure to [submit the disability form during the filing period] apply for disability retirement before the date membership ended was

attributable solely to the physical or mental incapacity of the [applicant during the filing period. To determine whether the applicant was incapacitated during the filing period, the medical board may consider whether the applicant's physical or mental impairment substantially limited the applicant's major life activities during the filing period] former member during membership.

B. Applying for a Disability Retirement.

(1) To apply for disability retirement, a former member shall:

(a) Properly complete and submit a Statement of Disability and Preliminary Application for Disability Retirement within 24 months after the month membership ended; or

(b) If the former member was in the Teachers' Retirement System, properly complete and submit a Statement of Disability and Preliminary Application for Disability Retirement within 12 months after the month membership ended.

(2) At the time the former member submits the required disability forms, the former member shall submit documentary evidence and a written statement attesting that the former member's failure to submit the disability forms before the date membership ended was attributable solely to the physical or mental incapacity of the former member before the date membership ended.

C. [To make the determination required under §B of this regulation, the medical board:

(1) To determine whether the former member's failure to apply for disability retirement before the date membership ended was attributable solely to the physical or mental incapacity of the former member during the filing period, the medical board:

(1) Shall consider whether the former member's physical or mental impairment substantially limited the applicant's major life activities during the filing period;

(2) Shall review the evidence submitted by the [applicant] former member in support of the claim; and

[2)] (3) May request the [applicant] former member to:

(a) (text unchanged)

(b) [Be examined by] Report for an independent medical [examiner] examination.

D. Medical Board Determination.

(1) Following review of all the evidence relating to the issue of whether the [applicant] former member failed to timely file a disability form, the medical board shall make one of the following decisions:

(a) Certify that the [applicant's] former member's failure to file a disability form during the filing period was attributable solely to physical or mental incapacity [during the filing period] before the date membership ended; or

(b) Determine that the [applicant's] former member's failure to file a disability form was not attributable solely to physical or mental incapacity [during the filing period] before the date membership ended.

(2) If the medical board certifies [an applicant's] a former member's claim under §D(1)(a) of this regulation, the Retirement Agency shall notify the [applicant] former member of the medical board's decision and accept the [applicant's] former member's disability [form] forms for processing as provided in [Regulation .07 of this chapter] COMAR 22.06.03.

(3) If the medical board determines that the [applicant's] former member's failure to file was not attributable solely to the physical or mental incapacity of the [applicant during the filing period, the applicant] former member before the date membership ended, the former member may request a reconsideration of the medical board's decision by following the procedures set forth in COMAR 22.06.03.03. If, after [reconsidering the applicant's request] reconsideration, the medical board affirms its initial decision and rejects the [applicant's] former member's disability [form] forms, the

[applicant] former member may request a hearing before a judge to be conducted as provided in COMAR 22.06.06.

.05 Application for Service and Disability Retirement.

A. A member or former member who has filed an application for service retirement may not apply for disability retirement on or after the effective date of retirement.

B. A member or former member who applies for service retirement may apply for disability retirement only if the member or former member submits a properly completed Statement of Disability and Preliminary Application for Disability Retirement before the effective date of retirement.

C. If the member or former member does not comply with §B of this regulation, or does not diligently pursue the application for disability retirement in accordance with COMAR 22.06.01.05, the Retirement Agency shall close the member or former member's file and the member or former member shall have no further right to apply for disability retirement.

[.08].06 Terminal Illness.

[A. If an] An applicant who is terminally ill, the applicant shall simultaneously file with the Disability Unit:

(1) A completed disability form that clearly indicates that the applicant is terminally ill; and

(2) For each disability retirement allowance the applicant intends to pursue, a completed application form that conforms to the requirements of §B of this regulation.

B. When submitting an application form for each disability retirement allowance the applicant intends to pursue, the applicant shall:

(1) Select a beneficiary and payment option; and

(2) Complete the purchase and claim of all previous service time for which credit will be claimed, including military service credit.] or an employer who files for disability retirement for a member who is terminally ill may request expedited review of the applicant's disability claim by providing medical documentation to the Retirement Agency indicating that the applicant is terminally ill.

22.06.03 [Medical Review Board] Review of Claims for Disability Retirement

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.01 Disability Unit's Review.

A. Disability Forms Review.

(1) On receipt of a Statement of Disability and Preliminary Application for Disability Retirement, the Disability Unit will conduct a disability forms review to determine whether:

(a) The appropriate disability forms have been properly completed and include the required information and documentation;

(b) Except as permitted under COMAR 22.06.02.04, the disability forms were submitted to the Retirement Agency before the date membership ended; and

(c) If the applicant has filed a claim for ordinary disability retirement only, the applicant has at least 5 years of eligibility service.

(2) If the Disability Unit determines that the applicant has not satisfied the requirement set forth in §A(1)(a) of this regulation, the Disability Unit shall:

(a) Reject the disability forms;

(b) Return the disability forms to the applicant;

(c) Notify the applicant that the applicant may refile for disability retirement if the applicant properly completes and timely submits a new Statement of Disability and Preliminary Application for Disability Retirement; and

(d) Close the applicant's file in accordance with COMAR 22.06.01.05B.

(3) Denial of Disability Claim.

(a) If the Disability Unit determines that the applicant has not satisfied the requirement set forth in §A(1)(b) or (c) of this regulation:

(i) The Retirement Agency shall deny the disability claim; and

(ii) The Disability Unit shall provide the applicant written notice of the denial of the disability claim and the applicant's appeal rights under §A(3)(b) and (c) of this regulation and COMAR 22.06.07.06.

(b) The applicant may appeal the denial of the disability claim by submitting a written request for a hearing to the Executive Director within 30 days of the date of the Disability Unit's notice of the denial of the disability claim.

(c) If the applicant does not submit a written request for a hearing to the Executive Director within 30 days of the date of the Disability Unit's notice, the applicant shall not have any further right to appeal the denial of the disability claim.

B. Review of Claim by Applicant with Fewer than 5 Years of Eligibility Service.

(1) An applicant who has fewer than 5 years of eligibility service is not eligible for ordinary disability retirement.

(2) If the applicant has filed a claim for accidental disability retirement, the Disability Unit and medical board may review the applicant's claim for eligibility for accidental disability retirement only.

C. The Disability Unit may request an applicant or an applicant's employer to submit additional information, including but not limited to:

(1) Records of proceedings before, or any decisions issued by the Workers' Compensation Commission or Social Security Administration;

(2) The applicant's personnel records; and

(3) Any other information the Disability Unit considers relevant to the determination of the disability claim.

D. Review of Claims for Accidental Disability Retirement.

(1) Except as provided in §D(2) of this regulation, the Disability Unit shall review an applicant's claim for accidental disability retirement to determine whether the event claimed to be the natural and proximate cause of the applicant's disability was an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the applicant.

(2) If the applicant is in the State Police Retirement System or Law Enforcement Officers' Pension System:

(a) Subject to §D(2)(b) of this regulation, the Disability Unit shall review the applicant's claim for accidental disability retirement to determine whether the occurrence or condition claimed to be the cause of the applicant's disability arose out of and in the course of the actual performance of duty without willful negligence by the applicant.

(b) If the applicant is a member of the Deferred Retirement Option Program who commenced participation on or after July 1, 2008, the Disability Unit shall also review the applicant's claim to determine whether the occurrence claimed to be the cause of the applicant's disability arose out of and in the course of the actual performance of duty during the member's participation in the Deferred Retirement Option Program, without willful negligence by the applicant.

(3) Except if the applicant is in the State Police Retirement System, Law Enforcement Officers' Pension System, or Correctional Officers' Retirement System, the Disability Unit may not consider an accident that took place more than 5 years before the date that the

Statement of Disability and Preliminary Application for Disability Retirement was submitted to the Retirement Agency.

.02 [Step One—Initial Review.] The Medical Board's Review.

A. Disabled or Not.

(1) In a claim for ordinary or accidental disability retirement, the medical board shall certify whether or not:

(a) An applicant is mentally or physically incapacitated for the further performance of the normal duties of the applicant's position;

(b) The incapacity is likely to be permanent; and

(c) The applicant should be retired.

(2) In making the determination set forth in §A(1) of this regulation, the medical board shall consider:

(a) The nature of the applicant's normal job duties;

(b) Whether the applicant currently performs of the normal duties of the applicant's position without restriction; and

(c) Whether the applicant is not performing the normal duties of the applicant's position for a reason other than a permanent mental or physical incapacity.

B. Accidental Disability Retirement.

(1) In a claim for accidental disability retirement, the medical board shall make a recommendation regarding whether an applicant:

(a) Is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the applicant; or

(b) Except as provided in §B(2) of this regulation, if the applicant is in the State Police Retirement System or Law Enforcement Officers' Pension System, is totally and permanently incapacitated for the further performance of duty arising out of and in the course of the actual performance of duty without willful negligence by the applicant.

(2) If an applicant is a member of the Deferred Retirement Option Program who commenced participation on or after July 1, 2008, in a claim for accidental disability retirement, the medical board shall make a recommendation whether the applicant:

(a) Became totally and permanently incapacitated for the further performance of duty after commencing participation in the Deferred Retirement Option Program; and

(b) Is totally and permanently incapacitated for the further performance of duty by an occurrence that arose out of and in the course of the actual performance of duty while participating in the Deferred Retirement Option Program without willful negligence by the applicant.

(3) In making the determination set forth in §B(1) or (2) of this regulation, the medical board:

(a) Shall consider the Disability Unit's findings under Regulation .01D of this chapter; and

(b) Except if the applicant is in the State Police Retirement System, Law Enforcement Officers' Pension System, or Correctional Officers' Retirement System, may not consider an accident that took place more than 5 years before the date that the Statement of Disability and Preliminary Application for Disability Retirement was submitted to the Retirement Agency.

[A.] C. Procedures for Medical Board's Review.

(1) The medical board shall review an applicant's [disability form, including any] Statement of Disability and additional evidence submitted by the applicant or obtained by the Retirement Agency.

(2) The medical board may [request] take one or more of the following actions to facilitate its review of the applicant's claim:

(a) Request additional information from the applicant or the applicant's employer pertaining to the applicant's claim[.];

(b) [The medical board may also require] *Require the applicant to [be examined by] report for an independent medical [examiner] examination; or*

(c) *Suspend its review for a period not to exceed 180 days in order to evaluate the effectiveness of treatment or consider whether an applicant has reached maximum medical improvement.*

[B.] — [E.] (proposed for repeal)

.03 Determination of an Applicant’s Claim.

A. Disability Has Been Certified.

(1) *Except as provided in §A(2) of this regulation, if the medical board certifies that the applicant is disabled and recommends that the Board of Trustees grant ordinary disability retirement, the Disability Unit shall forward the certification to the Executive Director for action by the Board of Trustees as provided in COMAR 22.06.05.*

(2) *If the applicant is not eligible for ordinary disability retirement because the applicant has fewer than 5 years of eligibility service, the Disability Unit shall forward the certification only if the medical board recommends that the Board of Trustees grant accidental disability retirement.*

(3) *In the case of an applicant who has been certified disabled by the medical board and who filed a claim for accidental disability retirement:*

(a) *If the medical board recommends that the Board of Trustees grant accidental disability retirement, the Disability Unit shall forward its recommendation to the Executive Director for action by the Board as provided in COMAR 22.06.05; or*

(b) *If the medical board recommends that the Board of Trustees deny accidental retirement, following action by the Board of Trustees on the award of ordinary disability retirement as provided in COMAR 22.06.05, the Disability Unit shall:*

(i) *Notify the applicant of the Board of Trustees’ decision on ordinary disability retirement in accordance with COMAR 22.06.05.02C; and*

(ii) *Advise the applicant of the medical board’s recommended denial of accidental disability retirement and the applicant’s right to request reconsideration of the medical board’s recommendation as provided in §C of this regulation.*

B. Disability Has Not Been Certified. *If the medical board determines that the applicant is not disabled, the Disability Unit shall notify the applicant of the medical board’s determination and advise the applicant of the applicant’s right to request reconsideration as provided in §C of this regulation.*

C. Requests for Reconsideration.

(1) *An applicant who disagrees with the recommendation of the medical board may request not more than one reconsideration of the recommendation.*

(2) *Subject to §C(3) of this regulation, to request reconsideration, within 30 days of the date of the Disability Unit’s notice of the medical board’s recommended denial of a disability retirement, an applicant shall submit to the Disability Unit:*

(a) *A written request for reconsideration; and*

(b) *Additional documentation, if any, to support the applicant’s claim for disability retirement in connection with the reconsideration.*

(3) Reconsideration When Disability Has Been Certified.

(a) *This subsection applies if an applicant has been certified disabled by the medical board and awarded ordinary disability retirement pursuant to COMAR 22.06.05.03, but the medical board has recommended denial of accidental disability retirement following its review pursuant to COMAR 22.06.03.02B.*

(b) *In addition to the requirements set forth in §C(2) of this regulation, an applicant who has been awarded an ordinary disability retirement shall, within 120 days of the date of the*

Disability Unit’s notice, accept an ordinary disability retirement or a service retirement in accordance with COMAR 22.06.05.03.

(4) *The Retirement Agency shall close the applicant’s file in accordance with COMAR 22.06.01.05B if:*

(a) *The applicant fails to submit a written request for reconsideration within 30 days of the Disability Unit’s notice of the medical board’s recommended denial of a disability retirement; or*

(b) *If the applicant was awarded ordinary disability retirement, the applicant fails to accept an ordinary disability retirement or a service retirement in accordance with COMAR 22.06.05.03 within 120 days of the date of the Disability Unit’s notice.*

22.06.04 [Retirement Agency Review] Reconsideration

Authority: State Personnel and Pensions Article, §§21-110 and 29-101—29-118, Annotated Code of Maryland

.01 Reconsideration.

A. *If an applicant, in accordance with COMAR 22.06.03.03C, timely requests reconsideration of a recommendation to deny ordinary disability retirement, the medical board shall reconsider an applicant’s file, including any additional evidence submitted with the applicant’s request for reconsideration.*

B. *If an applicant, in accordance with COMAR 22.06.03.03C, timely requests reconsideration of a recommendation to deny accidental disability retirement, the medical board and the Disability Unit shall reconsider an applicant’s file, including any additional evidence submitted with the applicant’s request for reconsideration.*

C. *The medical board or the Disability Unit may take one or more of the following actions to facilitate reconsideration:*

(1) *Request additional information from the applicant or the applicant’s employer;*

(2) *Require the applicant to report for an independent medical examination; or*

(3) *Suspend review for a period not to exceed 180 days until a determination can be reached regarding the effectiveness of treatment or whether the applicant has reached maximum medical improvement.*

D. Submission of Additional Information.

(1) *Except as provided in §C(2) of this regulation, the applicant shall submit to the medical board or Disability Unit any requested information within 45 days of the date of the request.*

(2) *At the request of the applicant or to facilitate its review of the applicant’s Statement of Disability, the medical board or Disability Unit may provide not more than one extension of the date for submission of additional evidence for a period not to exceed 30 days.*

E. *At the conclusion of the reconsideration, the medical board shall certify whether or not the applicant is disabled. If accidental disability retirement is requested, the medical board shall make a recommendation whether the Board of Trustees should grant or deny accidental disability retirement. The Disability Unit shall forward the medical board’s recommendation to the Executive Director for action by the Board of Trustees as provided in COMAR 22.06.05.*

22.06.05 Board of Trustees Review

Authority: State Personnel and Pensions Article, §§21-108, 21-110 and 29-101—29-118, Annotated Code of Maryland

.01 Disability Report.

A. *At each regular meeting of the Board of Trustees, the Executive Director shall submit a disability report to the Board of Trustees that*

summarizes the [decisions] *recommendations* of the medical board [and the Disability Unit] on the claims for disability retirement.

B. At a minimum, the disability report shall contain the following information:

(1) The name of each applicant [who is eligible to receive] *whom the medical board recommends be granted* an ordinary disability retirement [allowance];

(2) The name of each applicant [who is eligible to receive] *whom the medical board recommends be granted* an accidental disability retirement [allowance];

(3) The name of each applicant [who is eligible to receive] *whom the medical board recommends be granted* an ordinary disability retirement [allowance but who is not eligible to receive] *but denied* an accidental disability retirement [allowance]; and

(4) The name of each applicant [who is not eligible to receive] *whom the medical board recommends be denied* an ordinary disability retirement [allowance] or an accidental disability retirement [allowance].

.02 Board of Trustees' Action on the Disability Report.

A. [A] *With respect to each applicant listed on the disability report, a majority of the Board of Trustees shall:*

(1) *Adopt the recommendation of the medical board to grant or deny a disability retirement [by adopting the Executive Director's disability report]; or*

(2) *Remand the disability claim to the Retirement Agency for additional review or information.*

B. *If the Board of Trustees remands a disability claim, the Board of Trustees shall specify the basis for the remand and notify the Retirement Agency what additional review or information is requested.*

[B.] C. *Disability Unit's Notice.*

(1) [The] *Promptly following the Board of Trustees' action with respect to an applicant's disability claim, the Disability Unit shall [notify each applicant named in the Executive Director's disability report] send written notice to the applicant of the Board of Trustees' action [with respect to the applicant's claim] and advise the applicant of the applicant's rights as provided in Regulations .03—.05 of this chapter.*

(2) *If an applicant has been granted an ordinary or accidental disability retirement, the Disability Unit shall:*

(a) *Notify the applicant's appointing authority that the applicant has been approved for disability retirement; and*

(b) *If the applicant is a State employee:*

(i) *Notify the Department of Budget and Management, Office of Personnel Services and Benefits, that the applicant has been approved for disability retirement; and*

(ii) *Advise the appointing authority that the applicant shall be considered resigned from State service as of the 120th day after the date of the Disability Unit's notice to the applicant, in accordance with COMAR 17.04.03.16E.*

.03 Grant of Ordinary Disability Retirement or Accidental Disability Retirement.

A. [An] *Except as provided in Regulation .04 of this chapter, this regulation applies to an applicant who is granted a disability retirement.*

B. *Acceptance of Ordinary Disability Retirement or Accidental Disability Retirement.*

(1) *Except as provided in §B(2) of this regulation, an applicant who is granted [either] an ordinary disability retirement [allowance] or an accidental disability retirement [allowance shall accept] shall, within 120 days of the date of the Disability Unit's notice, properly complete and submit an Application for Disability Retirement to the Retirement Agency, accepting the disability retirement [allowance granted by:*

(1) *Completing the application form provided by the Retirement Agency; and*

(2) *Submitting the form to the Retirement Agency within 120 days of the date of the Board of Trustees' notice].*

(2) *Instead of accepting a disability retirement, an applicant who is eligible to receive a service retirement may accept the service retirement by properly completing and submitting an Application for Service Retirement within 120 days of the date of the Disability Unit's Notice.*

[B.] C. *If the applicant does not accept [the allowance as provided in §A of this regulation] a disability retirement or service retirement within 120 days of the date of the Disability Unit's notice to the applicant, the Retirement Agency shall close the applicant's file in accordance with COMAR 22.06.01.05B.*

[C. Retirement counseling is available to the applicant as provided in COMAR 22.06.01.10.

D. *If an applicant accepts an ordinary disability retirement allowance as provided in §A of this regulation or a service retirement allowance, the applicant may not apply for an accidental disability retirement allowance after the effective date of retirement selected by the applicant.]*

.04 Grant of Ordinary Disability Retirement and Denial of Accidental Disability.

A. *Scope.*

(1) *Except as provided in §A(2) of this regulation, this regulation applies to an applicant who is granted an ordinary disability retirement and denied an accidental disability retirement by the Board of Trustees in accordance with Regulation .02 of this chapter.*

(2) *The denial of an accidental disability retirement for an applicant who previously accepted an ordinary disability retirement and requested reconsideration of the medical board's recommended denial of accidental retirement in accordance with COMAR 22.06.03.03C(3) is governed by Regulation .05 of this chapter.*

B. *Acceptance of Ordinary Disability Retirement or Service Retirement.*

(1) [Subject to §B] *Except as provided in §B(2) of this regulation, an applicant who is granted an ordinary disability retirement [allowance] and denied an accidental disability retirement [allowance may accept the ordinary disability retirement allowance and waive the right to receive an accidental disability retirement allowance by:*

(a) *Completing the application form provided by the Retirement Agency; and*

(b) *Submitting to the Retirement Agency within 120 days of the date of the Board of Trustees' notice:*

(i) *The completed application form, and*

(ii) *A written waiver of the applicant's right to receive an accidental disability retirement allowance.*

(2) *An applicant may accept the ordinary disability retirement allowance granted by the Board of Trustees and pursue a claim for an accidental disability retirement allowance by simultaneously:*

(a) *Accepting the ordinary disability retirement allowance by:*

(i) *Completing the application form provided by the Retirement Agency, and*

(ii) *Submitting the completed form to the Retirement Agency within 120 days of the date of the Board of Trustees' notice;*

(b) *Filing a request for a hearing on the denial of the accidental disability retirement allowance;*

(c) *Selecting a beneficiary for an accidental disability retirement allowance by completing the application form for an accidental disability retirement allowance provided by the Retirement Agency and submitting the completed form to the Retirement Agency; and*

(d) Completing the purchase and claim of all previous service time for which credit will be claimed, including military service credit] *by the Board of Trustees shall, within 120 days of the date of the Disability Unit's notice, properly complete and submit an Application for Disability Retirement to the Retirement Agency, accepting the ordinary disability retirement.*

[B. Acceptance of Service Retirement Allowance.

(1) (2) Instead of accepting an ordinary disability retirement [allowance under §A of this regulation], an applicant who is eligible to receive a service retirement [allowance may retire with] *may accept a service retirement [allowance and pursue a claim for an accidental disability retirement allowance by simultaneously:*

(a) Accepting a service retirement allowance by:

(i) Completing the application form provided by the Retirement Agency, and

(ii) Submitting the completed form to the Retirement Agency within 120 days of the date of the Board of Trustees' notice;

(b) Filing a request for a hearing on the denial of the accidental disability retirement allowance;

(c) Selecting a beneficiary for an accidental disability retirement allowance by completing the application form for an accidental disability retirement allowance provided by the Retirement Agency and submitting the completed form to the Retirement Agency; and

(d) Completing the purchase and claim of all previous service time for which credit will be claimed, including military service credit.

(2) An applicant may accept a service retirement allowance as provided in §B(1) of this regulation and waive the right to pursue a claim for an accidental disability retirement allowance] *by properly completing and submitting an Application for Service Retirement within 120 days of the date of the Disability Unit's notice.*

[C.] (3) If the applicant does not accept an ordinary disability retirement [allowance] or a service retirement [allowance as provided in §A or B of this regulation] *within 120 days of the date of the Disability Unit's notice to the applicant, the Retirement Agency shall close the applicant's file in accordance with COMAR 22.06.01.05B.*

[D.] (proposed for repeal)

C. Appeal of Denial of Accidental Disability Retirement.

(1) *An applicant may appeal the denial of an accidental disability retirement by simultaneously submitting a written request for hearing to the Retirement Agency on the same date that the applicant timely submits a properly completed Application for Disability Retirement or Application for Service Retirement in accordance with §B of this regulation.*

(2) *An applicant who fails to submit a written request for hearing on the same date that the applicant timely submits a properly completed Application for Disability Retirement or Application for Service Retirement to the Retirement Agency shall not have any further right to appeal the denial of accidental disability retirement.*

.05 Denial of Ordinary Disability Retirement or Accidental Disability Retirement.

[A.] (proposed for repeal)

A. *Except as provided in Regulation .04 of this chapter, this regulation applies to an applicant who has been denied a disability retirement by the Board of Trustees.*

[B.] A. [An] *To appeal the denial of a disability retirement, an applicant [may] shall file a written request for a hearing [before a judge on the denial of an accidental disability retirement if the Retirement Agency determines that the:*

(1) Applicant has not satisfied the criteria specified in COMAR 22.06.04.02; and

(2) Board of Trustees denies an applicant accidental disability retirement.

C. If an applicant requests a hearing under §A of this regulation, the only issue at the hearing is whether the applicant is disabled or not. If an applicant requests a hearing under §B of this regulation, the only issue at the hearing is whether the applicant satisfied the criteria specified in COMAR 22.06.04.02] *not later than 30 days after the date of the Disability Unit's notice.*

[D.] C. If the request for a hearing under [§A or B] §B of this regulation is not filed within [120] 30 days of the date of the [Board of Trustees'] *Disability Unit's notice, the Retirement Agency shall close the applicant's file in accordance with COMAR 22.06.01.05B.*

.06 Effective Date of Disability Retirement.

[A.] (proposed for repeal)

[B.] A. Effective Date of Retirement.

(1) Except as provided in [§B(2) and (3)] §A(2) of this regulation, if the Board of Trustees grants a disability retirement [allowance] to an applicant and the applicant accepts the *disability retirement [allowance] as provided in Regulations .03 and .04 of this chapter, the applicant's effective date of retirement is the later of the:*

(a) [Day] *First day of the month following the last day the applicant was on payroll, as certified by the applicant's employer;*

(b) [Date] *First day of the month following the date the Retirement Agency receives a [statement of disability completed by or on behalf of the applicant] properly completed Statement of Disability and Preliminary Application for Disability Retirement; or*

(c) [Date] *First day of the month when the applicant desires to retire as set forth on the [completed disability application that is] Application for Disability Retirement that is properly completed and submitted to the Retirement Agency [by or on behalf of the applicant.*

(2) An applicant's effective date of retirement is the earlier of the:

(a) First day of the month following the date the Board of Trustees grants a disability retirement allowance to the applicant, if the applicant:

(i) Is on a qualifying leave of absence, and

(ii) Purchases eligibility service for the period of the applicant's absence by paying the member contributions with regular interest as provided in COMAR 22.05.01.03; or

(b) First day after the expiration of a leave of absence approved by the Board of Trustees].

(2) *The effective date of retirement may not be later than 120 days from the date of the Disability Unit's notice to the applicant.*

[(3) The Retirement Agency may substitute the date a statement of disability is executed by or on behalf of an applicant for the date specified in §B(1)(b) of this regulation, if the applicant establishes, to the satisfaction of the Executive Director, that the reason the statement of disability was not received by the Retirement Agency at or about the time it was executed was the result of circumstances beyond the applicant's control.]

[C.] B. Payment of Retirement Allowance.

(1) Except as provided in [§C(2)] §B(2) of this regulation, *as soon as practicable after the Board of Trustees grants a disability retirement, the Retirement Agency shall:*

(a) [Begin] *Process the applicant's Application for Disability Retirement and begin payment of [a] the disability retirement allowance [to an applicant after processing the applicant's completed disability application]; and*

(b) Make a retroactive payment *of the disability retirement allowance to the applicant as of the first day of the month following the applicant's effective date of retirement, if necessary.*

(2) The Retirement Agency may not[

(a) Pay] *pay an applicant a disability retirement allowance before the Board of Trustees [granted] grants the retirement allowance for disability]; or*

(b) Pro rate an applicant's benefit for the period beginning on the applicant's effective date of retirement and ending on the first day of the month following the applicant's effective date of retirement].

22.06.06 Hearings Before the Office

Authority: State Personnel and Pensions Article, §§21-110(b) and 29-101—29-118, Annotated Code of Maryland

.02 Hearings—General.

A. When Hearings Shall Be Held.

(1) At the request of an applicant, a hearing shall be held if [the]:

(a) The Board of Trustees denied the applicant a disability retirement allowance under COMAR 22.06.05; or

(2) (b) [Medical] The medical board rejected the [applicant's disability form] disability forms submitted by a former member under COMAR 22.06.02.04 [and 22.06.02.05].

(2) Unless the member waives the hearing in writing, a hearing shall be held if the Board of Trustees approves an application submitted by the Secretary of State Police on behalf of the member in accordance with COMAR 22.06.02.03D.

(3) The Executive Director or Board of Trustees may refer an appeal for a hearing before a judge on the issue of whether an applicant has satisfied the requirements set forth in COMAR 22.06.03.01A(1)(b) or (c).

B. Date, Time, [and Place for] Place, and Notice of Hearing.

(1) The Retirement Agency shall coordinate with the [parties] applicant and the Office to schedule a hearing before a judge at the central office of the Office of Administrative Hearings.

(2) The designation of a site for a hearing, other than the central office of the Office of Administrative Hearings, requires the [applicant's] Retirement Agency's consent.

[C. Hearing Notice.

(1) (3) The [Retirement Agency or the] Office shall issue a written hearing notice that conforms to State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, within a reasonable time before the hearing.

(2) The hearing notice shall state:

- (a) The date, time, and place of the hearing;
- (b) A short and simple statement of the matters that are at issue at the hearing;
- (c) The pertinent statutory and regulatory sections under which the Board of Trustees is taking the action; and
- (d) The party's right to be represented by counsel.]

C. Each party is required to provide every other party with a copy of any written communication with the Office or a judge, including but not limited to a request for postponement or a request for a subpoena.

D. Not less than 20 days prior to the hearing, each party shall provide written notification to every other party of the name and identify of each witness the party may call to testify at the hearing.

[D.] (proposed for repeal)

E. Conduct of the Hearing.

- (1) The burden of proof shall be on the applicant.
- (2) An applicant may represent oneself at the hearing, or may be represented by an attorney who is licensed to practice law in Maryland.

[E.] F. Official Record.

(1) The judge shall prepare and submit to the Retirement Agency an official record of the hearing which shall include all orders, pleadings, exhibits, materials submitted in connection with any prehearing conference, [and] other material filed in the proceeding, and any testimony transcribed according to [§E(2)] § F(2) of this regulation.

(2) A party may request a transcript of the record of the proceedings [need not be transcribed unless requested by a party]. The cost of typewritten transcripts[, for all or part of the proceedings,] shall be paid by the party requesting the transcript.

[F.] G. (text unchanged)

[G.] H. Exceptions.

(1) — (2) (text unchanged)

(3) A party that refers to any evidence produced at the hearing before the judge shall identify the specific evidence in the party's exceptions. [That party may file with the Board Secretary a copy of the transcript of the hearing, or relevant portion of the transcript, at that party's expense, at the time of filing the exceptions.]

(4) A party shall not submit additional evidence for consideration by the Board of Trustees.

(5) A party may file with the Board Secretary a copy of the transcript of the full hearing, at that party's expense, at the time of filing the exceptions.

(6) A copy of the exceptions shall be served on all parties to the proceedings, their representatives, and the Board Secretary.

22.06.07 Final Decision by the Board of Trustees

Authority: State Personnel and Pensions Article, §§21-108, 21-110, and 21-111, Annotated Code of Maryland

.01 Receipt of [Judge's] Proposed Decision.

As soon as practical after receipt of a proposed decision and any exceptions, the Board Secretary shall forward to the medical board those decisions which involve [only medical issues] the issue of whether or not an applicant is disabled for processing as provided in Regulation [.06] .05 of this chapter, and the Board Secretary shall consider those decisions which involve a proposed default order as provided in Regulation .07 of this chapter. An appeal of a denial of a disability claim because the applicant has not satisfied the requirements set forth in COMAR 22.06.03.01A(1)(b) or (c) shall be processed as provided in Regulation .06 of this chapter. All other cases shall be processed as provided in Regulations .02—[.05] .04 of this chapter.

[.04] .03 Exceptions Hearing Before the Board of Trustees.

A. [The] Subject to §B of this regulation, the Board Secretary shall:

- (1) Schedule the exceptions hearing before the Board of Trustees; and
- (2) Notify the parties in writing of [the]:

(a) The party's right to present argument at an exceptions hearing and to be represented by an attorney who is licensed to practice law in Maryland; and

(b) The date, time, and place for the exceptions hearing.

B. Request for Postponement or to Participate by Telephone.

(1) Postponement Request.

(a) Except in the case of an emergency or [in] unusual circumstances, a request for postponement of the exceptions hearing may not be granted by the Board Secretary unless it is received by the Board Secretary not later than 20 days from the date of the notice of the exceptions hearing issued by the Board Secretary in accordance with §A(2) of this regulation.

(b) (text unchanged)

(2) (text unchanged)

C. Appearance of Parties at Exceptions Hearings; Failure to Appear.

(1) [A party] An applicant may represent [himself or herself] oneself at an exceptions hearing, or may be represented by an attorney [authorized] who is licensed to practice law in Maryland.

(2) Except where a party has been granted a postponement as provided in §B(1) of this regulation, if a party fails to appear at the

scheduled date, time, and place of the exceptions hearing, the failure is considered a waiver of the request to make argument and the Board of Trustees shall issue a final decision as provided in [Regulation .05 or .06G] *Regulation .04 or .05G* of this chapter.

D. Conduct of Argument.

- (1) (text unchanged)
- (2) The presiding officer shall:
 - (a) (text unchanged)
 - (b) Regulate the course of the argument, including the conduct of the parties and their [representatives] *attorneys*;
 - (c) — (e) (text unchanged)
- (3) (text unchanged)

[.05] .04 Final Decision.

A. (text unchanged)

B. *The Board of Trustees shall:*

- (1) *Adopt or reject the proposed decision of the judge, with or without modification, granting or denying a disability; or*
- (2) *Remand the applicant's claim to the judge.*

C. *The Board of Trustees shall identify any changes, modifications, or amendments to the proposed decision and the reason for the changes, modifications, or amendments.*

D. *If the Board of Trustees remands an applicant's claim to the judge, the Board of Trustees shall specify the reason for the remand and the additional review requested.*

E. The Board Secretary shall:

- (1) Notify the parties in writing of the Board of Trustees' final decision with respect to the [party's] *applicant's* claim; and
- (2) Advise the [party] *applicant* of the [party's] *applicant's* right to:
 - (a) Receive a retirement allowance [under] *in accordance with* COMAR [22.06.05.02,] 22.06.05.03[,] or 22.06.05.04, except that the [party shall] *applicant's right* to appeal the denial of an accidental disability retirement [allowance under] *shall be governed by* Regulation .08 of this chapter; or
 - (b) Appeal the denial of a disability retirement [allowance] under Regulation .08 of this chapter.

[.06] .05 [Medical Issues] Final Decision in "Disabled or Not" Cases.

A. [The] *In an appeal regarding the issue of whether or not an applicant is disabled, the medical board shall review the:*

- (1) — (3) (text unchanged)

B. (text unchanged)

C. Within a reasonable time after the medical board completes its review under §A of this regulation, the medical board shall issue a decision as to [medical issues] *whether or not an applicant is disabled*. The medical board's decision shall be in writing and shall contain the reason or reasons for the decision.

D.—E. (text unchanged)

F. If the medical board's decision is adverse to an applicant, the Board Secretary shall notify the [party] *parties* of the [party's] *applicant's* right to present argument to the Board of Trustees in accordance with the procedures established under Regulations [.03] .02 and [.04] .03 of this chapter.

G. Final Decision of the Board of Trustees—[Medical Issues] *Disabled or Not*.

- (1) (text unchanged)
- (2) The Board of Trustees shall:
 - (a) Affirm the decision of the medical board and deny the [party] *applicant's* disability retirement; or
 - (b) Remand the [party's] *applicant's* claim to the medical board for further review.
 - (3) *If the Board of Trustees remands the applicant's claim to the medical board, the Board of Trustees shall specify the reason for the remand and the additional review requested.*

H. (text unchanged)

I. [The] *If the Board of Trustees denied the application for disability retirement under §G(2)(a) of this regulation, the Board Secretary shall notify the [party and the party's representatives] parties of the Board of Trustees' final decision and advise the [party] applicant of the [party's] applicant's right[:*

- (1) To] *to appeal the Board of Trustees' decision under Regulation .08 of this chapter [if the Board of Trustees denied the application for disability retirement under §G(2)(a) of this regulation; or*

(2) For further review of the claim by the medical board if the Board of Trustees remanded the claim under §G(2)(b) of this regulation].

.06 Final Decision on Summary Decision.

A. *This regulation applies only if an applicant appeals the Retirement Agency's denial of a disability claim because the applicant has not satisfied the requirements set forth in COMAR 22.06.03.01A(1)(b) or (c).*

B. *If an applicant timely appeals the denial of a disability claim, the Executive Director shall:*

(1) *Refer the appeal for a hearing before a judge as provided under COMAR 22.06.06; or*

(2) *Refer the appeal for a summary decision in accordance with §§C and D of this regulation.*

C. *Proposed Summary Decision.*

(1) *The Executive Director shall issue a written notice of hearing on summary decision in accordance with COMAR 22.06.07.06.*

(2) *The hearing notice shall state:*

(a) *A statement of the matters at issue at the hearing;*

(b) *The proposed summary decision of the Executive Director;*

(c) *The date, time and location of the hearing on summary decision before the Board of Trustees;*

(d) *The applicant's right to submit a written response to the Board of Trustees regarding the recommended summary decision not later than 10 days before the date of the hearing; and*

(e) *The applicant's right to present argument to the Board of Trustees and be represented by an attorney who is licensed to practice law in Maryland at the hearing.*

D. *Following review of the applicant's hearing request, the Executive Director's recommended summary decision, any written response to the recommended summary decision submitted by the applicant, and any argument presented to the Board of Trustees at a hearing, a majority of the Board of Trustees shall:*

(1) *Issue a summary decision; or*

(2) *Refer the appeal for a hearing as provided under COMAR 22.06.06.*

E. *The Board of Trustees may issue a summary decision if it finds that:*

(1) *There is no dispute of material fact; and*

(2) *The Agency or the applicant is entitled to prevail as a matter of law.*

F. *A summary decision is the final administrative decision of the Board of Trustees which may be appealed under Regulation .08 of this chapter. The Board Secretary shall notify the parties of the Board of Trustees' decision, and if the decision is adverse to the applicant, notify the applicant of the applicant's right to appeal the Board of Trustees' decision under Regulation .08 of this chapter.*

.07 Final Decision of the Board Secretary.

A. (text unchanged)

B. *A defaulting party may submit a written motion to vacate a proposed default order to the Board Secretary within 30 days after*

the date of the order. The motion shall state the reasons for the failure to attend or participate in the hearing.

C. On receipt of a proposed default order and any written motion from a defaulting party [requesting the Board of Trustees to vacate a proposed default order], the Board Secretary shall consider the proposed default order and any grounds stated [for the request in the motion] in a motion to vacate. The Board Secretary may contact the [party] parties or the Office to obtain additional information about reasons for the default.

[C.] D. If the Board Secretary finds that there is:

(1) Good cause to excuse the default, the Board Secretary may vacate the proposed default order, and return the case to the [officer] Office for further appropriate proceedings; or

(2) Not good cause to excuse the default, the Board Secretary shall deny the motion, if one was filed, and issue a final default order terminating further proceedings.

[D.] E. At the next regularly scheduled meeting of the Board of Trustees following the Board Secretary's consideration of a [written motion requesting that a] proposed default order [be vacated or modified], the Board Secretary shall advise the Board of Trustees as to the action taken.

.08 Appeal.

A party adversely affected by a final decision of the Board of Trustees or the Board Secretary [may obtain] is entitled to judicial review of the decision [as provided by law] in accordance with State Government Article, §10-222, Annotated Code of Maryland.

.09 Adjustment in Allowance.

The Retirement Agency shall adjust the allowance of a retiree who is subsequently granted an ordinary disability retirement [allowance] or an accidental disability retirement [allowance] retroactively to the effective date of retirement.

.10 Effect of Death Before Final Decision.

If the applicant dies before the final decision on the applicant's [claim] appeal for an ordinary disability retirement [allowance] or an accidental disability retirement [allowance], or both, the claim shall terminate. Survivor benefits, if any, shall be paid in accordance with the selection made by the applicant for the retirement allowance granted and accepted before death.

R. DEAN KENDERDINE
Executive Director
State Retirement Agency

Title 31
MARYLAND INSURANCE
ADMINISTRATION

Subtitle 04 INSURERS

31.04.14 Life and Health Insurance Guaranty Corporation Coverage — Notice Requirements

Authority: Insurance Article, §§2-109 and 9-414, Annotated Code of Maryland

Notice of Proposed Action

[12-178-P]

The Insurance Commissioner proposes to amend Regulation .03 under **COMAR 31.04.14 Life and Health Insurance Guaranty Corporation Coverage — Notice Requirements.**

Statement of Purpose

The purpose of this action is to amend the notice in Regulation .03 of the chapter to comply with the new limits that are applicable to the Life and Health Guaranty Corporation pursuant to S.B. 1003 and H.B. 1340, Chs. 633 and 634 respectively, Acts of 2012.

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 Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to klawhorn@mdinsurance.state.md.us, or fax to 410-468-2020. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.03 Required Notice.

A. (text unchanged)

B. The notice required in §A of this regulation shall be in at least 12-point type and shall read as follows:

NOTICE OF PROTECTION PROVIDED BY MARYLAND LIFE AND HEALTH INSURANCE GUARANTY CORPORATION

This notice provides a brief summary of the Maryland Life and Health Insurance Guaranty Corporation (the Corporation) and the protection it provides for policyholders. This safety net was created under Maryland law, which determines who and what is covered and the amounts of coverage.

The Corporation is not a department or unit of the State of Maryland and the liabilities or debts of the Life and Health Insurance Guaranty Corporation are not liabilities or debts of the State of Maryland.

The Corporation was established to provide protection in the unlikely event that your life, annuity, or health insurance company becomes financially unable to meet its obligations and is taken over by its Insurance Department. If this should happen, the Corporation will typically arrange to continue coverage and pay claims, in accordance with Maryland law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Corporation are:

- Life Insurance
\$300,000 in death benefits
\$100,000 in cash surrender or withdrawal values
- Health Insurance
[\$300,000 in health insurance benefits, including net cash surrenders and net cash withdrawal values]
• \$500,000 for basic hospital, medical, and surgical insurance or major medical insurance provided by health benefit plans
- \$300,000 for disability insurance
- \$300,000 for long-term care insurance
- \$100,000 for a type of health insurance not listed above, including any net cash surrender and net cash withdrawal values under the types of health insurance listed above
- Annuities
- \$250,000 in the present value of annuity benefits, including net cash withdrawal values and net cash surrender values

PROPOSED ACTION ON REGULATIONS

1020

• *With respect to each payee under a structured settlement annuity, or beneficiary of the payee, \$250,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values*

The maximum amount of protection for each individual, regardless of the number of policies or contracts, [are the amounts listed above.] is:

• *\$300,000 in aggregate for all types of coverage listed above, with the exception of basic hospital, medical, and surgical insurance or major medical insurance*

• *\$500,000 in aggregate for basic hospital, medical, and surgical insurance or major medical insurance*

NOTE: Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Maryland law.

To learn more about the above protections, please visit the Corporation's website at www.mdlifeqa.org, or contact:

Maryland Life and Health
Insurance Guaranty Corporation
9199 Reisterstown Road
P.O. Box 671—Suite 216C
Owings Mills, Maryland 21117
410-998-3907

Maryland Insurance
Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202
1-800-492-6116, ext. 2170

Insurance companies and agents are not allowed by Maryland law to use the existence of the Corporation or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Corporation coverage. If there is any inconsistency between this notice and Maryland law, then Maryland law will control.

THERESE M. GOLDSMITH
Insurance Commissioner

Subtitle 15 UNFAIR TRADE PRACTICES

31.15.08 Payment of Claims Under Life and Health Policies and Annuity Contracts

Authority: *Health General Article, §19-706(g)*; Insurance Article, §§1-301, 2-109, 2-205, 2-207, 4-113, 8-455, 10-102, 10-103, 10-118, 10-126, 10-130, 10-131, 10-401—10-406, 10-410, 14-112, 14-124, 14-407, 14-408, 14-409, 14-416, 15-1004, 15-1005, 27-102, Title 15, Subtitle 7, and Title 27, Subtitle 3[.]; Annotated Code of Maryland

Notice of Proposed Action [12-181-P]

The Insurance Commissioner proposes to amend Regulations .01 and .02 under **COMAR 31.08.15 Payment of Claims Under Life and Health Policies and Annuity Contracts**.

Statement of Purpose

The purpose of this action is to revise the above-cited regulation to include a health maintenance organization.

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 Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to klawhorn@mdinsurance.state.md.us, or fax to 410-468-2020. Comments will be accepted through August 27, 2012. A public hearing has not been scheduled.

.01 Scope.

These regulations are applicable to all life, health, and annuity insurers, including nonprofit health service plans, fraternal benefit societies, *health maintenance organizations*, and dental plan organizations, issuing life and health policies and annuity contracts.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) “Insurer” means a person licensed to issue, or who issues, any insurance policy in this State, including a nonprofit health service plan, fraternal benefit society, *health maintenance organization*, or dental plan organization.

(4) — (7) (text unchanged)

THERESE M. GOLDSMITH
Insurance Commissioner

Errata

COMAR 10.22.14

At 39:14 Md. R. 838 (July 13, 2012), column 1, line 27 from the bottom:

For: adopted new Regulations **.01—.12** under a new chapter,
COMAR
Read: adopted new Regulations **.01—.10** under a new chapter,
COMAR

[12-15-46]

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: September 17, 2012, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6190
 [12-15-08]

BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

Subject: Public Meeting
Date and Time: September 14, 2012, 9:30 a.m. — 12 p.m.; Additional Dates: September 14, October 12, and December 14, 2012
Place: 4201 Patterson Ave., Rm. 105, Baltimore, MD
Contact: Richard Proctor (410) 764-5911
 [12-15-22]

BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

Subject: Public Meeting
Date and Time: August 9, 2012, 10 a.m. — 1 p.m.
Place: Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rm. 108/109, Baltimore, MD
Contact: Maria Ware (410) 764-5902
 [12-15-36]

MARYLAND COLLECTION AGENCY LICENSING BOARD

Subject: Public Meeting
Date and Time: August 2, 2012, 11 a.m. — 12:30 p.m.
Place: Holiday Day Inn, 17th St., Ocean City, MD
Contact: Kelly Mack (410) 230-6079
 [12-15-18]

COMPTROLLER OF THE TREASURY

Subject: Reduction of Bond Authorization Announcement
Add'l. Info: Pursuant to State Finance and Procurement Article, §8-128, Annotated Code of Maryland, which provides that if within 2 years after the date of an authorization of State debt, no part of the project or program for which the enabling

act authorized the State debt is under contract and the Board of Public Works has not committed money for any part of the project or program, the authorization terminates unless:

(1) The enabling act provides otherwise; or

(2) In an emergency, the Board unanimously grants a temporary exception for a period of 1 year.

Therefore, with Board of Public Works approval of item #4 dated July 11, 2012, we submit for publication the following cancellation of bond authorizations in accordance with the above-referenced article:

MES — Infrastructure Improvement: Ch. 138, Acts of 1998; \$71,565.96; authorized the proceeds for the design, construction, and equipment capital improvements for State institutions.

MES — Water and Wastewater Facilities Improvement Fund: Ch. 660, Acts of 1997; \$33,554.52; authorized the proceeds for the design, construction, and equipment capital improvements for State institutions.

DNR — Lillian Holt Park: Ch. 445, Acts of 2005; \$21,969.20; authorized the proceeds for the renovation of structures and amenities throughout Lillian Holt Park and Center for the Arts, located in the Overlea and Fullerton areas of Baltimore County.

MES — Water and Wastewater Facilities Improvement Fund: Ch. 471, Acts of 1991; \$21,606.97; authorized the proceeds for the design and construction capital improvements to State-owned and State-operated water treatment and wastewater treatment plants and distribution systems.

MES — Water and Wastewater Facilities Improvement Fund: Ch. 125, Acts of 1996; \$18,299.15; authorized the proceeds for the design, construction, and equipment capital improvements for State institutions.

Bowie State University Campus Wide Site Improvements: Ch. 290, Acts of 2002; \$8,835.77; authorized the proceeds to provide funds for this State-owned project for the purpose contained in the fiscal year 2001 operating budget (Chapter 204, Acts of 2000) and the fiscal year 2002 operating budget (Chapter 102, Acts of 2001).

Rehena L. Rentuma

Fiscal Specialist
 Administration and Finance
Contact: Re Rentuma (410) 260-7909
 [12-15-40]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting
Date and Time: September 10, 2012, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6190
 [12-15-06]

ELEVATOR SAFETY REVIEW BOARD

Subject: Public Hearing
Date and Time: August 17, 2012, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Contact: Raquel M. Meyers (410) 230-6379
 [12-15-05]

STATEWIDE EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL (SEMSAC)

Subject: Public Meeting
Date and Time: August 2, 2012, 1 — 3 p.m.
Place: 653 W. Pratt St., Baltimore, MD
Add'l. Info: The State Emergency Medical Services Advisory Council meets regularly on the 1st Thursday of each month.
Contact: Leandrea Gilliam (410) 706-4449
 [12-15-23]

EMERGENCY MEDICAL SERVICES BOARD

Subject: Public Meeting
Date and Time: August 14, 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
 [12-15-24]

BOARD FOR PROFESSIONAL ENGINEERS

Subject: Public Meeting
Date and Time: August 9, 2012, 9 a.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Add'l. Info: The Board will host a public forum at 11 a.m. to hear comments from the public on elimination or modification of the nonacademic licensure path. Written comments may be sent to the Board at the above address.
Contact: Pamela J. Edwards (410) 230-6262

[12-15-34]

BOARD OF FORESTERS

Subject: Public Meeting
Date and Time: August 13, 2012, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Dennis L. Gring (410) 230-6224

[12-15-39]

BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

Subject: Public Meeting
Date and Time: August 8, 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

[12-15-04]

HOME IMPROVEMENT COMMISSION

Subject: Public Meeting
Date and Time: August 2, 2012, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Contact: Steven Smitson (410) 230-6169

[12-15-01]

MARYLAND STATEWIDE INDEPENDENT LIVING COUNCIL

Subject: Public Meeting
Date and Time: August 17, 2012, 12 — 3 p.m.; Additional Dates: October 19 and December 7, 2012, 12 — 3 p.m.
Place: Workforce & Technology Center, 2301 Argonne Dr., Rm. T-130, Baltimore, MD
Contact: Tonya Gilchrist (410) 554-5412

[12-15-10]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Meeting
Date and Time: August 21, 2012, 2 — 4 p.m.
Place: 200 St. Paul Pl., 24th Fl., Hearing Rm., Baltimore, MD
Add'l. Info: Second Meeting of the Workgroup on Access to Habilitative Services Benefits
Contact: Tinna Damaso Quigley (410) 468-2202

[12-15-35]

COMMISSION ON KIDNEY DISEASE

Subject: Public Meeting
Date and Time: October 25, 2012, 2 — 4 p.m.
Place: 4201 Patterson Ave., Baltimore, MD
Add'l. Info: A portion of the meeting may be closed for executive session.
Contact: Eva Schwartz (410) 247-3246

[12-15-17]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting
Date and Time: September 20, 2012, 1 p.m.
Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD
Contact: Valerie Wooding (410) 764-3460

[12-15-09]

MARYLAND HEALTH CARE COMMISSION

Subject: Receipt of Application
Add'l. Info: On July 6, 2012 the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by College View Center — Matter No. 12-10-2336 — Construction of a replacement building to house the current 119 comprehensive care facility (CCF) beds at College View and the relocation of 11 temporary delicensed CCF beds to be acquired from Frederick Memorial Hospital.

Proposed Cost: \$19,205,000

The MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter No. listed above in any correspondence on the application. A copy of the application is

available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Deputy Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Ruby Potter (410) 764-3276
 [12-15-32]

MARYLAND HEALTH CARE COMMISSION

Subject: Receipt of Application
Add'l. Info: On July 6, 2012 the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by Garrett County Memorial Hospital — Matter No. 12-11-2337 — Construction of a 4-story, New Wing Expansion and renovation project to the existing hospital

Proposed Cost: \$23,539,350

The MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter No. listed above in any correspondence on the application. A copy of the application is available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Deputy Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Ruby Potter (410) 764-3276
 [12-15-33]

MARYLAND HEALTH CARE COMMISSION

Subject: Collection of New AMI, VTE, and Stroke Inpatient Hospital Quality Measures Data for Reporting on the Hospital Performance Evaluation Guide

Add'l. Info: Pursuant to Health General Article, §19-134(e), Annotated Code of Maryland, and COMAR 10.25.04.02, the Maryland Health Care Commission will add new Stroke, VTE, and AMI Inpatient Process of Care measures to the Hospital Performance Evaluation System.

The new AMI measure is AMI-10 (Statin Prescribed at Discharge). This measure is effective for patients discharged on or after July 1, 2012. The new VTE measures include VTE-1 (Venous

GENERAL NOTICES

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Thromboembolism Prophylaxis), VTE-2 (Intensive Care Unit Venous Thromboembolism Prophylaxis), VTE-3 (Venous Thromboembolism Patients with Anticoagulation Overlap Therapy), VTE-4 (Venous Thromboembolism Patients Receiving Unfractionated Heparin with Dosages/Platelet Count Monitoring by Protocol), VTE-5 (Venous Thromboembolism Discharge Instructions), and, VTE-6 (Incidence of Potentially-Preventable Venous Thromboembolism). These measures are effective for patients discharged on or after January 1, 2013.

The new Stroke measures include STK-1 (Venous Thromboembolism (VTE) Prophylaxis), STK-2 (Discharged on Antithrombotic Therapy), STK-3 (Anticoagulation Therapy for Atrial Fibrillation/Flutter), STK-4 (Thrombolytic Therapy), STK-5 (Antithrombotic Therapy By End of Hospital Day 2), STK-6 (Discharged on Statin Medication), STK-8 (Stroke Education), and, STK-10 (Assessed for Rehabilitation). These measures are effective for patients discharged on or after January 1, 2013. Stroke data will be collected through the American Heart Association/American Stroke Association "Get With The Guidelines" (GWTG)-STROKE program. The Commission will work with hospitals currently not enrolled in the GWTG-Stroke program to determine if a waiver from participation is appropriate. Further information on the GWTG-Stroke program may be found here: http://www.heart.org/HEARTORG/HealthcareResearch/GetWithTheGuidelinesHFStroke/Get-With-The-Guidelines-Stroke-Home-Page_UCM_306098_SubHomePage.jsp
Contact: Theresa Lee (410) 764-3328

[12-15-44]

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

Subject: Public Meeting

Date and Time: August 8, 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

[12-15-03]

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Subject: Public Meeting

Date and Time: August 17, 2012, 8:30 a.m. — 2 p.m.

Place: Spring Grove Hospital Center, 55 Wade Ave., Catonsville, MD

Add'l. Info: Health Occupations Article, Title 10, Annotated Code of Maryland, and COMAR 10.46 amendments, additions, and revisions, including fee changes, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session. Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 1-800-735-2255.

Contact: Marilyn Pinkney (410) 402-8556

[12-15-29]

OFFICE OF THE ATTORNEY GENERAL/OPEN MEETINGS COMPLIANCE BOARD

Subject: Annual Meeting

Date and Time: September 13, 2012, 10:30 a.m. — 12:30 p.m.

Place: 200 St. Paul Pl., Baltimore, MD

Contact: Deborah P. Spence (410) 576-6327

[12-15-28]

BOARD OF PLUMBING

Subject: Public Meeting

Date and Time: August 16, 2012, 10 a.m. — 12:30 p.m.

Place: 500 N. Calvert St., Rm. 302, Baltimore, MD

Contact: Brenda Clark (410) 230-6164

[12-15-19]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting

Date and Time: September 13, 2012, 1 p.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Sheri Henderson (410) 764-4785

[12-15-13]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting

Date and Time: October 11, 2012, 1 p.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Sheri Henderson (410) 764-4785

[12-15-14]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting

Date and Time: November 8, 2012, 1 p.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Sheri Henderson (410) 764-4785

[12-15-15]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting

Date and Time: December 13, 2012, 1 p.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Sheri Henderson (410) 764-4785

[12-15-16]

RACING COMMISSION

Subject: Public Meeting

Date and Time: August 21, 2012, 12:30 — 1 p.m.

Place: Laurel Park, Laurel, MD

Contact: J. Michael Hopkins (410) 296-9682

[12-15-38]

COMMISSION OF REAL ESTATE APPRAISERS AND HOME INSPECTORS

Subject: Public Meeting

Date and Time: August 14, 2012, 10:30 a.m. — 12 p.m.

Place: 500 N. Calvert St., Baltimore, MD

Contact: Patti Schott (410) 230-6165

[12-15-02]

REAL ESTATE COMMISSION

Subject: Public Meeting

Date and Time: August 15, 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

[12-15-11]

REAL ESTATE COMMISSION

Subject: Public Hearing

Date and Time: August 15, 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

[12-15-12]

**STATE BOARD OF INDIVIDUAL TAX
PREPARERS**

Subject: Public Meeting

Date and Time: August 13, 2012, 1 — 5
p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf.
Rm., Baltimore, MD

Contact: Douglas Blackstone (410) 230-
6244

[12-15-25]

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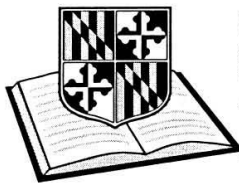
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