

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	08/28/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/2/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

13B 02 01 .02, .03, .04-1, and .07-1

13B 02 05 .01 through .09

13B 05 01 .01 and .02

3. Name of Promulgating Authority

Maryland Higher Education Commission

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

Christine Wellons

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: August 26, 2015.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Christine Wellons, Assistant Attorney General, (telephone #410-767-3313) on August 26, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Mark Blom

Title

Principal Counsel

Telephone No.

410-767-3311

Date

August 26, 2015

Title 13B
B MARYLAND HIGHER EDUCATION COMMISSION

Subtitle 02 ACADEMIC REGULATIONS

13B.02.01 Requirements for Authorization of Out-of-State Degree-Granting Institutions to Operate in Maryland

Subtitle 02 ACADEMIC REGULATIONS

13B.02.05 Approval and Oversight of In-State SARA Institutions

Subtitle 05 FULLY ONLINE PROGRAMS

13B.05.01 Registration

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

Notice of Proposed Action

[]

The Maryland Higher Education Commission proposes to amend Regulations .02, .03, .04-1, and add Regulation .07-1, to Chapter 01 of Subtitle 02 of Title 13B of the Code of Maryland Regulations; add Chapter 05 to Subtitle 02 of Title 13B of the Code of Maryland Regulations; and amend Regulations .01 and .02 of Subtitle 05 of Title 13B of the Code of Maryland Regulations.

This action was considered at an open meeting of the Maryland Higher Education Commission held on August 24, 2015, pursuant to of Section 3-301 of the General Provisions Article of the Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to facilitate the State's participation in, and implementation of, the State Authorization Reciprocity Agreement (SARA), pursuant to Ch. 175, Acts of 2015.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

With respect to in-State institutions of higher education, the regulations will lower the administrative costs that the institutions incur in connection with obtaining approval to

offer online education to students located in other states. With respect to the Maryland Higher Education Commission, the regulations will lower the fees received by the Commission in connection with registering out-of-state institutions of higher education to provide online education to students within Maryland. However, the regulations will increase the fees that the Commission receives from in-State institutions applying to participate in SARA.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
(1) Fees for Out-of-State Institutions	(R-)	\$365,400 in FY 2017
(2) Fees for In-State Institutions	(R+)	\$90,000 in FY 2017
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude

D. On regulated industries or trade groups:		
Cost Reduction for In-State SARA Institutions	(+)	Indeterminate
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). Beginning in fiscal year 2017, out-of-State institutions participating in SARA will not be required to pay fees to the Commission in order to offer online education in Maryland.

A(2). Beginning in fiscal year 2017, in-State institutions that apply to the Commission to participate in SARA will pay application fees and renewal fees to the Commission.

D. In-State institutions approved by the Commission to participate in SARA will have significantly reduced costs associated with offering online education in other states.

Although these institutions will be required to pay fees to the Commission in order to participate in SARA, they will no longer have to pay fees to the other 28 SARA member states in order to offer online education in those states.

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 Jennifer Vest Frank, Assistant Secretary of Higher Education, Maryland Higher Education Commission, 6 North Liberty Street, 10th Floor, Baltimore, MD 21201, or call 410-767-3041, or email to jennifer.frank@maryland.gov, or fax to 410-332-0275. Comments will be accepted through November 2, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 16

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:
Special funds generated from program review fees.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The regulations do not affect small businesses.

G. Small Business Worksheet:

Attached Document:

Title 13B MARYLAND HIGHER EDUCATION COMMISSION

Subtitle 02 ACADEMIC REGULATIONS

Chapter 01 Requirements for Authorization of Out-of-State Degree-Granting Institutions to Operate in Maryland

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

.02 Scope.

A.—C. (text unchanged)

D. (text unchanged)

(1)—(2) (text unchanged)

E. *Application of Chapter to Out-of-State SARA Institutions.*

(1) *If the State is a member of SARA, regulations .04-1 through .22 of this chapter do not apply to out-of-state SARA institutions that do not operate in Maryland.*

(2) *The requirements of this chapter apply to out-of-state SARA institutions that operate in Maryland.*

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(a)—(b) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(a)—(b) (text unchanged)

(4)—(7) (text unchanged)

(8) (text unchanged)

(a)—(b) (text unchanged)

(9) (text unchanged)

(10) (text unchanged)

(a)—(d) (text unchanged)

(10-1) *“Home state” means the SARA member state in which an institution holds its legal domicile.*

(11) (text unchanged)

(12) *“Operate in Maryland” means to:*

(a) *Establish or provide a physical location in the State for students to receive synchronous or asynchronous instruction for credit leading to a degree or certificate;*

(b) (text unchanged)

(c) *Have more than [five] ten students, in a single program, [physically present] placed simultaneously at one [or more sites] site in the State in a supervised internship, practicum, or field experience as a required part of a degree or certificate program, unless the internship, practicum, or field experience:*

(i) *is arranged and administered by a national placement center;*

(ii) *occurs at the National Institutes of Health, the U.S. Food and Drug Administration, or another federal agency that, in the determination of the Secretary, recruits students nationwide from eligible academic programs, regardless of the student’s specific institution of higher education; or*

(iii) *in the determination of the Secretary, has de minimus contacts with Maryland and is subject to the sufficient oversight of another regulatory body or government agency.*

(13) (text unchanged)

(13-1) *“Out-of-state SARA institution” means an out-of-state institution approved by its home state to participate in SARA.*

(14)—(16) (text unchanged)

(16-1) *“SARA” means a State Authorization Reciprocity Agreement overseen by the National Council for State Authorization Reciprocity Agreements and administered by the Southern Regional Education Board, the New England Board of Higher Education, the Midwestern Higher Education Compact, or the Western Interstate Commission for Higher Education.*

(16-2) *“SARA distance education” means interstate instruction, originating in the United States or a U.S. territory, offered by any means where the student and faculty member are in separate physical locations, including, but not limited to, online, interactive video, or correspondence courses or programs.*

(17) (text unchanged)

(18) (text unchanged)

(a)—(f) (text unchanged)

.04-1 Report by Out-of-State Institutions.

A. *An out-of-state institution that has no more than [five] ten students in a single program placed simultaneously at one [or more sites] site in the State in a supervised internship, practicum, or field experience as a required part of a degree or certificate program shall:*

(1)—(2) (text unchanged)

B. (text unchanged)

.07-1. Operation of Out-of-State SARA Institutions in the State.

A. If the State is a member of SARA, an out-of-state SARA institution that does not operate in Maryland may provide SARA distance education in the State.

B. An out-of-state SARA institution may not operate in Maryland unless it first obtains a certificate of approval from the Commission pursuant to § 11-202 of the Education Article of the Annotated Code of Maryland.

C. An out-of-state SARA institution that operates in Maryland may not offer a program in Maryland unless the program is offered in compliance with § 11-206 of the Education Article of the Annotated Code of Maryland.

D. An out-of-state SARA institution is subject to all generally applicable laws and regulations of Maryland, as may be amended by the General Assembly, including but not limited to the Maryland Consumer Protection Act.

Chapter 05 Approval and Oversight of In-State SARA Institutions.

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

.01 SARA Portal Agency and Delegation to Secretary.

A. Designation of SARA Portal Agency. The Commission is the interstate point of contact for SARA questions, complaints, and other communications.

B. Delegation to Secretary. Except as otherwise provided by this chapter, the Commission delegates to the Secretary the authority to act on its behalf with respect to all matters concerning SARA.

C. Reporting by the Commission. In the manner required under SARA, the Commission shall report information to the Council and to the Southern Regional Education Board.

.02 Definitions.

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

B. Terms Defined.

(1) "Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

(2) "Commission" means the Maryland Higher Education Commission.

(3) "Council" means the National Council for State Authorization Reciprocity Agreements.

(4) "C-RAC guidelines" mean the Interregional Guidelines for the Evaluation of Distance Education adopted by the Council of Regional Accrediting Commissions.

(5) "In-state Institution" means an institution of higher education whose authority to grant degrees is conferred by Maryland.

(6) "In-state SARA institution" means an in-state institution approved by the Commission to participate in SARA.

(7) "SARA" means the State Authorization Reciprocity Agreement of which the State is a member.

(8) "SARA distance education" means interstate instruction, originating in the United States or a U.S. Territory, offered by any means where the student and faculty member are in separate physical locations, including, but not limited to, online, interactive video, or correspondence courses or programs.

(9) "Secretary" means the Secretary of Higher Education or the Secretary's designee.

.03 Scope.

This Chapter does not affect the obligations of in-state SARA institutions to seek and obtain institutional and programmatic reviews and approvals from the Commission under §§ 11-202 and 11-206 of the Annotated Code of Maryland.

.04 Approval of In-State Institutions to Participate in SARA.

A. An in-state institution seeking approval to participate in SARA shall submit an application to the Commission in a form prescribed by the Secretary.

B. The Secretary shall, upon receipt of an in-state institution's complete application to participate in SARA, approve the application if:

(1) The applicant is an in-state institution approved by the Commission to operate in Maryland;

(2) Programs offered by the institution comply with §§ 11-206 and 11-206.1 of the Annotated Code of Maryland;

(3) The applicant is accredited;

(4) The president or chief academic officer of the institution attests that the institution meets and agrees to comply with the C-RAC guidelines;

(5) The institution, if it participates in federal Title IV financial aid, has a federal financial responsibility rating of at least 1.5, or, upon justification deemed acceptable by the Secretary, a federal financial responsibility rating of at least 1.0;

(6) The institution, if it does not participate in federal Title IV financial aid, would, in the determination of the Secretary, have a federal financial responsibility rating of at least 1.5, or, with justification deemed acceptable by the Secretary, at least 1.0;

(7) The institution makes its SARA-related complaint policies and procedures readily available to students, and informs students that they may appeal SARA-related complaints to MHEC pursuant to this chapter;

(8) For any course or program potentially leading to professional licensure:

(a) the institution notifies students and potential students that the course or program meets the licensing requirements of the state where the students or potential students reside; or

(b) the institution notifies students and potential students that it cannot confirm whether the course or program meets the licensing requirements of the state where the students or potential students reside, provides students and potential students with current contact information for applicable licensing boards, and advises students and potential students to determine whether the course or program meets state licensing requirements;

(9) The provisional approval criteria in § C of this regulation do not apply; and

(10) The applicant has paid the fee required by regulation .06 of this chapter.

C. **Provisional Approval.** The Secretary shall, upon receipt of an in-state institution's complete application to participate in SARA, approve the institution to participate in SARA on a provisional status if the institution meets the requirements of subsections (1) through (8) and (10) of § B of this regulation, but:

(1) Is on probationary status or the equivalent with its institutional accrediting association;

(2) Uses a letter of credit or is under a cash management agreement with the U.S. Department of Education;

(3) Is the subject of a publicly announced investigation by a government agency, and the investigation is related to the institution's academic quality, financial stability, or student consumer protection; or

(4) Is the subject of an investigation by the State related to the institution's academic quality, financial stability, or student consumer protection.

D. **Terms and Length of Provisional Status.**

(1) An in-state institution approved to participate in SARA on provisional status shall meet any requirements the Secretary deems necessary, including enrollment limits, to ensure SARA standards are met regarding program quality, financial stability, and consumer protection.

(2) The length of the provisional status of an in-state institution approved to participate in SARA shall be determined by the Secretary and may not exceed one year.

(3) **Application for Removal of Provisional Status.**

(a) If an in-state institution approved to participate in SARA on provisional status no longer meets the provisional status criteria set forth in § C of this regulation, it may apply in writing to the Secretary for removal of its provisional status designation and approval as an in-state SARA institution.

(b) The Secretary shall grant the application if the criteria justifying provisional status no longer apply, and if the institution meets the requirements of § B of this regulation.

(4) If the Secretary determines that an in-state institution approved to participate in SARA on provisional status no longer meets the requirements of subsections (1) through (8) and (10) of § B of this regulation, the Secretary shall:

(a) Provide the institution with a grace period, not to exceed one year, in which the institution shall come into compliance with SARA standards, subject to the supervision of the Secretary; or

(b) Prohibit the institution from enrolling additional students in SARA distance education, terminate the institution's SARA participation pursuant to regulation .08 of this chapter, and allow the institution to continue to instruct students already enrolled in SARA distance education for a period of six months.

(5) In any three-year period, the Secretary may grant an institution only one grace period in which to correct noncompliance under § D(4) of this regulation.

.05 Annual Renewal of Approval of In-State Institutions to Participate in SARA.

A. An in-state SARA institution shall apply to the Commission annually, in a form prescribed by the Secretary, to renew its participation in SARA.

B. The Secretary shall approve the renewal application if the in-state SARA institution continues to meet the requirements set forth in § B of regulation .04 of this chapter.

C. An in-state institution approved to participate in SARA on provisional status may not renew its provisional status.

.06 Annual Fees for In-State Institutions to Participate in SARA.

A. An in-state institution shall pay annually the SARA application and renewal fees set forth in this regulation.

B. **Fees to the Commission.**

(1) For institutions with less than 2,500 full-time equivalent enrollment, the annual, nonrefundable fee due to the Commission shall be \$2,000.

(2) For institutions with between 2,500 and 9,999 full-time equivalent enrollment, the annual, nonrefundable fee due to the Commission shall be \$4,000.

(3) For institutions with 10,000 or more full-time equivalent enrollment, the annual, nonrefundable fee due to the Commission shall be \$6,000.

C. **Fees to the Council.** Fees due annually to the Council to participate in SARA are prescribed by the Council.

.07 Student Complaints against In-state SARA Institutions.

A. **Scope.**

(1) This regulation applies to SARA distance education provided by in-state SARA institutions to students residing in Maryland, and to students residing in other states.

(2) This regulation does not affect or limit the rights of students or of the State to pursue other remedies available under the law, including the Maryland Consumer Protection Act.

B. A student who receives SARA distance education from an in-state SARA institution may, after the student has exhausted the institution's procedures for the resolution of grievances, and within two years of the incident about which the complaint is made, file a written complaint to the Commission, in a form prescribed by the Secretary, alleging that the institution:

(1) Has engaged in dishonest or fraudulent activity; or

(2) Has operated a course or a program contrary to practices set forth in the C-RAC guidelines in a way that has harmed the student.

C. A complaint made under § B of this regulation may include, but is not limited to, allegations that the institution provided false or misleading:

(1) Recruitment or marketing materials;

(2) Job placement data;

(3) Information about tuition, fees, or financial aid;

(4) Information about admission requirements;

(5) Information about the institution's accreditation;

(6) Information about whether course work meets relevant professional licensing requirements or the requirements of specialized accrediting bodies; and

(7) Information about the transferability of course work to other institutions.

D. The Secretary shall send a copy of a complaint received under § C of this regulation to the institution that is the subject of the complaint.

E. Within 30 days of the date that the Secretary sends a copy of a complaint received under § D of this regulation to an institution, the institution shall provide a written response in a form prescribed by the Secretary.

F. Within 30 days of the date the Secretary receives the institution's response under § E of this regulation, or if the Secretary receives no response under § E of this regulation, the Secretary shall issue a notice to the institution containing:

(1) The Secretary's findings regarding the complaint;

(2) The actions that the institution shall take, if any, to comply with the requirements set forth in this chapter; and

(3) The consequences of failing to take the actions prescribed by the Secretary, which may include the termination of the institution's participation in SARA under regulation .08 of this chapter.

.08 Termination of an In-State Institution's Participation in SARA.

A. If the Secretary finds that an in-state SARA institution fails to meet the requirements of this chapter, the Secretary may:

(1) Issue a notice of deficiencies to the institution; or

(2) If the institution meets the requirements of § C of regulation .04 of this chapter, permit the institution to participate in SARA on provisional status, subject to the requirements of § D of regulation .04 of this chapter.

B. Within 20 days of receipt of the notice of deficiencies, the institution shall respond in writing to the Secretary's notice, setting forth the institution's objections to the Secretary's findings.

C. Within 20 days of receipt of the institution's written response to the notice of deficiencies, the Secretary shall issue a decision on whether to terminate the institution's participation in SARA.

D. The Secretary's decision to terminate an institution's participation in SARA may be reviewed under regulation .09 of this chapter.

.09 Administrative Review of SARA Decisions.

A. If the Secretary issues a decision to deny an institution's application to participate in SARA, to deny its renewal application under SARA, or to terminate its participation in SARA, the president of the institution may, within 10 days of issuance of the Secretary's decision, notify the Commission that the institution seeks the Commission's review of the Secretary's decision.

B. If the president of the institution does not notify the Commission that it seeks review of the Secretary's decision within 10 days of issuance of the decision, the decision shall be final.

C. Within 30 days of notifying the Commission that the institution seeks review of the Secretary's decision, the president of the institution, in writing:

(1) Shall submit to the Commission the grounds upon which the institution objects to the Secretary's decision;

and

(2) May request a hearing before the Commission.

D. Within 30 days of receipt of the institution's written statement, the Secretary shall issue a written statement setting forth the reasons supporting the Secretary's decision.

E. If the institution has requested a hearing, within 60 days of issuance of the Secretary's written statement in support of the Secretary's decision, the Commission shall schedule a hearing to consider the institution's objections to the Secretary's decision.

F. At the hearing, the president of the institution or the president's designee, and the Secretary or the Secretary's designee, each shall have 15 minutes, or longer at the discretion of the Chairman of the Commission, to present data and arguments to the Commission regarding the Secretary's decision.

G. Within 10 working days of the hearing, or if no hearing has been requested, within 60 days of issuance of the Secretary's written statement in support of the Secretary's decision, the Commission shall issue an order:

(1) Affirming the Secretary's decision;

(2) Reversing the Secretary's decision; or

(3) Remanding the decision to the Secretary for further action as directed by the Commission.

H. The Commission's order is final, and is not subject to reconsideration by the Commission or review by any other administrative or judicial body.

Subtitle 05 FULLY ONLINE PROGRAMS

Chapter 01 Registration

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

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)-(5) (text unchanged)

(5-1) "SARA" means a State Authorization Reciprocity Agreement overseen by the National Council for State Authorization Reciprocity Agreements and administered by the Southern Regional Education Board, the New England Board of Higher Education, the Midwestern Higher Education Compact, or the Western Interstate Commission for Higher Education.

(6)-(8) (text unchanged)

.02 Scope.

This chapter does not apply to an online program that:

A. Is subject to program review by the Commission under COMAR 13B.02.03; [or]

B. Participates in the Southern Regional Education Board's Electronic Campus[.]; or

C. Is offered by an institution approved by its state authority to participate in SARA, if Maryland is a member of SARA.