

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD	
	02/24/2020	Date Filed with Division of State Documents	
		Document Number	
		Date of Publication in MD Register	

1. Desired date of publication in Maryland Register: 3/13/2020

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
21	11	13	01-.11

3. Name of Promulgating Authority

Department of Labor, Licensing, and Regulation

4. Name of Regulations Coordinator	Telephone Number
Kimberly S Ward	410-230-6123

Mailing Address

500 N. Calvert Street

City	State	Zip Code
Baltimore	MD	21202

Email
kimberlys.ward@maryland.gov

5. Name of Person to Call About this Document	Telephone No.
Lauren Gilwee	410-767-2268

Email Address
lauren.gilwee@maryland.gov

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 Leza Griffith, Assistant Attorney General, (telephone #410-230-6020) on 02/20/2020. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Tiffany Robinson

Title

Secretary

Telephone No.

410-767-2924

Date

02/21/2020

Title 21
STATE PROCUREMENT REGULATIONS
Subtitle 11 SOCIOECONOMIC POLICIES
21.11.13 State Apprenticeship Training Fund-Capital Construction Projects

Authority: State Finance and Procurement Article, §§17-6A-01—17-6A-06, Annotated Code of Maryland

Notice of Proposed Action

□

The DIVISION OF WORKFORCE DEVELOPMENT AND ADULT LEARNING proposes to Adopt new Regulation .01-.11 under COMAR 21.11.13 et seq. State Apprenticeship Training Fund-Capital Construction Projects.

Statement of Purpose

The purpose of this action is to implement the provisions of State Finance and Procurement Article, §§17-6A-01—17-6A-06, Annotated Code of Maryland. The statute requires contractors and some subcontractors on certain capital construction projects to employ apprentices from a registered apprenticeship program or to make contributions to a registered apprenticeship program or the State Apprenticeship Training Fund.

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 Natalie Clements, Policy Analyst, Maryland Department of Labor, 1100 North Eutaw Street, Baltimore, MD 21201, or call 410-767-2019, or email to natalie.clements@maryland.gov, or fax to 410-333-5355. Comments will be accepted through April 13, 2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2021

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 required.

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

The regulations require the use of registered apprentices in certain contracts which are partially funded by State capital funds or a contribution to a registered apprenticeship training fund or the State's fund. The number of contracts subject to this statute is small and the expected contribution is minimal.

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 require the use of registered apprentices in certain contracts which are partially funded by State capital funds or a contribution to a registered apprenticeship training fund or the State's fund. The number of contracts subject to this statute is small and the expected contribution is minimal.

G. Small Business Worksheet:

Impact Statement Part C — Legislative Information

Part C requests agencies to provide information required by the Department of Legislative Services in its report to the AELR Committee. Answer the questions in the space provided. Part C is not printed in the Maryland Register.

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses? The Maryland Apprenticeship and Training Fund is the primary beneficiary.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?
Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?
Businesses will not be affected by the proposed action.

2a. Other Direct or Indirect Impacts:None.

2b. Other Direct or Indirect Impacts: None.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?
There is no long-term economic impact.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) There may be a long term affect on the workforce since apprenticeship programs will be expanded by the Fund; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 11 SOCIOECONOMIC POLICIES

Chapter 13 State Apprenticeship Training Fund-Capital Construction Projects

Authority: State Finance and Procurement Article, §§17-6A-01—17-6A-06, Annotated Code of Maryland

.01 Definitions.

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

B. *Terms Defined.*

- (1) *“Covered Contract” has the meaning set forth in State Finance and Procurement Article §17-6A-01 (c), Annotated Code of Maryland.*
- (2) *“Department” means the Maryland Department of Labor.*
- (3) *“Fund” has the meaning set forth in State Finance and Procurement Article §17-6A-01 (e), Annotated Code of Maryland*
- (4) *“Registered apprenticeship program” means an apprenticeship program which has been registered with, and approved by, the Maryland Apprenticeship and Training Council or the United States Department of Labor and is operating within the State of Maryland.*
- (5) *“Secretary” means the Secretary of the Maryland Department of Labor.*

.02 Applicability

A. *Each contractor or subcontractor awarded a covered contract defined in Regulation .01 of this Chapter shall:*

- (1) *Be affiliated with a registered apprenticeship program; and*
- (2) *Use apprentices from registered apprenticeship programs for each craft or trade in which the contractor or subcontractor employs individuals to complete the contract;*
- (3) (a) *Make payments to the Fund; or*
(b) *Make payments to a registered apprenticeship program.*

B. *This title is not applicable to a contractor or subcontractor if there are no registered apprenticeship programs for the craft or trade in which the contractor or subcontractor employs one or more individuals to complete the covered contract.*

.03 Hourly Contribution Rate.

A. *Contractors and subcontractors that elect to make payments as described in .02 of this regulation shall pay 25 cents per individual per hour for each employee who is employed to complete the contract to (i) a registered apprenticeship program; or (ii) the Fund.*

B. *Payments described in A. above shall be made on a monthly basis.*

.04 Registration.

A. *Contractors performing work on a covered contract shall complete the registration process at the Department’s website.*

B. *Prior to the commencement of work, a registered contractor shall log onto Department’s website and complete the required project log information, including, but not limited to, the following:*

- (1) *Identification of the capital project or grant;*
- (2) *Contract value;*
- (3) *Identification of subcontractors with contracts valued at \$500,000 or more to perform work on the project and subcontract value amount;*
- (4) *Identification of the affiliated registered apprenticeship program;*
- (5) *Certification that the contractor is employing registered apprentices from the registered apprenticeship program to complete the contract; and*
- (6) *Any other information that the Secretary requires.*

C. *In the event the contractor is not affiliated with a registered apprenticeship program and is not able to comply with the certification requirement set forth in B (5) above, the contractor shall designate the registered apprenticeship program or the Fund where the contractor will make contributions, estimate the number of employees per craft and trade for which there is a registered apprenticeship program and the number of hours they will be employed to complete the contract.*

D. *Subcontractors shall comply with the same registration requirements as set forth above.*

.05 Notification.

A. *Contractors who hire subcontractors performing work valued at \$500,000 or more on a covered contract, shall provide the subcontractors with written notice of the following requirements:*

- (1) Subcontractors performing work valued at \$500,000 or more on a covered contract shall complete the registration process at the Department's website;
 - (2) Prior to the commencement of work, a subcontractor shall log onto the Department's website and complete the required project log information including:
 - (a) Identification of the capital project or grant;
 - (b) Contract value;
 - (c) Identification of subcontractors with contracts valued at \$500,000 or more to perform work on the project and subcontract value amount;
 - (d) Identification of the affiliated registered apprenticeship program; and
 - (e) Certification that the subcontractor is employing registered apprentices from that program to complete the contract; or,
 - (f) Designation of the registered apprenticeship program or Fund where the subcontractor will make contributions; and
 - (g) Any other information that the Secretary requires.
- B. Contractors shall retain a copy of the written notice required in Paragraph A of this Regulation that was provided to covered subcontractors for inspection and review by the Secretary for 3 years after the completion of their work on a covered contract.
- C. In the event the contractor or subcontractor is not affiliated with a registered apprenticeship program and is not able to comply with the certification requirement set forth in A (2) above, the contractor or subcontractor shall estimate the number of employees per craft and trade for which there is a registered apprenticeship program and the number of hours they will be employed to complete the contract.
- D. Subcontractors shall comply with the same notice requirements as set forth above.

.06 Contractor's and Subcontractor's Obligations Related to Contributions.

Contractors and subcontractors who elect to make contributions to a registered apprenticeship program or the Fund are required to comply with the following requirements:

- A. Indicate on their capital construction payroll records their contributions under State Finance and Procurement Article, §17-6A-03 or §17-6A-04, Annotated Code of Maryland; and
- B. Certify to the Secretary, or the Secretary's designee, on a quarterly basis, that the contributions were sent to a registered apprenticeship program or to the Fund.

.07 Registered Apprenticeship Program's Obligations Related to Contributions.

Upon request from contractors or subcontractors, registered apprenticeship programs shall provide a written documentation to the contractors or subcontractors verifying their affiliation with the applicable program.

.08 Notification of Intended Changes to Designated Registered Apprenticeship Programs or the Fund.

- A. 30 days prior to making a change in the designation of applicable apprenticeship or contribution to the Fund, contractor or subcontractor shall log onto the Department's website to indicate the intended change.
- B. A contractor or subcontractor making payments to the Fund may make a written request to the Secretary that the contributions be directed to a specific pre-apprenticeship or workforce development program.

.09 Registered Apprenticeship Program's Obligations.

- A. Upon notice from the Department's Division of Workforce Development and Adult Learning that the registered apprenticeship program has been designated for contributions by a contractor or subcontractor, a registered apprenticeship program shall register on the Department's website.
- B. A registered apprenticeship program shall comply with the following requirements:
 - (1) Complete the requested information on contributions received from contractors and subcontractors for each contract at the Department's website on or before the last day of the month immediately following each calendar quarter; and
 - (2) Certify that all funds received are used solely for the purpose of improving or expanding apprenticeship training in the State.

.10 Audit of a Registered Apprenticeship Program.

The Secretary, or the Secretary's designee, may require an independent audit by a certified public accountant of a registered apprenticeship program to verify that contributions received from contractors and subcontractors are used consistently with requirements set forth in State Finance and Procurement Article, §§17-6A-01—17-6A-06, Annotated Code of Maryland and these regulations.

.11 Enforcement Procedures.

- A. The Secretary, or the Secretary's designee, may investigate whether State Finance and Procurement Article, Title 17, Subtitle 6A, Annotated Code of Maryland, has been violated:
 - (1) On the Secretary's, or the Secretary's designee, own initiative;
 - (2) On receipt of a written complaint; or
 - (3) On referral from another State agency.

B. The Secretary, or the Secretary's designee, may require a contractor, subcontractor, or an registered apprenticeship program to produce records as part of its investigation.

C. The Secretary, or the Secretary's designee, may enter a place of business to:

- (1) Interview individuals; or*
- (2) Review and copy records.*

D. If after an investigation, the Secretary, or the Secretary's designee, determines that there is a violation of State Finance and Procurement Article, Title 17, Subtitle 6A, Annotated Code of Maryland, or a regulation adopted to carry out the title, the Secretary shall issue an administrative charge that shall:

- (1) Describe in detail the nature of the alleged violation;*
- (2) Cite the provision of law or regulation that is alleged to have been violated; and*
- (3) State the penalty to be assessed, if any.*

E. Within a reasonable amount of time after the issuance of the administrative charge, the Secretary shall send a copy of the administrative charge to the alleged violator by regular mail with notice of the opportunity to request a hearing.

F. Within 30 days of the postmark of the administrative charge sent to the alleged violator, the alleged violator may submit a written request for a hearing on the administrative charge and proposed penalty.

G. If a hearing is not requested within 30 days of the postmark of the administrative charge sent to the alleged violator, the administrative charge, including any penalties, shall become a final order of the Secretary.

H. If there is a request for a hearing, the Secretary may delegate the hearing to the Office of Administrative Hearings in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

I. A proposed decision of an administrative law judge shall become a final order of the Secretary unless, within 15 days of the issuance of the proposed decision:

- (1) The Secretary orders review of the proposed decision; or*
- (2) The alleged violator submits to the Secretary a written request for review of the proposed decision.*

J. After review of the proposed decision under §I of this regulation, with or without a hearing on the record, the Secretary shall issue an order that affirms, modifies, or vacates the proposed decision.

TIFFANY P. ROBINSON
Secretary