



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: Georgeanne A. Carter, AELR Committee Counsel
Kathleen P. Kennedy, AELR Committee Counsel
Kelvin P. Lucas, AELR Committee Counsel

Date: September 12, 2023

Re: **Synopses of Regulations received from 8/14/2023 through 9/11/2023**

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.

/mjp

cc: Sally Robb
Jeremy Baker

Department of Natural Resources

Proposed Regulation

DLS Control No. 23-203

Department of Natural Resources:

Fisheries Service: Shellfish Aquaculture and Leasing: COMAR 08.02.23.05

According to the department, the purpose of this action is to create a pilot program permit structure for future aquaculture pilot programs. The Department would then be able to conduct certain voluntary pilot projects for the practical demonstration and evaluation of alternative aquaculture management methods to increase accountability as well as efficiency and value within the industry.

Proposed Regulation

DLS Control No. 23-207

Department of Natural Resources: Fisheries Service:

General: COMAR 08.02.01.12

According to the department, the purpose of this action is to revise the Submerged Aquatic Vegetation Protection Zones. Zones are being revised using data from an annual aerial survey compiled by the Virginia Institute of Marine Sciences (VIMS).

Proposed Regulations

DLS Control No. 23-208

Department of Natural Resources: Fisheries Service:

Fish: COMAR 08.02.05.31

Endangered and Threatened Fish Species: COMAR 08.02.12.03

According to the department, the purpose of this action is to declare longnose gar as “In Need of Conservation” and establish a creel limit for the species. This action proposes a creel limit of 1 longnose gar per person from April 15 through June 30 and a creel limit of 5 longnose gar per person from July 1 through April 14. This creel limit would apply to both recreational anglers and commercial harvesters. These regulations would mirror the recreational creel limits in Virginia to provide consistency with adjacent jurisdictions and provide heightened protections during the spawning period when gar are more vulnerable to harvest due to their tendency to gather in large groups to spawn.

Proposed Regulation

DLS Control No. 23-215

Department of Natural Resources: Fisheries Service:

General: COMAR 08.02.01.13

According to the department, the purpose of this action is to simplify the language and prohibit the use of projectile fishing gear in all Fishery Management Areas (FMAs). Current

regulations define legal projectile fishing gear as archery equipment, gig, spear, and spear gun. Current regulations prohibit the use of projectile gear in many Fishery Management Public Fishing Areas or sections of FMAs due to restrictions on public access, restrictions in trout management waters, and safety zone distance. The areas where the gear may be used legally are few, small in size, and can be difficult to identify and enforce. This has led to confusion among stakeholders and enforcement personnel.

Proposed Regulation

DLS Control No. 23-216

Department of Natural Resources:

Fisheries Service: Fish: COMAR 08.02.05.21

According to the department, the purpose of this action is to update the commercial quota information to reflect recent changes made by the Atlantic States Marine Fishery Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (MAFMC). The annual total allowable landings of black sea bass for the commercial fishery is set by the Atlantic States Marine Fisheries Commission and shall be published through a public notice.

Due to changes made by ASMFC/MAFMC, the Maryland commercial black sea bass quota is no longer necessarily 11% of the coastal quota as currently written in COMAR. The Department will publish the quota as established by those agencies when it is available through a public notice on the Department's website, as well as sending it out to the Department's email listserv and social media accounts. More information about the ASMFC/MAFMC action is available here: <https://www.federalregister.gov/documents/2023/03/09/2023-04588/magnuson-stevens-fishery-conservation-and-management-act-provisions-fisheries-of-the-northeastern>.

Proposed Regulations

DLS Control No. 23-217

Department of Natural Resources: Fisheries Service:

Striped Bass: COMAR 08.02.15.04, .05, and .07

According to the department, the purpose of this action is to eliminate the Chesapeake Bay Common Pool commercial striped bass fishery. Doing this will mean that all individuals participating in the commercial striped bass fishery in the Chesapeake Bay would then participate in the Individual Transferrable Quota fishery.

The Chesapeake Bay Common Pool fishery represents a small fraction of the striped bass commercial industry overall. This derby style fishery depends on timely harvest reporting to adhere to quotas. As the common pool has continued to get smaller over time due to fewer individuals electing this option, it has become increasingly difficult to manage the shrinking quota. The common pool fishery is a holdover for those permit holders who were extremely reluctant to join the ITQ in 2014. In 2023, the common pool fishery functions more like a "bonus fishery" for families that harvest in the ITQ fishery to add a little extra to their annual harvest. However, the smaller derby-fishery quota also increases the risk of overharvesting because there is less room for error. Eliminating the Chesapeake Bay Common Pool fishery will increase the Department's

ability to accurately manage the overall commercial harvest of striped bass in the Chesapeake Bay while lowering the Department's administrative responsibilities.

Proposed Regulation

DLS Control No. 23-221

Department of Natural Resources:

Boating: Special Uses: COMAR 08.04.16.02

According to the department, the purpose of this action is to update the list of registered vessels that may request a DNR Ski Sticker. The current regulation includes a list of qualified vessels and permits the Department to issue a DNR Ski Sticker to owners of a registered qualified vessel. The Department is updating its list of qualified vessels with the Approved Tournament Towboats list approved and developed by USA Water Ski & Wake Sports. USA Water Ski & Wake Sports is the national governing body of organized water skiing and wakeboarding in the United States. USA Water Ski & Wake Sports is also a member of the International Waterski & Wakeboard Federation (world governing body). The USA Water Ski and Wake Sport's towboat approval process includes performing a series of 11 tests and sub-tests which include power and acceleration and centerline deviation. Additionally, the USA Water Ski and Wake Sport Approved Tournament Towboats list is updated annually. Thus, the Department is proposing to update its list of qualified vessels to mirror this governing body's list.

Commission on Civil Rights

Proposed Regulations

DLS Control No. 23-201

Independent Agencies:

Prescription Drug Affordability Board:

General Provisions: COMAR 14.01.01.01 – .05

According to the commission, the purpose of this action is to establish necessary definitions and procedures for calculating time periods, managing open meetings, handling confidential, trade-secret and proprietary information, and facilitating public comment.

Proposed Regulations

DLS Control No. 23-204

Independent Agencies:

Prescription Drug Affordability Board: COMAR 14.01.04.01 – .05

According to the commission, the purpose of this action is to establish procedures to identify drugs that may create affordability challenges, refer drugs to the Stakeholder Council for consideration and comment, obtain public input at multiple points through the process, select a drug or drugs for cost review, request information to conduct the cost review, conduct cost review study and adopt a written report of that study.

Proposed Regulation

DLS Control No. 23-185

Independent Agencies:

Commission on Criminal Sentencing Policy:

Criminal Offenses and Seriousness Categories: COMAR 14.22.02.02

According to the commission, this regulation (1) reflects the addition of new, revised, and repealed offenses from the 2023 Legislative Session; (2) adds several previously unclassified offenses; (3) revises seriousness categories for certain subsequent drug offenses; and (4) replaces all instances of “inmate” with “incarcerated individual.”

Maryland Department of Health

Proposed Regulations

DLS Control No. 23-210

Maryland Department of Health: Board of Physicians:

General Licensure Regulations: COMAR 10.32.01.05, .11, and .12

According to the department, the purpose of this action is to establish regulations for the policy and procedures regarding initial application, renewal, reinstatement, and fees for emeritus license status, an honorary license status for physicians, and to update/restructure outdated fees.

Proposed Regulations

DLS Control No. 23-214

Maryland Department of Health:

Board of Dental Examiners: Dental Assistants: COMAR 10.44.01.01 – .39

According to the department, the purpose of this action is to establish a new regulatory scheme to recognize and certify orthodontic expanded function dental assistants and general duties expanded function dental assistants in accordance with Ch. 364 (H.B. 968), Acts of 2022, Health Occupations – Dental Assistants – Certification and Regulation. The chapter specifies the intraoral procedures that require certification, establishes initial educational requirements, continuing education requirements, and requirements for certification renewal. The chapter also specifies those intraoral procedures that do not require certification.

Emergency Regulation

DLS Control No. 23-218

Maryland Department of Health:

Board of Nursing: Examination and Licensure: COMAR 10.27.01.05

According to the department, the purpose of this action is to revise the English language proficiency examinations accepted by the Maryland Board of Nursing and to outline overall and minimum passing section scores. This emergency action is being requested due to substantive comments during the public comment period, which led to the revision of the proposal and

resubmission to the Maryland Department of Health. The regulation is being revised to correct the Occupational English Test (OET) minimum passing scores. The original proposal was submitted on November 3, 2022. The Board has been receiving many inquiries from constituents and are concerned about the delay in promulgation.

Proposed Regulations

DLS Control No. 23-219

Maryland Department of Health: Board of Dental Examiners:

Fees: COMAR 10.44.20.02

Continuing Education: COMAR 10.44.22.02, .04 – .06, and .08 – .14

According to the department, the purpose of this action is to update COMAR 10.44.22 Continuing Education to: (1) delineate acceptable continuing education programs and the hours permitted under those programs; (2) increase the number of hours of the Board's required infection control course from 2 to 3 hours as a condition of license renewal; (3) allow dentists and dental hygienists to receive up to 2 continuing education hours per renewal cycle for attendance at regularly scheduled open session Board meetings; (4) alter the dates upon which licensees must complete continuing education programs as a condition of license renewal; (5) allow dentists and dental hygienists to receive continuing education credit for completing a required course on implicit bias training; (6) amend the list of automatically approved sponsors of continuing education; (7) provide a mechanism for approval of continuing education sponsors who are not automatically approved; (8) accept for continuing education credit those courses that have been approved by certain credentialing agencies; (9) delineate the contents of continuing education certificates of completion; and (10) amend the existing procedures for conducting continuing education audits. Additionally, the purpose of COMAR 10.44.20 Fees is to establish a fee for a continuing education sponsor who applies for Board-approval of a continuing education program.

Maryland Department of Labor

Proposed Regulation

DLS Control No. 23-212

Maryland Department of Labor:

Board of Public Accountancy: Examinations: COMAR 09.24.05.03

According to the department, the purpose of this action is to make Maryland's educational requirements comparable to neighboring jurisdictions. Surrounding states have a lower threshold and there is concerns that applicants may be choosing other states in lieu of testing Maryland.

Proposed Regulation

DLS Control No. 23-220

Maryland Department of Labor:

Board of Public Accountancy: Examinations: COMAR 09.24.05.05

According to the department, the purpose of this action is to change the conditional credit loss date from 18 months to 30 months. Therefore, allowing CPA Exam candidates and extended period of time to pass a section of an exam.

State Board of Education

Proposed Regulations

DLS Control No. 23-202

State Board of Education: State School Administration:

Appeals to the State Board of Education:

COMAR 13A.01.05.01 – .04, .08, .10, and .12

According to the board, the purpose of this action is to provide further direction to those submitting appeals to the State Board of Education and efficiency to the appeal process.

Proposed Regulations

DLS Control No. 23-206

State Board of Education: Family Child Care Central Repository:

Scope and Definitions: COMAR 13A.15.01.02

Home Environment and Equipment: COMAR 13A.15.05.03

Child Safety: COMAR 13A.15.10.02

Health: COMAR 13A.15.11.04 – .06

Child Care Centers: Scope and Definitions: COMAR 13A.16.01.02

Physical Plant and Equipment: COMAR 13A.16.05.11

Safety: COMAR 13A.16.10.04

Health: COMAR 13A.16.11.04 – .06

Child Care – Letters of Compliance: Scope and Definitions: COMAR 13A.17.01.02

Physical Plant and Equipment: COMAR 13A.17.05.11

Safety: COMAR 13A.17.10.04

Health: COMAR 13A.17.11.04 – .06

Large Family Child Care Homes: Scope and Definitions: COMAR 13A.18.01.02

Home Environment and Equipment: COMAR 13A.18.05.11

Safety: COMAR 13A.18.10.04

Health: COMAR 13A.18.11.04 – .06

According to the board, the purpose of this action is to amend regulations to: (1) prevent inappropriate exposure to or ingestion of cannabis; and (2) specify that bio contaminants and biohazards shall be disposed of in a clean and sanitary manner, consistent with this proposal's purpose to prevent children from being exposed to hazardous items.

Proposed Regulation

DLS Control No. 23-211

State Board of Education: Students: General Regulations: COMAR 13A.08.01.17

According to the board, the purpose of the regulation is to align the regulation with the statutory language of Md. Code, Educ. § 7-303 and 305, to provide a definition of “reportable offenses”, and to clarify necessary school and local school system actions related to educational programs and safety when there is a student facing community-based charges.

Proposed Regulations

DLS Control No. 23-213

State Board of Education: Family Child Care Central Repository:

Inspections, Complaints, and Enforcement: COMAR 13A.15.13.04-1

Administrative Hearings: COMAR 13A.15.14.01 and .02

Child Care Centers:

Inspections, Complaints, and Enforcement: COMAR 13A.16.17.04-1

Administrative Hearings: COMAR 13A.16.18.01 and .02

Child Care – Letters of Compliance:

Inspections, Complaints, and Enforcement: COMAR 13A.17.15.04-1

Administrative Hearings: COMAR 13A.17.16.01 and .02

Large Family Child Care Homes:

Inspections, Complaints, and Enforcement: COMAR 13A.18.14.04-1

Administrative Hearings: COMAR 13A.18.15.01 and .02

According to the board, the purpose of this action is to authorize the Maryland State Department of Education, Office of Child Care (OCC) to issue intermediate sanctions on an emergency basis upon determining that a child care provider has violated child care regulations and that action is necessary to protect the health, safety, or welfare of children in care. The emergency intermediate sanctions that will be available to the OCC include restricting the ages of children in care; reducing the number of children in care; limiting the spaces, rooms, or areas that may be used for child care; prohibiting an employee, staff member, substitute, or volunteer who has successfully passed all required background checks from being alone with a child or group of children pending an open child protective services or criminal investigation; requiring the provider or staff to participate in training; and increasing the frequency of monitoring. Since emergency intermediate sanctions will go into effect immediately upon issuance, providers will be notified in writing and given appeal rights, including the right to an expedited hearing before the Office of Administrative Hearings. This action will allow the OCC to take immediate action, as appropriate, without necessarily suspending a child care program in its entirety, which is the only option available on an emergency basis under current regulations.

State Procurement Regulations

Proposed Regulations

DLS Control No. 23-200

State Procurement Regulations: Administrative and Civil Remedies:

Maryland State Board of Contract Appeals – General:

COMAR 21.10.05.02, .06, .07, and .12

Maryland State Board of Contract Appeals – Procedures For Appealing Contract Disputes: COMAR 21.10.06.04

Maryland State Board of Contract Appeals — Procedures for Appealing Protests:

COMAR 21.10.07.01, .03, .04, .06 – .09

According to the department, these regulations alter procedural rules and requirements for proceedings before the Maryland State Board of Contract Appeals (Appeals Board).

State Retirement and Pension System

Proposed Regulations

DLS Control No. 23-205

State Retirement and Pension System: General Regulations: COMAR 22.01.14.02

Compliance with the Internal Revenue Code:

General Provisions: COMAR 22.07.01.02

Code Compliance: COMAR 22.07.02.01

According to the State Retirement Agency, the purpose of this action is to provide a new definition in COMAR 22.01.14, concerning applications for service retirement, and in COMAR 22.07.01, concerning compliance with the Internal Revenue Code, to advise that the required beginning date means the applicable date by which the distribution of a plan benefit “must commence in accordance with the Internal Revenue Code, 26 U.S.C. § 401(a)(9)(C).” By referencing the Internal Revenue Code and not specifying the starting age, the proposed regulation in COMAR 22.07.02, allows for compliance with any future changes to § 401(a)(9)(C) without the need for a further corresponding regulatory amendment.