

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Agriculture  
(DLS Control No. 16-023)**

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**Overview and Legal and Fiscal Impact**

This regulation alters the administrative review process for contested cases in the Maryland Department of Agriculture.

The regulation presents no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**Department of Agriculture:**

Office of the Secretary: Procedural Regulations: COMAR 15.01.01.03

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**Legal Analysis**

**Background**

Chapter 171 of 2013 repealed provisions of law relating to the department's Board of Review, eliminating the board and associated requirements governing appeals to the board. The board was required to hear and determine appeals from any decision of the Secretary of Agriculture or any position or unit within the department subject to judicial review under the Administrative Procedure Act or any other provision of law. In addition, the Secretary was authorized to, by regulation, provide for review by the board of any action or failure to act of any position or unit within the department.

A "contested case" is defined in § 10-202(d) of the State Government Article as a proceeding before an agency to determine (1) a right, duty, statutory entitlement, or privilege of a person that is required by statute or constitution to be determined only after an opportunity for an agency hearing or (2) the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined only after an opportunity for an agency hearing.

**Summary of Regulation**

This regulation alters the department's administrative review process by (1) repealing provisions that relate to the former board; (2) establishing the process for administrative review by

the Secretary in a contested case; and (3) establishing that the Secretary's decision in a contested case is the final agency action for purposes of judicial review under the Administrative Procedure Act.

Similar to the current process, within 30 days after a hearing record is closed, the hearing officer must prepare a written decision and mail it to the last known address of each party. The mailing to a party constitutes notice of the decision. However, under this regulation, the 30-day period is directory and no penalty incurs if the time requirement is not satisfied.

A person aggrieved by a decision of a position or unit within the department, after a contested case hearing or a certain default decision, may file a written request for review by the Secretary. The person must file the request with the Secretary within 30 days after issuance of the decision and must include a statement describing the nature of the complaint and the relevant facts and argument. The time restriction is mandatory and the Secretary may not consider a written statement filed more than 30 days after issuance of the decision. The Secretary may require the aggrieved person to pay the costs of compiling the record for review, including the cost of transcribing testimony (the regulation repeals the current requirement that a person who files a petition for judicial review must pay for the transcription of testimony).

Within 90 days after receiving the complete record, the Secretary must investigate any claim made in the written statement, review the record, issue a written decision, and send a copy of the decision to each party. The Secretary may affirm, reverse, or modify any written decision issued by any position or unit within the department, including any default decision. Although the 90-day time period is not mandatory, a delayed decision operates as an automatic denial by the Secretary.

## **Legal Issues**

The regulation presents no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 2-103 of the Agriculture Article and § 10-206 of the State Government Article as statutory authority for the regulation. More specifically, § 2-103(b) of the Agriculture Article grants the Secretary of Agriculture broad authority to adopt regulations relating to the agricultural interests of the State. Section 2-103(h) authorizes the Secretary to exercise or perform any power, duty, responsibility or function that any position or unit within the department, except the Maryland Agricultural Commission, may exercise or perform. Section 10-206(b) of the State Government Article authorizes the Secretary to adopt regulations to govern procedures and practices in contested cases under the Administrative Procedure Act.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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