

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>
	05/15/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 6/19/2020**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

21 10 05 05, .06

21 10 06 05, .12, .27

**3. Name of Promulgating Authority**

State Board of Contract Appeals

**4. Name of Regulations Coordinator**

Michael L Carnahan

**Telephone Number**

410-767-8227

**Mailing Address**

6 St. Paul Street, Suite 601

**City State Zip Code**

Baltimore MD 21202

**Email**

michael.carnahan@maryland.gov

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

Michael Carnahan

**Telephone No.**

410-767-8227

**Email Address**

michael.carnahan@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: April 29, 2020.

Repeal of Existing Regulations



## **21.10.06 Maryland State Board of Contract Appeals — Procedures for Appealing Contract Disputes**

Authority: State Finance and Procurement Article, §§12-101 and 15-201—15-223, Annotated Code of Maryland

### **Notice of Proposed Action**

[]

The Maryland State Board of Contract Appeals proposes to (1) Amend Regulations .05 and .06 under COMAR 21.10.05 Maryland State Board of Contract Appeals—General; and (2) Repeal Regulation .05 and Amend Regulations .12 and .27 under COMAR 21.10.06 Maryland State Board of Contract Appeals — Procedures For Appealing Contract Disputes.

### **Statement of Purpose**

The purpose of this action is to The purpose of this action is to revise, clarify, and bring up to date the regulations of the Maryland State Board of Contract Appeals such that the regulations are aligned with the Maryland Rules of Civil Procedure and the Annotated Code of Maryland. These are changes to the procedures used by the Board for filing appeals and for hearing and administering decisions on appeals, and are designed to improve the efficiency and overall effective administration of appeals.

### **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 Michael Carnahan, Clerk, Maryland State Board of Contract Appeals, 6 St. Paul Street, Suite 601, Baltimore MD 21202, or call 410-767-8227, or

email to michael.carnahan@maryland.gov, or fax to 410-333-0890. Comments will be accepted through 7/20/2020. 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:

None

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

None

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

None

G. Small Business Worksheet:

Attached Document:

---

## **Title 21 STATE PROCUREMENT REGULATIONS**

### **Subtitle 10 ADMINISTRATIVE AND CIVIL REMEDIES**

#### **21.10.05 Maryland State Board of Contract Appeals—General**

Authority: State Finance and Procurement Article, §§12-101 and 15-201—15-223, Annotated Code of Maryland

##### **.05 Subpoenas.**

A. – E. (text unchanged)

F. (text unchanged)

(1) (text unchanged)

(2) (text unchanged)

(a) Personal Delivery. A subpoena may be served at any place by any person who is not a participant in the proceeding and is not less than 18 years old. [Service of a subpoena upon a person named in it shall be made by personally delivering a copy to him.] *A subpoena shall be served by personally delivering a copy to the person named in it. Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney.*

G. (text unchanged)

H. Contumacy or Refusal to Obey a Subpoena. In the case of contumacy or refusal to obey a subpoena, the Appeals Board may invoke the aid of a court of competent jurisdiction, and the court may order that person to obey the subpoena or order. *The party seeking enforcement shall prepare and submit to the Appeals Board a proposed petition for consideration. The party seeking enforcement shall be responsible for filing the Petition with the court once it has been approved and signed by the Appeals Board and shall pay any applicable court costs.*

**.06 Motions.**

A. Scope. Unless otherwise provided by this subtitle, this regulation [pertains] *applies* to all motions filed with the Appeals Board.

B. (text unchanged)

(1) A party may move for appropriate relief before or during a hearing[;].

(2) A party shall submit all motions in writing in accordance with §B(3) of this regulation or orally at a hearing[;].

(3) (text unchanged)

(a) Be filed as far in advance of the hearing as is practicable or in accordance with the Appeals Board's Scheduling Order;

(b) State concisely the question to be determined; [and]

(c) Be accompanied by any necessary supporting documentation and shall not exceed (motions and responses thereto) 25 8.5 x 11 inch pages, typewritten double-spaced, excluding exhibits thereto; *and*

(d) (text unchanged)

(4) A response to a written motion shall be filed within 15 working days of the State government after the date the motion was filed, or the day before the date of the hearing, whichever is earlier. The moving party may file a reply to the response to the motion. No further responses will be accepted. The reply shall be filed within [15] 5 working days of the State government after the date the response was filed, or the day before the date of the hearing, whichever is earlier, *and shall not exceed 10 8.5 x 11 inch pages, typewritten double-spaced, excluding exhibits thereto*. Any party that desires to supplement its motion or response thereto must seek leave of the Appeals Board.

(5) Upon notice to all parties, the Appeals Board may schedule a hearing to consider a written motion[;].

(6) (text unchanged)

(a) Issue a written decision; [or]

(b) State the decision on the record; *or*

(c) *State the decision on the record and issue a written opinion providing the basis for its decision at a later date.*

(7) – (8) (text unchanged)

C. Motion to Dismiss. Upon motion, the Appeals Board may issue [a proposed or final decision] *an Order dismissing an initial pleading [which] that fails to state a claim [for] upon which relief may be granted. A motion addressed to the jurisdiction of the Appeals Board shall be filed promptly. A hearing on the motion shall be conducted at the request of either party, unless the Appeals Board determines that its decision on the motion will be deferred pending a hearing on both the merits of the appeal and the motion. The Appeals Board shall have the right at any time to raise the issue of its jurisdiction to proceed with a particular appeal, and shall issue an appropriate order affording the parties an opportunity to be heard on the issue of the jurisdiction of the Appeals Board.*

D. (text unchanged)

(1) (text unchanged)

(2) The Appeals Board may grant a [proposed or final] *motion for summary decision* if the Appeals Board finds that:

(a) – (b) (text unchanged)

E. (text unchanged)

F. *Motion for Reconsideration. A motion for reconsideration may only be filed on the grounds that the decision of the Appeals Board was in error as a result of fraud, surprise, mistake, or inadvertence and shall be filed within 15 days for appeals of protests and within 30 days for appeals of contract claims from the date the party filing the motion received a copy of the decision of the Appeals Board. A response to a motion for reconsideration shall be filed within 7 working days of the State government after the date the motion was filed. The moving party may not file a reply to a response to a motion for reconsideration. The Appeals Board may also, at its own discretion, alter or amend its decision or order if it determines that an error has occurred. For purposes of judicial review as provided for under State Finance and Procurement Article, §15-223 and State Government Article, §10-222, Annotated Code of Maryland, and Title 7, Chapter 200 of the Md. Rules, an action of the Appeals Board shall be deemed final 30 days from the date of receipt by the parties of the Appeals Board's decision under this regulation or, in the event of a motion for reconsideration, from the date of receipt by the parties of the Appeals Board's ruling thereon.*

## **21.10.06 Maryland State Board of Contract Appeals — Procedures For Appealing Contract Disputes**

Authority: State Finance and Procurement Article, §§12-101 and 15-201—15-223, Annotated Code of Maryland

### **[.05 Dismissal for Lack of Jurisdiction.]**

#### **.12 Optional "Small Claims (Expedited)" and "Accelerated" Procedures.**

A. – B. (text unchanged)

C. (text unchanged)

(1) – (2) (text unchanged)

(3) Written decisions by the Appeals Board in cases processed under the "Small Claims (Expedited)" procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Appeals Board by a single member. If there has been a hearing, the Appeals Board member presiding at the hearing may, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. If an oral decision is rendered, the Appeals Board subsequently will furnish the parties a typed copy of the oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration [under Regulation .28 of this chapter].

D. (text unchanged)

(1) – (2) (text unchanged)

(3) Written decisions by the *Appeals* Board in cases processed under the "Accelerated" procedure normally will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Appeals Board by a single member with the concurrence of the Chairman or other designated Appeals Board member, or by a majority among these two and an additional designated Appeals Board member in case of disagreement. Alternatively, in cases where the amount in dispute is \$10,000 or less as to which the "Accelerated" procedure has been elected and in which there has been a hearing, a single Appeals Board member presiding at the hearing with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, may render on the record oral summary findings of fact, conclusions, and a decision of the appeal. If an oral decision is rendered, the Appeals Board subsequently will furnish the parties a typed copy of the oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration [under Regulation .28 of this chapter].

#### **.27 Formal Decision.**

Decisions of the Appeals Board will be made in writing and authenticated copies will be forwarded simultaneously to both parties. Except as provided for in Regulation .12 of this chapter, the decision of a majority of three Appeals Board members shall constitute the decision of the Appeals Board. Decisions of the Appeals Board will be based solely upon the record, as described in Regulation .13 of this chapter. The regulations of the Appeals Board and all final orders and decisions shall be open for public inspection at the Appeals Board's office. For purposes of judicial review as provided for under State Finance and Procurement Article, §15-223 and State Government Article, §10-222, Annotated Code of Maryland, and Title 7, Chapter 200 of the Md. Rules, an action of the Appeals Board shall be deemed final 30 days from the date of receipt by the parties of the Appeals Board's decision *or, in the event of a motion for reconsideration, from the date of receipt by the parties of the Appeals Board's ruling thereon.*