

MARYLAND REGISTER

**Proposed Action on Regulations**

|  |   |  |
|--|---|--|
| <b>Transmittal Sheet</b><br><br><b>PROPOSED<br/>OR REPROPOSED</b><br><br><b>Actions on Regulations</b> | <b>Date Filed with AELR<br/>Committee</b> | <b>TO BE COMPLETED BY<br/>DSD</b>              |
|  | 02/11/2016                                | Date Filed with Division of<br>State Documents |
|  |   |  |
|  |   | Document Number                                |
|  |   | Date of Publication in MD<br>Register          |
|  |   |  |

**1. Desired date of publication in Maryland Register: 3/18/2016**

**2. COMAR Codification**

| <b>Title</b> | <b>Subtitle</b> | <b>Chapter</b> | <b>Regulation</b> |
|--------------|-----------------|----------------|-------------------|
| 33           | 20              | 01             | 01                |
| 33           | 20              | 02             | 02, .03           |
| 33           | 20              | 04             | 02                |
| 33           | 20              | 06             | 01, .02           |
| 33           | 20              | 07             | 02                |
| 33           | 20              | 08             | 01                |
| 33           | 20              | 09             | 01                |

**3. Name of Promulgating Authority**

State Board of Elections

**4. Name of Regulations Coordinator**

Erin Perrone

**Telephone Number**

410-269-2845

**Mailing Address**

151 West Street

|             |              |                 |
|-------------|--------------|-----------------|
| <b>City</b> | <b>State</b> | <b>Zip Code</b> |
| Annapolis   | MD           | 21401           |

**Email**

erin.perrone@maryland.gov

**5. Name of Person to Call About this Document**

Jared DeMarinis

**Telephone No.**

410-269-2853

**Email Address**

jared.demarinis@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 01/05/2016.

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 General Provisions Article, §3-302(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 Jeffrey Darsie, Assistant Attorney General, (telephone #410-576-6356) on January 21, 2016. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Linda H. Lamone

**Title**  
State Administrator  
**Date**  
January 21, 2016

**Telephone No.**  
410-269-2840

## **Title 33**

### **STATE BOARD OF ELECTIONS**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.01 Definitions**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.02 Statement of Contributions Requirements**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.04 Affidavit of Limited Applicable Contribution**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.06 Contributions**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.07 Waivers**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.08 Penalties**

#### **Subtitle 20 DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS**

**33.20.09 Retention**

Authority: Election Law Article, §§2-102(b)(4) and 14-109, Annotated Code of Maryland, Election Law Article, §§2-102(b)(4), 14-104 and 14-109, Annotated Code of Maryland, Election Law Article, §§2-102(b)(4), 14-107 and 14-109, Annotated Code of Maryland.

### **Notice of Proposed Action**

[]

The State Board of Elections proposes to amend Regulation .01 under COMAR 33.20.01 Definitions; amend Regulations .02 and .03 under COMAR 33.20.02 Statement of Contributions Requirements, amend Regulation .02 under COMAR 33.20.04 Affidavit of Limited Applicable Contribution, adopt new Regulations .01 and .02 under COMAR 33.20.06 Contributions, adopt new Regulation .02 under COMAR 33.20.07 Waivers, amend Regulation .01 under COMAR 33.20.08 Penalties, and adopt new Regulation .01 under COMAR 33.20.09 Retention.

This action was considered by the State Board of Elections at its January 21, 2016 meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

## **Statement of Purpose**

The purpose of this action is to establish an automatic waiver for initial reports if the person has filed the required information in prior reports; establishes deadlines for filing a registration and an initial report and codifies the documents that must be retained by the person doing public business. Finally, the proposed regulations codify past practices and prior advice rendered by State Ethics Commission and the Office of the Attorney General regarding the determination of attributed contributions. Additionally, the proposed regulations provide specific practical applications on actions by officers, directors and partners that may constitute suggesting a contribution or donation to a political committee.

The following changes to Subtitle 20 reflect the legislative changes and past practices:

- Changes the terms on the Statement of Contribution to include applicable contributions, independent expenditure entities and the exemptions (.02)
- Requires the names of governmental entities that the person has contract with as a required content for the Affidavit of Limited Applicable Contributions (.04)
- Clarifies and codifies the determination of attributed contributions (.06)
- Establishes notice requirements and codifies past practices regarding notice to officers of subsidiaries (.06)
- Establishes automatic waiver for initial statement of contributions (.07)
- Details the documents that must be retained by the person doing public business (.09)

## **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 Erin Perrone, Director of Election Reform and Management, State Board of Elections, PO Box 6486, Annapolis, MD 21401, or call 410-269-2845, or email to [erin.perrone@maryland.gov](mailto:erin.perrone@maryland.gov), or fax to 410-974-2019. Comments will be accepted through April 18, 2016. 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?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

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

No funds are necessary to implement these regulations.

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

These regulations are technical and administrative in nature.

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

These regulations do not impact small business as they are technical and administrative in nature.

G. Small Business Worksheet:

Attached Document:

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## **Title 33 State Board of Elections**

### **Subtitle 20 Disclosure by Persons Doing Public Business**

#### **Chapter 01 Definitions**

Authority: Election Law Article, §§2-102(b)(4) and 14-109, Annotated Code of Maryland

##### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Award" means the written notification by a governmental entity [to a person] announcing that the governmental entity intends to enter into a contract [with that person] *for a procurement*.

## **Title 33 State Board of Elections**

### **Subtitle 20 Disclosure by Persons Doing Public Business**

#### **Chapter 02 Statement of Contributions Requirements**

**.02 Registration.**

A. In General. A person doing public business shall file the registration [notice] *statement* required under §B of this regulation with the State Board within [1]15 business days after the award of a contract by a governmental entity.

B. [Notice] *Statement* Requirements. *Except as provided in §D of this regulation, [The] the registration [notice] statement* shall include the following information:

(1) – (4) (text unchanged)

(5) The name of the governmental entity that awarded the contract; [and]

(6) The name and relationship of any business entity or person attributed to or affiliated with the person filing the registration notice that was awarded a contract by a governmental entity[.]; *and*

(7) *The base amount of the consideration to be received by the person doing public business from the governmental entity for the contract.*

C. (text unchanged)

D. *Omission of Contract. The registration statement may omit:*

(1) Contract information if the State Board has approved the person's request to waive the requirement to disclose the contract; or

(2) The base amount of the consideration to be received for the performance of the contract if the person doing public business files, for the entire period of performance of the contract, an affidavit of limited applicable contributions under COMAR 33.20.04.

E. Initial Report. A person doing public business shall file the initial statement of contributions within 15 business days of filing the registration statement.

**.03 Required Contents for Statement of Contributions.**

The statement of contributions filed by the person doing public business shall include:

A. The name of the candidate to whom the *applicable* contribution was made *or who benefited from the applicable contribution*;

B. The name of the political committee affiliated with the candidate *or the independent expenditure entity* that received the applicable contribution;

C. (text unchanged)

D. The aggregate *applicable* contributions attributed to the filer during the reporting period;

E. The aggregate *applicable* contributions to date attributed to the filer during the election cycle in which the applicable contribution was made;

F. If the *applicable* contribution was made by a person other than the filer but attributed to the filer, the filer must provide:

(1) The name and address of:

(a) The individual who made the *applicable* contribution; or

(b) The organization, business[, corporation, limited liability company, partnership] *entity*, union, or other legal entity that made the *applicable* contribution;

(2) The amount of the *applicable* contribution;

(3) The date the *applicable* contribution was made; and

(4) (text unchanged)

G. The *transaction* method of the *applicable* contribution [transaction] and any other information on the transaction method required by the State Administrator;

H. The aggregate amount or value, *to date*, of *applicable* contributions made *to or for the benefit of* [to date to] each candidate from the contributor for the election cycle in which the statement of contributions is filed;

I. *Unless already provided on the registration statement or exempt under COMAR 33.20.07:*

(1) The nature and amount of the contract awarded;

(2) *The name of the governmental entity that awarded the contract; and*

(3) *The name of the business entity or person awarded the contract, if different from the filer; and*

J. [The name of the governmental entity that awarded the contract;

K. The name of the business entity or person awarded the contract, if different from the filer; and

L.] If an in-kind applicable contribution, the fair market value of the applicable contribution.

## **Title 33 State Board of Elections**

### **Subtitle 20 Disclosure by Persons Doing Public Business**

## Chapter 04 Affidavit of Limited Applicable Contribution

Authority: Election Law Article, §§2-102(b)(4), 14-104 and 14-109, Annotated Code of Maryland

### .02 Required Contents.

The affidavit shall include:

A. (text unchanged);

B. *The name of the governmental entity that the person does public business with;*

[B.] C. – [C.] D. (text unchanged).

## Title 33 State Board of Elections

### Subtitle 20 Disclosure by Persons Doing Public Business

#### Chapter 06 Contributions

Authority: Election Law Article, §§2-102(b)(4), 14-105 and 14-109, Annotated Code of Maryland

### .01 Contributions.

A. *Attributed Contributions.* Any contribution or donation, regardless of the amount, that is made to a political committee or independent expenditure entity by an officer, director, or partner of a business entity doing public business shall be attributed to the business entity for reporting purposes under Title 14 of the Election Law Article.

B. *Contributions by Other Persons.* Any contribution or donation, regardless of the amount, to a political committee or independent expenditure entity that is made at the suggestion or direction of the business entity, or an officer, director, or partner of the business entity by an employee, agent or other affiliated person of the business entity shall be attributed to the business entity for reporting purposes under Title 14 of the Election Law Article.

C. *Subsidiary.* Any contribution or donation made to a political committee or independent expenditure entity by a subsidiary of the filer shall be attributed to the filer.

D. *Attributed Contributions for Subsidiary.* Any contribution or donation, regardless of the amount, that is made to a political committee or independent expenditure entity by an officer, director, or partner of a subsidiary of the filer shall be attributed to the filer for reporting purposes under Title 14 of the Election Law Article.

E. *Other Employees of the Subsidiary.* Any contribution or donation made by an employee, agent or other affiliated person of the subsidiary, regardless of the amount, to a political committee or independent expenditure entity is attributed to the filer for reporting purposes under Title 14 of the Election Law Article, if made at the suggestion of:

- (1) The filer, including officers, directors or partners of the filer;
- (2) The subsidiary of the filer; or
- (3) The officer, director, or partner of a subsidiary of the filer.

F. *Acquisition, Merger or Change in Ownership.* If a business entity acquires, merges with, or changes ownership or control over another business entity:

- (1) Contributions made prior to the acquisition or merger by the acquired, merged, or newly owned or controlled business entity, including by its officers, directors and partners, will not be attributed to the filer; and
- (2) Contributions made during the reporting period by the acquired, merged, or newly owned or controlled business entity, including by its officers, directors or partners, will be attributed to and reported by the filer.

G. *Contributions Made “At the Suggestion or Direction of” Directors, Partners, or Officers of a Business Entity.* An act or communication by a director, a partner or an officer of the business entity to an employee, agent or other affiliated person of the business entity that a reasonable person would understand to be a solicitation or request for a contribution to a political committee affiliated with a candidate or a donation to an independent expenditure entity shall be considered a suggestion for a contribution or donation and any contribution or donation that results from the suggestion must be reported by the filer.

H. *Email Solicitation.* An officer, director or partner of a business entity doing public business who initiates, or forwards to an employee, agent or other affiliated person of the business entity, an email solicitation or similar request for a contribution to a political committee affiliated with a candidate or a donation to an independent expenditure entity shall be considered to have made a suggestion for a contribution or donation and any contribution or donation that results from the suggestion must be reported by the filer..

*I. Endorsements. Acts or communications by officers, directors, or partners of a business entity that endorse a candidate, display public support for a candidacy, or express public support through social media are not, by themselves, suggestions for contributions or donations to a candidate that are attributable to the business entity.*

**.02 Report to Chief Executive Officer or Designee.**

**A. Notify Employees.**

*(1) Except as provided for in §C of this regulation, the chief executive officer or a designee of the chief executive officer of a business entity doing public business shall notify the persons covered under this chapter of this regulation that contributions and donations made from the persons covered must be reported to the chief executive officer or the designee of the chief executive officer no later than 5 business days after the last day of the reporting period.*

*(2) A business entity that requires the persons covered under this chapter to preclear their contributions through a legal or compliance department shall be deemed to satisfy the notice requirement if the preclearance policy is:*

*(a) In writing; and*

*(b) Annually reviewed by the covered employees.*

**B. Report.** *The persons covered by this chapter of this regulation shall report to the chief executive officer or a designee of the chief executive officer of the business entity doing public business any contributions and donations made during the reporting period.*

**C. Exemption from Notification.**

*(1) The chief executive officer, or the officer's designee, is not required to notify officers, directors, partners or employees of a subsidiary that does not itself do public business if the business entity doing public business has a written and well publicized policy prohibiting officers, directors, or partners from making contributions or donations for State elections.*

*(2) The policy must be:*

*(a) In writing; and*

*(b) Annually reviewed by the covered employees.*

*(3) The business entity shall provide the State Board a copy of the:*

*(a) Written policy;*

*(b) The subsidiaries to which the policy applies;*

*(c) A description of how the policy is delivered to the covered employees subject to the policy; and*

*(d) A statement that the business entity is not aware of any violations of the policy.*

*(4) The policy must be submitted to the State Board annually, no later than the due date for the first semi-annual statement of contributions filing of that year by the person doing public business.*

## **Title 33 State Board of Elections**

### **Subtitle 20 Disclosure by Persons Doing Public Business**

#### **Chapter 07 Waivers**

Authority: Election Law Article, §§2-102(b)(4) and 14-109, Annotated Code of Maryland

**.02 Waiver – Initial Statement of Contributions.**

**A. Availability.** *A person doing public business is not required to file an initial statement of contributions if the person doing public business has previously filed statements of contributions covering the transaction period of the initial statement of contributions for that level of government.*

**B. Updates.** *The person doing public business shall update the registration statement with any new contracts within 30 business days of the date of the award for that contract.*

## **Title 33 State Board of Elections**

### **Subtitle 20 Disclosure by Persons Doing Public Business**

## **Chapter 08 Penalties**

Authority: Election Law Article, §§2-102(b)(4), 14-107 and 14-109, Annotated Code of Maryland

### **.01 Late Filing Fee**

A. – B. (text unchanged)

C. *Retention Penalty.* An officer or partner of a business entity doing public business who knowingly and willfully fails to retain records required under Election Law Article, §14-105(g), Annotated Code of Maryland may be subject to a fine not exceeding \$1,000, or imprisonment not exceeding 1 year, or both.

# **Title 33 State Board of Elections**

## **Subtitle 20 Disclosure by Persons Doing Public Business**

### **Chapter 09 – Retention**

Authority: Election Law Article, §§2-102(b)(4), 14-105 and 14-109, Annotated Code of Maryland

### **.01 Late Filing Fee**

A. *Records Retained.* The person doing public business who has filed a registration statement shall maintain detailed and accurate records of:

(1) All contracts awarded by governmental entities to the person or attributed to the person that caused the person to be doing public business;

(2) Applicable contributions made by or attributed to the person, including related notifications and policy documents; and

(3) All statements of contributions filed by the person doing public business.

B. *Length of Retention.* The records shall be retained until the earlier of:

(1) 10 years after the creation of the record; or

(2) 4 years after the performance is completed on the last contract that causes the person to be doing public business.

C. *Audit.* The State Board, at its discretion, may audit the records retained by the person doing public business.

LINDA H. LAMONE  
STATE ADMINISTRATOR