



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW

Memorandum

To: Members of the AELR Committee
Standing Committee Chairs

From: Kathleen P. Kennedy, AELR Committee Counsel
John J. Joyce, AELR Committee Counsel
Georgianne Carter, AELR Committee Counsel

Date: October 30, 2020

Re: **Synopses of Regulations received from 10/16/2020 through 10/29/2020**

Enclosed please find synopses of regulations received by the Joint Committee on Administrative, Executive, and Legislative Review (AELR) during the weeks noted above.

The Office of Policy Analysis prepares analyses of the regulations to determine if there are any problem areas, to ensure that the regulations comply with statutory authority and legislative intent, and to assess the fiscal impact of the regulations. If any regulation is of particular interest to you, please feel free to contact us at 410-946-5350 and we will supply you with a copy of the regulation along with the legal and fiscal analysis.

/cr

cc: Jake Weissmann
Alexandra M. Hughes

Comptroller of the Treasury

Proposed Regulation

DLS Control No. 20-138

Comptroller of the Treasury:

Alcohol and Tobacco Tax:

Alcoholic Beverages: COMAR 03.02.01.05

According to the office, the purpose of this action is to repeal the regulation, remove obsolete provisions related to containers of alcoholic beverages, and adopt new regulations concerning price filings and Maryland's "post-and-hold" system found to be violative of federal law in 2009.

Juvenile Services, Department of

Proposed Regulation

DLS Control No. 20-137

Department of Juvenile Services:

Field Services:

Probation and Aftercare Services and Procedures: COMAR 16.16.01.03

According to the department, the purpose of this action is to update Maryland Department of Juvenile Service (DJS) regulations governing the provision of court services.

The proposed action amends the existing regulation to update terminology, adds citations to controlling statutes, removes superfluous language, clarifies the required content of transfer and waiver reports, and makes technical corrections.

Natural Resources, Department of

Proposed Regulation

DLS Control No. 20-135

Department of Natural Resources:

Fisheries Service:

Striped Bass: COMAR 08.02.15.07

According to the department, the purpose of this action is to extend the commercial striped bass Chesapeake Bay Individual Transferable Quota (ITQ) fishery seasons for hook and line, haul seines, and drift gill nets. The proposed action does not allow additional harvest, but it does provide fishery participants with greater flexibility. Specifically for the hook and line Chesapeake Bay individual transferable quota fishery, the proposed action extends the season through December 31, removes the prohibition for fishing on Friday, and extends the fishing hours to one

hour after sunset. For the haul seine Chesapeake Bay individual transferable quota fishery, the proposed action extends the season through the end of February. For the drift gill net Chesapeake Bay individual transferable quota fishery, the proposed action allows harvest on Saturdays and Sundays throughout the drift gill net season.

Proposed Regulation

DLS Control No. 20-139

Department of Natural Resources:

Fisheries Service:

Gear: COMAR 08.02.25.03

According to the department, the purpose of this action is to implement the circle hook requirement of Addendum VI to Amendment 6 to the Atlantic States Marine Fisheries Commission Atlantic Striped Bass Interstate Fishery Management Plan. The proposed action implements a year-round requirement to use a non-offset circle hook if an individual is:

- using bait while fishing for striped bass;
- live-lining; or
- chumming.

The proposed action also reorganizes the regulation so that rules are in the appropriate locations and easier to understand.

Environment, Department of the

Proposed Regulation

DLS Control No. 20-131

Department of the Environment:

Water Pollution:

Discharge Limitations: COMAR 26.08.03.01

According to the department, the purpose of this action is to designate a new area of the waters of the State as a no discharge zone (NDZ) in the Chester River, where the discharge from Type I and II marine sanitation devices aboard vessels is prohibited, and adopt an amendment to regulation 01 under COMAR 26.08.03.

Proposed Regulations

DLS Control No. 20-140

Department of the Environment:

Radiation Management:

Radiation Protection: COMAR 26.12.01.01

Inspection and Certification: COMAR 26.12.02.02

According to the department, the purpose of this action is to amend COMAR 26.12.01.01, Incorporation by Reference, to incorporate Supplement 30 to:

- add requirements for x-ray security screening;
- update the records and surveys section, including record retention period;
- clarify the definition of an authorized provider in the State;
- cover requirements for administrative controls;
- add procedures for therapeutic administrations; and
- incorporate a definition for “registered cardiovascular invasive specialist.”

Additionally, this action amends COMAR 26.12.02.02, State Certification of Radiation Machines, to include future radiation machine certification expiration dates.

Transportation, Department of

Proposed Regulation

DLS Control No. 20-136

Department of Transportation:

Motor Vehicle Administration – Vehicle Registration:

Electronic Lien Recording and Release: COMAR 11.15.38.01 through .03

According to the department, the purpose of this action is to set requirements for the electronic transmission of liens recorded and released on vehicle titles pursuant to the passage of Chapter 411 (HB 1033) and Chapter 412 (SB 778), Acts of 2020.

Labor, Maryland Department of

Proposed Regulation

DLS Control No. 20-132

Maryland Department of Labor:

Division of Labor and Industry:

Maryland Occupational Safety and Health Act – Incorporation by Reference of

Federal Standards: COMAR 09.12.31.A

According to the department, the purpose of this action is to adopt through incorporation by reference 14 revisions to existing standards in the federal Occupational Safety and Health (OSHA) recordkeeping, general industry, shipyard, and construction standards. The Standards Improvement Project (SIP) IV removes or revises outdated, duplicative, unnecessary, and inconsistent requirements in safety and health standards, which will permit better compliance by employers and reduce paperwork burdens without reducing employee protections. The revisions include an update to the previously incorporated by reference consensus standard for signs and devices used to protect workers near automobile traffic, a revision to the requirements for roll-over protective structures to comply with current consensus standards, updates for storage of digital x-rays, and the method of calling emergency services to allow for use of current technology. OSHA is also revising two standards to align with current medical practice: A reduction to the number of necessary employee x-rays and updates to requirements for pulmonary function testing. To protect employee privacy and prevent identity fraud, OSHA is also removing from the standards the requirements that employers include an employee's social security number (SSN) on exposure monitoring, medical surveillance, and other records.

Proposed Regulation

DLS Control No. 20-133

Maryland Department of Labor:

Division of Labor and Industry:

Maryland Occupational Safety and Health Act – Incorporation by Reference of

Federal Standards: COMAR 09.12.31.J-1

According to the department, the purpose of this action is to adopt through incorporation by reference the federal final rule, Occupational Exposure to Beryllium, published on January 9, 2017, as amended. This rule was issued to prevent chronic beryllium disease and lung cancer in workers by limiting their exposure to beryllium and beryllium compounds in general industry, construction, and shipyards. The rule was codified in three separate standards at 29 CFR § 1910.1024, 29 CFR § 1915.1024, and 29 CFR § 1926.1124. It establishes a new, lower permissible exposure limit (PEL) for beryllium of 0.2 µg/m³, averaged over 8-hours and a new short-term exposure limit for beryllium of 2.0 µg/m³, over a 15-minute sampling period. It also requires employers to use engineering and work practice controls (such as ventilation or enclosure) to limit worker exposure to beryllium; provide respirators when controls cannot adequately limit exposure; limit worker access to high-exposure areas; develop a written exposure control plan; and train workers on beryllium hazards. Finally, this rule requires employers to make available medical exams to monitor exposed workers and provides medical removal protection to workers identified with a

beryllium-related disease. These updated requirements will apply to employers whose workers are exposed to beryllium through operations such as beryllium metal and ceramic production, non-ferrous foundries, and fabrication of beryllium alloy products.

Additionally, this action adopts two subsequent final rules promulgated to clarify and to simplify provisions established by the January 9, 2017 Occupational Exposure to Beryllium rule by amending to provide the following:

- revisions to the Beryllium Standard for General Industry, published on July 14, 2020, by adding a definition, modifying existing terms, and replacing Appendix A; and
- the Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors, published August 31, 2020, delays nearly all provisions of the standards in construction and shipyard sectors until August 2021 with the exception of the established exposure limits to beryllium and beryllium compounds.

Proposed Regulation

DLS Control No. 20-141

Maryland Department of Labor:

Racing Commission:

Prohibited Acts: 09.10.03.01-1

According to the department, the purpose of this action is to prohibit a specific medication, Clenbuterol, from being in a horse's system during a race. Clenbuterol is currently allowed, if below a quantitated amount.

Administrative Hearings, Office of

Proposed Regulations

DLS Control No. 20-142

Office of Administrative Hearings:

Rules of Procedure:

Rules of Procedure: COMAR 28.02.01.02-.05, .10-.11, .13-.14, .16, .18-.21, and .23

According to the office, the purpose of this proposal is to make substantive changes and additions to the regulations to facilitate remote hearings by incorporating current agency practices and implementing new practices deemed necessary and appropriate. The substantive changes are summarized below.

Specific Changes:

Subtitle 02, Chapter 01 – Rules of Procedure:

Definitions

Regulation .02B – Amends to:

(1) Expand the definition of “office proceedings” to include any remote proceeding conducted by audio and/or audiovisual means consistent with current practice.

(2) Add a definition of a “remote proceeding.”

Transmittal of Request for Hearing

Regulation .03B – Adopts:

(1) A requirement to include a telephone number and email address on an initial hearing request.

(2) A requirement that a requestor indicate whether the requestor consents to electronic notice. (See Chapter 518 of Session Law, effective October 1, 2020).

Regulation 03E – Adopts a requirement that a party notify the office of a change in email address or telephone number.

Filing

Regulation .04D – Amends the procedure for filing a pleading to clarify that when a pleading is received via email, it is filed.

Notice

Regulation .05 – Amends:

(1) The required content of the notice by adding remote proceeding locations.

(2) The method of giving notice to allow for electronic notice with the parties’ consent.

Venue

Regulation .07 – Amends the regulation to clarify that the “site” designated by the office for a proceeding may include a remote platform.

Service

Regulation .10B – Amends to adopt a provision stating that parties may consent to pleadings and other documents being served electronically.

Powers and Duties of ALJs

Regulation .11B – Amends to clarify an ALJ’s authority to convene any office proceeding remotely.

Discovery

Regulation .13C – Amends to clarify that ALJs have broad authority to issue orders regarding discovery, including orders requiring that discovery be produced electronically.

Subpoenas

Regulation .14 – Amends to:

(1) Require the parties to provide email and telephone contact information, if available, for a subpoenaed witness.

(2) Adopt a provision that allows parties and the office to serve subpoenas electronically.

Postponements

Regulation .16B – Amends to reflect current practice of allowing postponements requests via email to OAH postponement box.

Alternative Dispute Resolution

Regulation .18D – Amends to adopt procedures to ensure the confidentiality of a remote alternative dispute resolution proceeding.

Proceedings Open to the Public, Recording Devices

Regulation .19C – Amends:

(1) Clarify that the ALJ’s authority to remove disorderly persons from the proceedings applies to remote proceedings; and

(2) Clarify that the ALJ’s authority to restrict attendance based on physical limitations applies to remote proceedings.

Conduct of Hearings, Waivers

Regulation .20 – Amends:

(1) Alter heading to include remote proceeding language

(2) Clarify that the ALJ may allow all or some portion of an office proceeding to be conducted via a combination of in-person, telephonic and/or audio-visual platforms;

(3) Clarify the factors that are relevant to the establishment of good cause.

(4) Clarify that the ALJ may require documentary evidence for audio or audio-visual proceedings to be filed electronically and organized as ordered by the ALJ.

Evidence; Burden of Proof

Regulation .21F – Adopts new procedure for prefiled direct testimony.

Failure to Attend or Participate in a Hearing, Conference, or Other Proceeding; Default

Regulation .23 – Adopts new procedure to:

(1) Address failure to appear after consent to receive electronic notice;

(2) Address failure to appear by both parties to a proceeding and establishing that the party bearing the burden of proof will be deemed to be the defaulting party.

Retirement and Pension System, State

Emergency Regulation

DLS Control No. 20-134

State Retirement and Pension System:

Board of Trustees:

Election of Trustees: COMAR 22.03.01.06

According to the State Retirement Agency, the emergency regulation seeks to temporarily reduce the number of signatures required to be nominated as a candidate for election to the Board of Trustees for the State Retirement and Pension System (SRPS board) from 500 to 50.