

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	02/23/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 4/1/2016**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

15 01 01 03

**3. Name of Promulgating Authority**

Department of Agriculture

**4. Name of Regulations Coordinator**

Iva Benson

**Telephone Number**

410-841-5829

**Mailing Address**

50 Harry S. Truman Parkway, Suite 303

**City State Zip Code**

Annapolis MD 21401

**Email**

iva.benson@maryland.gov

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

Andrew M. Griffin

**Telephone No.**

410 841 5887

**Email Address**

andrewm.griffin@maryland.gov

**6. Check applicable items:**

- New Regulations
- Amendments to Existing Regulations  
Date when existing text was downloaded from COMAR online: February 10, 2016.
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

33: 25 Md. R 1952 2006  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: 14-073-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 Craig Nielsen, Assistant Attorney General, (telephone #410 841 5883) on February 22, 2016. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Joseph Bartenfelder

**Title**

Secretary

**Telephone No.**

410 841 5884

**Date**

February 22, 2016

**Title 15**  
**DEPARTMENT OF AGRICULTURE**  
**Subtitle 01 OFFICE OF THE SECRETARY**

**15.01.01 Procedural Regulations**

Authority: Agriculture Article, §2-103; State Government Article, §10-206; Annotated  
Code of Maryland

**Notice of Proposed Action**

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The Secretary of Agriculture proposes to amend Regulation .03 under COMAR 15.01.01 Procedural Regulations.

**Statement of Purpose**

The purpose of this action is to establish an administrative review process by the Secretary of Agriculture, available to an aggrieved person in a contested case.

**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 Andrew M. Griffin, Legislative Aide, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, or call 410 841 5887, or email to [andrewm.griffin@maryland.gov](mailto:andrewm.griffin@maryland.gov), or fax to 410 841 5914. Comments will be accepted through May 1, 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?  
Yes
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:  
General Funds
- 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.
- G. Small Business Worksheet:

Attached Document:

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**Title 15**  
**DEPARTMENT OF AGRICULTURE**  
**Subtitle 01 OFFICE OF THE SECRETARY**  
**Chapter 01 Procedural Regulations**

Authority: Agriculture Article, §2-103; State Government Article, §10-206;  
Annotated Code of Maryland

**.01 Definitions.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
- (1) "Contested case" means a proceeding before the Department as provided under the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.
- (2) "Department" means the Maryland Department of Agriculture or any of its units.
- (3) "Secretary" means:
- (a) The Secretary of Agriculture or the Secretary's designee; and
- (b) If a unit of the Department is authorized to conduct hearings, the head of that unit or the unit head's designee.

**.02 Procedural Regulations – Promulgation of Regulations.**

- A. Unless otherwise designated by statute, these procedures will be followed with respect to the promulgation of all regulations.
- B. Regulation Adoption and Declaratory Rulings.
- (1) Secretary of the Department. The Secretary of Agriculture is responsible for adopting the regulations of the Department. He shall review, and approve, disapprove, or revise the regulations of all units within the jurisdiction of the Department.
- (2) Adoption of Regulations. New, amended, revised, or repealed regulations shall be proposed and adopted on a regular or emergency basis, as prescribed by the State Documents Law and the Administrative Procedures Act.
- (3) Petition for the Adoption of Regulations.
- (a) Who May File. Any interested person may file a petition with the Secretary, requesting the promulgation, amendment, or repeal of any regulation.

(b) Form. The petition shall be in writing and shall contain a brief statement of the regulation, or reference to the regulation, amendment, or repeal which is sought, and a statement of any proposed amendment. The petition should contain a brief statement of reasons in support of the proposed regulation or change and shall contain the name, address, and telephone number of the petitioner.

(c) Submission, Consideration, and Disposition. The petition shall be filed with the Secretary for his consideration and disposition. The Secretary shall either deny the petition in writing, stating the reasons for his denial, or initiate appropriate regulation-making procedures according to his decision.

(4) Petition for Declaratory Ruling.

(a) Who May File. Any interested person may file with the Secretary a petition for a declaratory ruling with respect to the applicability to any person, corporation, property, or statement of facts of any statute or Departmental regulation pertaining to the Department's activities.

(b) Form. The petition shall:

(i) Be in writing;

(ii) Contain a detailed statement of facts which are applicable to the regulation or statute in question;

(iii) Pose the question of whether, and in what manner, the state regulation or statute applies to the facts contained in the petition;

(iv) Contain the name, address, and telephone number of the petitioner; and

(v) Contain a statement by the petitioner, under oath, that the facts contained in the petition are true to the best of his knowledge, information, and belief.

(c) Submission, Consideration, and Disposition. The petition shall be filed with the Secretary for his consideration and disposition. The Secretary shall consider the petition and may issue the declaratory ruling requested. The Secretary shall notify the petitioner in writing of whatever action he may decide to take, stating the reasons for his decision.

(5) The Secretary shall:

(a) Set the date and place of all hearings;

(b) Give notice as provided here;

(c) Preside at all hearings;

(d) Receive all views and data, either written or oral, pertaining to proposed action of the Department.

**.03 Procedural Regulations – Contested Cases.**

A. Notice of Agency Action.

(1) In a contested case, the Department shall give reasonable notice of the agency's action.

(2) The notice shall state:

(a) The facts that are asserted or if they cannot be stated in detail when the notice is given, the issues that are involved;

(b) The pertinent statutory and regulatory sections under which the Department is taking its action;

(c) The sanction proposed or potential penalty, if any, as a result of the Department's action;

(d) The opportunity of the recipient of the notice to request a hearing, specifying:

(i) What, if anything, the person shall do to receive a hearing, and

(ii) All relevant time requirements; and

(e) The direct consequences, sanction, or potential penalty, if any, of the recipient's failure to exercise in a timely manner the opportunity for a hearing or, if a hearing is scheduled, the recipient's failure to appear at that hearing.

B. Request for Hearing.

(1) A person may request a hearing by mailing or delivering a clear written request in the manner and within the time frame specified in the Notice of Agency Action.

(2) A request for hearing shall be considered filed on the date that the request is actually received in any office of the Department.

C. Default

(1) The Department may issue a default order if:

(a) The recipient of the notice fails to exercise in a timely manner the opportunity for a hearing; or

(b) A hearing has been scheduled, and the recipient fails to appear at that hearing.

(2) On motion filed within 15 days after the date of the default order, the Department may, on good cause shown, vacate or modify the default order and set the case in for further proceedings as appropriate.

(3) The Department may issue a default decision and order, and impose the proposed sanction if:

(a) The recipient fails to file a motion within the time frame specified in §C(2) of this regulation; or

(b) The motion is denied.

[(4) A person may appeal a default decision and order to the Department's Board of Review as provided under Agriculture Article, Title 2, Subtitle 4, Annotated Code of Maryland.]

D. Hearings.

(1) The Secretary shall preside as hearing officer at all hearings.

(2) Unless otherwise specified by law, the Department shall notify all parties to a contested hearing at least 10 days before the scheduled hearing.

(3) Any party to a hearing may be represented by counsel. The party or his counsel shall notify the hearing officer of the name, address, and telephone number of the counsel at least 5 days before the date of the hearing.

(4) Before the hearing and upon the specific request in writing, of any party, or his counsel, the hearing officer may furnish at his office, for inspection or copying, any documents or other material relating to the matter at issue, or mail copies of the material upon request to the party. The cost shall be borne by the requesting party.

(5) The hearing officer may provide a stenographer or furnish an electric transcription device for any hearing. Any party may request a copy of the proceedings of the hearing at his own expense.

(6) At any contested hearing, a representative of the Department or other moving party shall present the case for the party first, and the other party or parties, or counsel for them, may cross-examine each witness for the Department or other moving party. The other party or parties to the hearing shall thereafter present evidence, subject to cross-examination. The parties and the Department shall be permitted to present evidence at any time during the hearing, and shall be permitted to present oral arguments at the close of all the evidence.

(7) The hearing officer, at his discretion, may postpone the hearing for any reason upon request of any party, his counsel, or Department official.

(8) Failure to appear at the hearing at the time and place designated in the notice, or designated by the hearing officer in the event of postponement, shall be deemed a default on the part of any party, other than the hearing officer, and the hearing officer may take the action set forth in the notice without further hearing.

(9) [A decision shall be rendered within 30 days of the hearing, and the hearing officer, within that time, shall notify all parties in writing, to be mailed to the last known address of each party. The mailing of a decision shall be prima facie evidence of notification to a party of the decision.] *Within 30 days after the hearing record is closed, the hearing officer shall prepare a written decision and mail it to the last known address of each party. The 30 day period provided in this subsection is directory and no penalty shall incur if this time limitation is not satisfied. The mailing date of the hearing officer's decision to a party constitutes notice of the decision.*

E. [An appeal to the Secretary, pursuant to Agriculture Article, §2-405, Maryland Annotated Code, shall be taken within 30 days of a decision of any position or unit within the Department.] *Review by the Secretary.*

(1) *Except as provided by law, a person aggrieved by a decision of a position or unit within the Department after a contested case hearing or default decision that is subject to judicial review under the Administrative Procedure Act, may file a written statement with the Secretary requesting review of that decision setting forth the nature of the complaint and the relevant facts and argument.*

(2) *The aggrieved person shall file the written statement with the Secretary within 30 days from either the date of the written decision issued under §D(9) of this regulation or any default decision. The time restrictions imposed by this subsection is mandatory and any written statement filed beyond 30 days may not be considered.*

(3) *The Secretary may require the aggrieved person to pay the costs of compiling the record of the decision to be reviewed, including the cost to transcribe testimony, if any.*

(4) *Within 90 days after receiving the complete record, the Secretary shall investigate any claim made in the written statement, review the record, issue a decision in writing, and send a copy to each party. The 90 day period provided in this subsection is not mandatory; however, any delay beyond the 90 day period operates as an automatic denial by the Secretary.*

(5) *The Secretary may affirm, reverse, or modify any written decision issued by any position or unit within the Department, including any default decision. The decision of the Secretary shall be the final agency decision or action for purposes of judicial review under the Administrative Procedure Act.*

(6) A party [who is] aggrieved by the final decision of the Secretary may file a petition for judicial review with the appropriate circuit court as required by the Maryland Rules of Civil Procedure.

F. [The appellant shall pay the expense of transcription of testimony in an appeal from a final decision of the Department to a Court.

G.] Administrative Procedure Act. In addition to the foregoing regulations, the Administrative Procedure Act in the State Government Article, Annotated Code of Maryland, shall govern the practice and procedure in all hearings and appeals.