Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Department of Agriculture
(DLS Control No. 16-024)

Overview and Legal and Fiscal Impact

The Department of Agriculture is repealing Regulations .01 - .09 under COMAR 15.02.01, Board of Review Procedure, in accordance with Chapter 171 of 2013.

The action presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Agriculture:
Board of Review: Board of Review Procedure: COMAR 15.02.01.01-09

Legal Analysis

Background

The Board of Review is 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. The Secretary may also, by rule or regulation, provide for review by the board of any action or failure to act of any position or unit within the department.

Chapter 171 of 2013 repealed provisions of law relating to the board, eliminating the board and associated requirements governing appeals to the board. In response to Chapter 171, the department indicated that the board had not met since 2004 because no cases had been filed. The department believed that there were statutory controls in place to allow for similar review in circuit court that made the board unnecessary. Additionally, a person would still receive an agency hearing under the Administrative Procedure Act in a contested case and then have the opportunity to appeal an adverse decision to the circuit court.

Summary of Regulation

This action repeals Regulations .01-.09 under COMAR 15.02.01, Board of Review Procedure, in accordance with Chapter 171 of 2013.

Legal Issues

The action presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-103 and 2-405 of the Agriculture Article as statutory authority for this action. Section 2-103 grants the Secretary broad authority to adopt regulations to carry out the provisions of law in the Agriculture Article. Section 2-405 established procedures for a person aggrieved by any decision, action, or failure to act on the part of the Secretary or any position or unit within the Department to appeal the decision, action, or failure to act to the board. Section 2-405 was repealed by Chapter 171 of 2013.

Although not cited by the department, Chapter 171 of 2013 repealed provisions of law relating to the board, as discussed above.

With the addition of Chapter 171 of 2013, this authority is correct and complete. The action complies with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the department agree to make the following changes:

- adding Chapter 171 of 2013 as statutory authority for the action; and
- altering the Notice of Proposed Action to include the repeal of Regulation .09.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulations implement Chapter 171 of 2013 (Senate Bill 53). The fiscal and policy note for Senate Bill 53 indicated that the bill does not materially affect State finances.

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 regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Crystal L. Lemieux – (410) 946/(301) 970-5350
Fiscal Analysis: Scott D. Kennedy – (410) 946/(301) 970-5510