

RESERVE

Research Guide for Maryland Regulations

Office of the Secretary of State



**Division of State
Documents**

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On page 3, line 10 from bottom:

For: 3. govern the procedure of the unit;

Read: 3. govern the procedure of the unit; or

On page 4, line 20 from top:

For: point when the Maryland Racing
Commission in 1985 de-

Read: point when the Maryland Racing
Commission in 1979 de-

Research Guide for Maryland Regulations

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RESEARCH GUIDE FOR MARYLAND REGULATIONS

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I. INTRODUCTION

The scope of administrative regulations in Maryland has now reached unprecedented proportions. In sheer volume of printed matter, the Code of Maryland Regulations (COMAR) now exceeds the statutes of the **State**. This is not altogether surprising, given the fact that in recent years the General Assembly has enacted comprehensive legislation in such areas as health, the environment, and motor vehicle safety, and has mandated that State agencies adopt regulations to carry out its intention. At the same time, the move toward deregulation by the Federal Government has shifted the focus of regulation to the state level. All of this has combined to make administrative regulations more important than ever before to Maryland attorneys and their clients.

What follows is intended to be a practical guide to the practicing attorney who finds himself confronted with the need to research State regulations. The discussion will use three time periods (pre-1970; 1970-1974; and 1974 to present) as a framework within which to highlight the procedures that have brought regulations into existence, and the research techniques that can be used to track regulations to their origins during each period. Regulations emanating from the counties, and from such multicounty entities as the Maryland-National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission, are not discussed because they are not State regulations as defined by the State's Administrative Procedure Act.

II. HISTORY OF REGULATIONS IN MARYLAND

Before enactment of the State Documents Law in 1974, very few formalities surrounded the creation of administrative regulations. Those that did exist were often followed haphazardly. An annual filing requirement, in which agencies were to submit their updated regulations to the Secretary of State, was often overlooked. In some local depositories, regulations that were properly submitted by the agencies were sometimes discarded by clerks unacquainted with their importance.

The period before 1970 is especially troublesome. Very little was consistent or uniform about the regulation adoption or amendment process during that time. There were as many formats and styles of regulations as there were agencies. There was no uniform codification system, and no uniform amendment process. Notice to the public and affected parties was rudimentary and often relied upon the sometimes ob-

secure legal notice section of selected local newspapers. For the researcher, it can be a daunting and often frustrating task to track Maryland's administrative regulations back to this period.

In the early 1970's, the Secretary of State's Office made an effort to bring order out of this chaos. A uniform codification system was adopted and a standardized printing format prescribed for all regulations. The compilation that resulted was called the Maryland Agency Rules and Regulations (MARR). But the Secretary of State's Office had little authority to do more than establish publishing guidelines, and had no staff available to assign permanently to the project. As a consequence, the MARR publication process was never completed, and the effort to impose uniformity began to break down almost immediately.

But change was in the air. In the late 1960's and early 1970's there was heightened interest in opening up the processes of government to the public. This movement had been accompanied by a drive to set forth the language of the law more simply and in "plain English." It was not until 1974, however, that the General Assembly, relying heavily upon existing Pennsylvania law, enacted what was called the State Documents Law. This statute dramatically changed the way administrative regulations were created in Maryland.

The State Documents Law spelled out in unprecedented detail the process by which agencies were to go about rule-making. Chief among the new formalities was the requirement that State agencies give legal notice of their pending and adopted regulations in an official State publication called the *Maryland Register*. This publication was described in the new law as the temporary supplement to the Code of Maryland Regulations (COMAR), the name given to the permanent compilation of Maryland agency regulations.

Equally important, a new unit, the Division of State Documents, was created within the Secretary of State's Office and given specific responsibility for editing, compiling, publishing, and distributing the *Maryland Register* and COMAR.

The first issue of the *Maryland Register* appeared on October 17, 1974, and has appeared regularly on its biweekly schedule since then. The editing and compiling of agency regulations into COMAR, however, was a project of much larger scope. While planning for COMAR began immediately, the first volume did not appear until 1977, and the last volume in the original compilation was not completed until nearly

five years later in 1981. Since then, legislative enactments and periodic government reorganization have added additional volumes.

From this brief history, the researcher should understand that he is going to encounter three more or less distinct periods in the course of tracing the origins of a regulation: 1) Pre-1970; 2) 1970-1974; and 3) 1974-present.

Each of these periods tests the skills of the researcher in different ways, and presents problems that become more severe, with less likelihood of success, as the researcher goes back through time.

III. THE REGULATION

While the procedures that bring a regulation into being have changed markedly from the pre-1970 period, the definition of "regulation" has changed very little over time. From 1957, when Maryland first adopted the Administrative Procedure Act (APA), to the present, the definition of "regulation" has remained virtually unchanged and enjoys the reputation of being one of the broadest in the nation. A wide variety of **State** agency activity is swept into the definition, and exceptions to it are few and tightly drawn. As found today in § 10-101 of the State Government Article (hereafter, SG), Annotated Code of Maryland, a regulation is defined as follows:

(e) **Regulation.**—(1) "Regulation" means a statement or an amendment or repeal of a statement that:

(i) has general application;

(ii) has future effect;

(iii) is adopted by a unit to:

1. detail or carry out a law that the unit administers;
2. govern the organization of the unit;
3. govern the procedure of the unit;
4. govern practice before the unit; and

(iv) is in any form, including:

1. a guideline;
2. a rule;
3. a standard;
4. a statement of interpretation; or
5. a statement of policy.

(2) "Regulation" does not include:

(i) a statement that:

1. concerns only internal management of the unit; and
 2. does not affect directly the rights of the public or the procedures available to the public;
- (ii) a response of the unit to a petition for adoption of a regulation, under § 10-123 of this subtitle; or
- (iii) a declaratory ruling of the unit as to a regulation, order, or statute, under Subtitle 3 of this title.

(3) "Regulation", as used in §§ 10-110 and 10-111 . . . , means all or any portion of a regulation.

It is clear from this definition that the General Assembly was not concerned with the form but rather with the substance of the agency statement. If the agency statement is one that seeks to affect the conduct of others, then that statement is a regulation—no matter what the agency might choose to call it.

The Attorney General had an opportunity to underscore this point when the Maryland Racing Commission in 1985 decided to change a Sunday racing "policy" which had been in effect for more than half a century—but changed it without benefit of any of the formal rule-making procedures. The Attorney General decided that any change in "policy", no matter what that policy's antiquity, could only be accomplished by obedience to the rule-making requirements set out in the Administrative Procedure Act. At 65 Opinions of the Attorney General 396, the Attorney General stated:

It follows that the Racing Commission's decades-old policy of banning Sunday racing is itself a "rule"—albeit one adopted long before the enactment of the Administrative Procedure Act and, thus, not then subject to the Act's requirements.

Because the definition of "rule" in the APA includes the "amendment or repeal" of a pre-existing policy or statement of general application, it appears axiomatic that any change in Commission policy on Sunday racing would also be a "rule", subject to the notice and publication requirements of the APA . . .

Taken together, the broad definition of regulation coupled with the formal publication requirements of the APA make it virtually impossible for an agency policy statement to be enforceable unless it is first promulgated as a regulation under the Administrative Procedure Act.

IV. THE PROMULGATION PROCESS

With the enactment of the State Documents Law in 1974, the process by which regulations are created became formalized to a degree unknown in the past. The centerpiece of the new legislation was the requirement that the full text of each proposed regulation be published in a new official State publication, the *Maryland Register*. Publication of proposals in newspapers of general circulation was discontinued in **all** but a few special situations.

Over the years, amendments to the law have required that the agency provide more information in support of its proposal, and more legislative checkpoints have been established that tend to slow a proposal's forward progress. Indeed, many enactments appear designed to give legislative reviewers expanded opportunities to question, modify, and in extreme cases, compel the withdrawal of regulations thought to be unwarranted or outside the scope of legislative intention.

Today, the road a regulation must travel on its way toward promulgation is long and arduous. At a minimum, it is a process that will take 94 days, with the possibility that it may be extended for months longer (see Illustration A). Milestones along the way, with some of the twists and turns the path may take, are as follows:

(1) Attorney General's Review

Before the proposed regulation even reaches its legislative reviewers, it must first be scrutinized by the Office of the Attorney General for legality (SG, § 10-107). No regulation can go into effect without this approval.

(2) AELR Committee Preliminary Review

After receiving the Attorney General's approval, the agency files the proposal with the Administrative, Executive, and Legislative Review (AELR) Committee, a joint standing committee of the General Assembly. The powers of this Committee have grown significantly over the years, and while the Committee does not technically have a veto over regulations, it nonetheless exercises de facto veto power over the promulgation process. The proposed regulation must be on file with the AELR Committee for 15 days before the agency may submit its proposal to the Division of State Documents (SG, § 10-110).

(3) *Maryland Register Review and Publication*

Once filed, the regulation is examined by Division of State Documents personnel to make sure the agency has taken all necessary steps up to that point. The proposal is then reviewed for compliance with the Division's editorial standards. This involves making certain that the proposal has been prepared in the correct style and format, and that the codification system has been properly used by the agency in structuring the regulation. The editors also ensure that other information required by law is included and in correct order. This additional information includes:

(a) *Notice of Proposed Action*

The purpose of the Notice of Proposed Action is to identify the regulations being affected by an agency proposal. There are three types of action an agency may propose: (i) adopt entirely new regulations; (ii) amend existing regulations; and (iii) repeal existing regulations. Often, a proposal combines several types of action.

(b) *Statement of Purpose*

In the Statement of Purpose, the agency sets forth its reasons for proposing to make changes to its regulations, and states what it believes will be accomplished if the proposal is adopted.

(c) *Estimate of Economic Impact*

Each proposal must be accompanied by an Estimate of Economic Impact, in which the agency is expected, whenever practicable, to give actual dollar estimates of the proposal's impact upon the promulgating agency itself, regulated parties, other State or local agencies, and the general public (SG, § 10-112).

(d) *Opportunity for Public Comment*

Finally, an Opportunity for Public Comment notice, detailing how the public may make its views about the proposal known to the agency, must always accompany each regulation. A telephone number and an address to which comments may be submitted must appear in this notice. If there is to be a public hearing, the date, time, and place of the hearing must be included. The agency must hold itself open to receive public comment for at least 30 days after the

proposal has been published in the *Maryland Register*. If there is to be a public hearing, at least 15 days advance notice in the *Maryland Register* is required. All of these requirements are carefully checked by the editorial staff as the proposal is prepared for publication (SG, § 10-112).

(4) Forty-five Day Comment and Review Period

Once publication has occurred in the *Maryland Register*, the agency is not permitted to adopt the regulation until at least 45 days have elapsed. During this time, if the AELR Committee determines that an additional period for review is required, the Committee may invoke certain procedures that will extend the review period and prevent the agency from immediately adopting the proposal at the end of the 45-day waiting period. Consultation between the agency, the Committee, and, finally, the Governor may be required before the extended review procedure is concluded (SG, §§ 10-111 and 10-111.1; see Illustration A).

(5) Regulation Promulgation

Normally, however, the 45-day post-publication waiting period is sufficient, and with the expiration of the 45th day, the agency is free to adopt the regulation. Once adoption has occurred, the agency must then submit a formal Notice of Final Action to the Division for publication in the *Maryland Register*. This notice once again describes the regulations affected by the proposal, cites the *Maryland Register* in which the proposal was published, sets forth any nonsubstantive changes the agency may wish to make to its originally proposed text, and specifies the date on which the adopted regulations will go into effect. The agency may select any effective date it wishes, provided that date is at least 10 days after publication of the Final Action notice in the *Maryland Register* (SG, § 10-117). This **10-day** period is intended to give the public a reasonable opportunity to learn of the effective date before it occurs.

(6) Substantive Changes

While agencies are permitted to make nonsubstantive changes to regulations at the time of adoption, they are prohibited from making substantive changes to their original proposal. To prevent substantive changes from occurring, the Attorney General must certify that any changes made by the agency to its proposal are of a

nonsubstantive character. This Attorney General's Certification is published in the *Maryland Register* with the Notice of Final Action (SG, § 10-113). If the agency wishes to make changes that are deemed substantive, its only recourse is to repropose the affected regulations. There is one other alternative: the agency may withdraw the regulations and submit an entirely new proposal.

V. INCORPORATION BY REFERENCE

There is a special class of documents that, although legally a part of the Code of Maryland Regulations, are never found in print in COMAR or the *Maryland Register*. These documents are those incorporated by reference into the Code of Maryland Regulations. An incorporated document has the same legal force and effect as if it had been published in full text. There are scores of documents incorporated into COMAR, adding thousands of additional pages to Maryland's official compilation of regulations.

Not only is there statutory provision permitting incorporation by reference of documents, but in some cases incorporation is actually required. Section 7-207 of the State Government Article specifically prohibits the *Maryland Register* and COMAR from reprinting any text from the Annotated Code of Maryland, the session laws, the United States Code, the United States Statutes at Large, the Code of Federal Regulations, and the Federal Register, unless specifically permitted by the AELR Committee.

In addition to the six classes of documents just mentioned, the law also provides that text is not to be reprinted from "any other generally available publication that the Administrator specifies" (SG, § 7-207(a)(vii)). Thus while State agencies may decide for themselves when and if they are to incorporate text from the six enumerated documents, any other document must first be approved by the Administrator before an agency is free to incorporate its provisions.

To get the Administrator's approval, any agency wishing to incorporate a "generally available publication" must make formal application to the Administrator. The Administrator has imposed restrictions and requirements upon documents that agencies seek to incorporate. All such documents must be of a certain minimum page length, and agencies must agree to make copies of the incorporated document available for distribution to the State's depository libraries (Education Article, Title 23, Subtitle 2A). The documents may be either the internal publication of the proposing agency, or the

publication of an organization outside of State government, such as the American National Standards Institute (ANSI).

No matter what the origin of the document, its incorporation must occur within the text of a regulation. The full name of the incorporated document must appear in the regulation, together with any other information (such as publisher, edition, year) that would help the reader identify the document precisely. The regulation must be proposed and adopted in the same manner as any other regulation. The public has an opportunity to comment upon the document, just as the public may comment about any other provision of a proposed regulation.

In some cases, an agency may wish to amend or alter the text of a document it has previously incorporated. These amendments may be in the form of an entirely new edition of the incorporated document, or supplements that replace only certain pages rather than the whole document. Changes must be proposed in the form of an amendment to the regulation that originally incorporated the document.

The depository libraries are sent copies of the proposed replacement volumes or supplements so that interested members of the public may have an opportunity to inspect the proposed changes and make comments during the public comment period. If the proposed changes to the incorporated document are adopted, the newly incorporated material replaces all or part of the original document. Some depository libraries may retain the obsolete volumes or pages, but probably most do not. The Division of State Documents, however, retains superseded materials for legal research purposes.

A list of the depository libraries to which incorporated documents are sent is published in the first Maryland Register issue of each calendar year. The depository libraries are located throughout the State, and all are open to the public.

VI. EMERGENCY REGULATIONS

There is special provision in the Administrative Procedure Act for the adoption of emergency regulations (SG, § 10-111(b)). Approval for an agency to create an emergency regulation, however, rests exclusively with the Joint Committee on Administrative, Executive, and Legislative Review (AELR) of the General Assembly. To gain emergency status, an agency petitions the AELR Committee setting forth reasons for requesting emergency status for its regulation. The Committee always imposes a time limitation

on the duration of an emergency regulation. The Committee may also impose any other condition that it feels is appropriate. Emergency status may be revoked by the Committee, which is also free to alter the conditions it has previously imposed.

Once the Committee grants its approval, the emergency measure may go into effect immediately without an opportunity for public comment and without prior publication in the *Maryland* Register. The full text of the emergency regulation will always be published in the next available issue of the Register.

If any agency wishes an emergency regulation to have ongoing life, the regulation must be promulgated by the agency, following normal procedures. If the agency does not wish the regulation to continue beyond the time allotted to it by the AELR Committee, the emergency measure will expire and the agency's regulations revert to what they had been before the emergency was approved. The Committee may, however, grant an extension to the emergency time period, if an agency has not been able to complete permanent adoption of the emergency measure.

VII. MARYLAND REGISTER & CODE OF MARYLAND REGULATIONS

In 1974, the General Assembly enacted the State Documents Law which was then codified as Article 41, §§ 256B-256S, Annotated Code of Maryland, and is today a part of the State's Administrative Procedure Act (SG, Title 10, Subtitle 1, and Title 7, Subtitle 2). The State Documents Law did three things. First, it established a new vehicle, the *Maryland* Register, for promulgating regulations. Second, it provided for the compilation and publication of State agency regulations in the Code of Maryland Regulations (COMAR). Third, it created a new agency, the Division of State Documents, to administer the law and produce the required publications.

(1) *Maryland* Register

From its inception, the *Maryland* Register was intended to be both the vehicle for promulgating regulations and the temporary supplement to COMAR. As the vehicle for promulgating regulations, the *Maryland* Register publishes the text of proposed regulations and offers these regulations for public comment. The actual promulgation process is discussed in Section IV, above. The *Maryland* Register also acts as the temporary supplement to COMAR and therefore

is indispensable in any research undertaken to determine the current text of a regulation.

(2) Code of Maryland Regulations (COMAR)

The Code of Maryland Regulations is the permanent publication of all regulations promulgated by Maryland's administrative agencies.

All COMAR regulations are codified. Each State department is assigned a title number. Each title is divided into numbered subtitles, each subtitle is divided into numbered chapters, and each chapter is divided into numbered regulations.

A regulation may be divided into lettered sections, a section may be divided into numbered subsections, a subsection may be divided into lettered paragraphs, and a paragraph may be divided into numbered subparagraphs.

The following is a citation to a COMAR regulation, along with an outline identifying each element in the citation:

COMAR 09.12.01.02D(2)(c)(iii)

(Title) Title 09 Department of Licensing and Regulation

(Subtitle) Subtitle 12 Division of Labor and Industry

(Chapter) Chapter 01 Board of Boiler Rules

(Regulation) .02 Administration.

...

(Section) D. Examination for an Inspector's Certificate of Competency.

...

(Subsection) **(2)** An applicant for an examination shall have education and experience equal to at least one of the following:

...

(Paragraph) **(c)** The equivalent of a high-school education plus 3 years of experience in at least one of the following:

...

(Subparagraph) **(iii)** As an inspector of high-pressure boilers and pressure vessels.

Generally, each title represents a major department or agency in State government. The current breakdown of the Code of Maryland Regulations by title is as follows:

Title	Name
01	Executive Department
02	Office of the Attorney General
03	Comptroller of the Treasury
04	Department of General Services
05	Department of Housing and Community Development
06	Department of Personnel
07	Department of Human Resources
08	Department of Natural Resources
09	Department of Licensing and Regulation
10	Department of Health and Mental Hygiene
11	Department of Transportation
12	Department of Public Safety and Correctional Services
13A	State Board of Education
13B	Higher Education Commission
13C	State Board for Community Colleges
14	Independent Agencies
15	Department of Agriculture
16	Department of Juvenile Services
17	Department of Budget and Fiscal Planning
18	Department of Assessments and Taxation
19A	State Ethics Commission
20	Public Service Commission
21	State Procurement Regulations
22	State Retirement and Pension Systems
23	Board of Public Works
24	Department of Economic and Employment Development
25	State Treasurer
26	Department of the Environment
27	Reserved
28	Office of Administrative Hearings

Each title of COMAR contains a Certificate page. The Certificate page is always the third page of each title or volume (if the title is multivolumed) and is numbered as page iii (see Example 1). The Certificate page gives a "cut-off" date for publishing regulations in the COMAR volume. All new regulations and changes to existing regulations adopted and effective before this date are published in the title. Regulations effective after this date are published in the Maryland Register and then compiled for inclusion in the annual COMAR supplement.

On the reverse side of the Certificate page is the "Publication Status" page, always numbered as page iv (see Example 2). The Publication Status page lists the date on which each supplement to the title was published. The publication date

of a COMAR supplement, however, is not relevant in finding current regulations, and, more importantly, has nothing to do with the effective date of regulations found in the supplement. Remember that **all** regulations are already in effect by the time they are published in COMAR; in fact, they became effective as a consequence of being proposed and adopted in the *Maryland* Register. The Publication Status page does have some utility, however. Since each supplement and its publication date are listed, it may be used to check whether the most recent supplement has been inserted into the title. Publication dates will also be useful in finding obsolete regulations in a manner to be discussed below.

Each title of COMAR is supplemented once a year. The supplementation process is staggered over the course of the entire year so that various supplements appear throughout the year. The result of annual supplementation is that both the Code of Maryland Regulations and the *Maryland* Register must be consulted in researching a regulation.

VIII. FINDING CURRENT REGULATIONS

(1) When *Codification* is Known

If a researcher knows the codification number of the regulation in which he is interested, it is not enough merely to turn to the appropriate page in the COMAR volume. Always keep in mind that the *Maryland* Register is the temporary supplement to COMAR and must be checked to determine whether there are any changes to the regulation that have occurred since the COMAR volume was last updated. Normally, this involves two basic steps: 1) Finding the appropriate page in COMAR, and 2) Checking the table entitled "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" in the *Maryland* Register. Therefore, determine the current regulation under a known citation by the following method:

- (a) Locate the regulation in COMAR by finding the appropriate title and by scanning the citations found at the top of every page (see Example 3).
- (b) Next, make certain that the latest published supplement has been inserted in the title. Begin this by turning to the Certificate page (page iii) at the front of the title or volume (if the title is multivolumed). Note the supplement number on the Certificate page.
- (c) Now locate the most recent issue of the *Maryland* Register. Following the Table of Contents pages, find

the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed (see Example 4). The Cumulative Table is broken down by COMAR title. In the case of multivolume titles, the titles are broken down into volumes when the volumes are separately supplemented. Note the supplement number listed under each title. This is the latest supplement issued for that title. Check this supplement number in the Cumulative Table against the supplement number on the Certificate page. If the numbers agree, this is evidence that the most recent supplement has been inserted in the title. If the number of the Certificate page does not correspond to that in the Cumulative Table, the COMAR title is incomplete and cannot be relied upon until it is properly supplemented.

(d) Having established that the most recent supplement has been integrated into the COMAR title, the next step is to use the Cumulative Table to **see** if any change has occurred to the regulation being researched since the last supplement was issued. Since the Table lists all amended regulations in codification order, it is a fairly simple matter to compare the regulation in which you are interested against the regulations listed in the Table. If the regulation number does not appear in the Table, it means that no changes to the regulation have occurred since the last supplement listed on the Certificate page was issued, and thus the text as found in the COMAR title is the current text of the regulation.

(e) If, however, there is an entry in the Cumulative Table under the citation you are researching, the Table will give the **Register** volume, issue, and page number where the change was adopted. Go to that **Register** and on the page number listed will appear the Notice of Final Action, announcing adoption of the regulation. Also listed will be the **Register** in which the regulation was proposed (see Example 5). The new text will, in most circumstances, be found with the proposal (see Example 6).

Sometimes agencies make nonsubstantive changes to regulations after they have been proposed. If so, these changes will always be printed in the Notice of Final Action. Be sure to check the Notice of Final Action and if there have been changes, read them together with the proposed text.

To summarize, using Examples 1 and 3–6, the regulation being researched (COMAR 03.04.02.04) is found by the following steps:

Step 1: Use the four-part codification number at the top of every page to locate COMAR 03.04.02.04 (Example 3).

Step 2: Check the supplement number on the Certificate Page (Example 1) against the supplement number in the Cumulative Table (Example 4).

Step 3: Determine whether COMAR 03.04.02.04 has been amended by checking the Cumulative Table in the most recent issue of the *Register*.

Step 4: Having found an entry under COMAR 03.04.02.04 in the Cumulative Table, locate the Notice of Final Action (Example 5) from the citation listed in the Table. Note that the amendment was adopted as proposed, meaning that there were no changes in text made after the proposal was printed in the *Maryland Register*.

Step 5: Use the citation listed in the Notice of Final Action to find the Notice of Proposed Action (Example 6) under which can be found the entire text of the amendment.

A researcher should be aware of several things in using the Code of Maryland Regulations. First, because COMAR is a loose-leaf service, accurate research is dependent on the proper insertion of the loose-leaf supplement pages. By reviewing the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed, a researcher can check to determine whether the most recent supplement has been inserted into a title. The number of the most recent supplement is listed in the Cumulative Table under each title or volume (if the title is multivolumed), and appears on both the Certificate page (page iii) and as the last entry on the Publication Status page (page iv). As with any loose-leaf service, however, the improper insertion of COMAR supplement pages will cause research to be inaccurate. If the researcher has any doubt as to whether his volume contains the correct COMAR page, he can always call the Division of State Documents for verification as a last resort.

A researcher who wants to check the accuracy of the Cumulative Table can do so by using the Notice of Final Action section of the *Maryland Register*. This section is always listed in the *Register's* Table of Contents. The researcher must check the Final Action section in every *Register* issue back to the cut-off date printed on the Certificate Page. If the COMAR number of the regulation cannot

be found in the Cumulative Table, and if the Register-by-Register search of the Final Action Notice section turns up nothing, this confirms that the Cumulative Table is accurate.

(2) When *Codification* is *Unknown*

When the codification of the regulation is unknown and a researcher is attempting to locate regulations on a particular topic, there are several approaches that may be taken:

(a) If the department or agency responsible for regulating the topic being researched is known, a researcher can look at the title of COMAR assigned to that department and check the index to the title. Having found the citation to the regulation, the researcher should proceed as discussed in (1), above.

(b) If the department or agency responsible for regulating the topic being researched is not known, one approach would be to locate the program or topic in the Cumulative Index of the Annotated Code of Maryland. The agency given responsibility by the General Assembly for carrying out the program can be determined by examining the Annotated Code provisions. These provisions, in turn, authorize a named department or agency to promulgate regulations. With the promulgating agency now identified, the researcher can proceed in the manner suggested in (a), above.

(3) Maryland Information Retrieval System (*MIRS*)

The Maryland Information Retrieval System (MIRS) is a computer-based system with on-line access to full text databases of COMAR as well as proposed regulations and current emergency regulations.

The COMAR and proposal databases, including current emergency regulations, are updated with every issue of the Maryland Register. Because MIRS integrates changes to regulations rapidly, the COMAR database is the most current compilation of Maryland regulations available.

MIRS can provide up-to-date printouts of any portion of COMAR, with all text changes integrated. Printouts are available to both State agencies and the public either by subscription (MIRS Update) or on request (**MIRS** Print). For more information about MIRS printouts, call (410)974-3500.

IX. FINDING OUT-OF-DATE REGULATIONS FROM 1974 TO PRESENT

To find the text of a regulation as it existed at some time in the past, a researcher must begin with two items of information: the date (or range of dates) for which text is needed, and the regulation's codification number. If the codification is unknown, a user should attempt to discover it by using the methods discussed above. Having the date and the cite, a user should proceed as follows:

- (1) Go to the Administrative History found at the end of the chapter of regulations corresponding to your citation (see Example 7). Scan the History to determine when the regulation in question was adopted, and if and when subsequent amendments occurred.
- (2) Next, determine the last amendment which occurred before the date in which you are interested. Then determine the first amendment that occurred after the date in which you are interested. These two amendments, one before your date, the other after your date, fix boundaries and provide a range within which your date falls. (Obviously, not all research will be so complicated. The regulation you are researching may be unchanged since the date in question. In that case, the text currently found in COMAR will answer your research question.)
- (3) Having the appropriate range of dates, the researcher can proceed through either the Maryland *Register* or COMAR to determine the appropriate text. In order to use COMAR, the researcher must have access to a library which has archived all COMAR pages displaced and removed by the annual supplementation process. Obsolete pages should be organized under the supplement number which instructed that they be removed from COMAR. Therefore, if discarded loose-leaf pages of COMAR have been properly archived, the appropriate pages can be retrieved by determining which supplement to the title removed those pages that were effective between the range of dates being researched.
- (4) In a more complex situation with a narrow range of dates and where the regulations being researched were frequently supplemented, it may be necessary to narrow the search by checking the amendments as they appeared in the Maryland *Register*.

X. REGULATIONS PRIOR TO JULY 1, 1974

(1) The *Promulgation Process*

Before the enactment of the State Documents Law on July 1, 1974, **State** agency regulations were adopted by a process that included filing of regulations with various depositories throughout the State. This process, as found in what was then Article 41, §§ 9 and 246, was as follows:

Section 9. Adoption of rules and regulations.

Prior to the adoption of any rule or regulation by an officer or department of the executive branch of the State of Maryland under any rule-making power granted by the General Assembly of Maryland, the said rule or regulation shall be submitted to the Attorney General of Maryland for approval as to its legality. Every officer, department, board, commission, bureau and similar agency of the State government other than those within the Legislative and Judiciary Departments who has power to make, promulgate, adopt or enforce **rules and** regulations shall file copies thereof with the Clerk of the Court of Appeals, with the Secretary of State, with the State Library, with each of the libraries of the respective circuit courts of the several counties and with the Supreme Bench of Baltimore City, and with the State Department of Legislative Reference. No rule or regulation hereafter made, promulgated or adopted shall be effective until after compliance with this section. Any rule or regulation, filed as required by this section, shall be admissible as evidence in any court proceeding, upon certification by the Clerk of the Court of Appeals. Nothing in this section shall relieve any officer, board or commission of any legal requirement as to the publication or other notice of the adoption or promulgation of such rules and regulations.

Section 246. Filing and effective date.

(a) Each agency shall comply with the provisions of § 9 of this article, and any amendments thereto. Each agency shall file forthwith with the clerk of the Court of Appeals, with the Secretary of State, with the State Library, with each of the libraries of the respective circuit courts of the several counties and the Supreme Bench of Baltimore City, with the Administrative, Executive, and Legislative Review Committee, and with the Department of Legislative Reference certified copies of all rules now in effect. The Secretary of State shall keep a permanent register of such rules open to public inspection.

(b) Each rule hereafter adopted shall become effective upon filing, unless a later date is required by statute or specified in the rule.

In addition, agencies were required to publish their regulations in accordance with guidelines established by the Secretary of State (Article 41, § 247 (1971 Replacement Volume)). Formal guidelines were issued in 1971 and the result was Maryland's first attempt at a compilation, the Maryland Agency Rules and Regulations (MARR). In researching regulations, therefore, three parameters must be considered: 1) regulations before MARR or not in MARR (see Section (2), below); 2) regulations in MARR (see Section 3, below); and 3) regulations after July 1, 1974 as found in the Code of Maryland Regulations and the *Maryland Register* (discussed above).

(2) Finding Regulations Before MARR.

Before the Secretary of State required all agencies to publish their regulations under the general title of Maryland Agency Rules and Regulations (MARR), publication of regulations was a matter left entirely to the initiative and budget of each agency. There are two sources for locating regulations that predate 1970:

a) The promulgating agency itself may have published a compilation of its regulations or kept a record of what regulations were then in effect. However, success in finding regulations through the agencies themselves will probably be spotty. Fewer than half the agencies in existence at the time actually published a formal compilation of their regulations. If an agency did publish its regulations, the only source for them is now the agency itself. Additionally, agency records from 20 or more years ago often cannot be located. Proof of proper filing as then required under Article 41, §§ 9 and 246, quoted above, may be hard to establish in any case. While the agency *itself* should be the **first** source consulted, the agency—and therefore the researcher—may come up empty-handed when a search is instituted for its regulations.

b) The various depositories in which the regulations were required to be filed **may—or may not—have** a record of filings from this period. Anyone attempting to locate regulations predating MARR should first try two depositories: the State Law Library and the State Department of Legislative Reference. Keep in mind that in the days before MARR, published compilations of regulations were often nonexistent, codification was inconsistent, and the record of rule-making activity was generally inadequate. Therefore, success in locating regulations

using the depositories as a source may, once again, produce an uncertain outcome.

3) *Finding Regulations in MARR (1970 to July 1, 1974).*

In establishing the MARR format, the Secretary of State set forth a basic codification system which all agencies were to follow. Within these guidelines, however, each agency followed their own inclinations. The predictable result was that MARR was never truly uniform.

In addition, not all agencies complied with the statutory publication requirement under Article 41, § 247. Those agencies that did publish their regulations under MARR were as follows:

Title 05 - Department of Economic and Community Development

Title 06 - Department of Human Resources

Title 08 - Department of Natural Resources

Title 09 - Department of Licensing and Regulation

Title 10 - Department of Health and Mental Hygiene

Title 11 - Department of Transportation

Title 12 - Department of Public Safety & Correctional Services

Title 15 - Department of Agriculture

Since MARR was a formal compilation, those agencies that did publish their regulations in MARR can today, in most instances, determine the text of their regulations in the period 1970 to 1974. In addition, all the volumes in this compilation can be found at the Division of State Documents and the State Law Library. Generally, if a regulation was in existence from 1970 to **1974**, that fact is noted in the Administrative History found at the end of each chapter in COMAR. Therefore, the best method for determining whether research into MARR is needed would be to start with the current version of those regulations as found in COMAR. By checking the Administrative History at the end of the chapter, the user can determine whether further research is required. For example, if the Administrative History indicates that a regulation is unchanged since 1970 or before, there is no need to search out the MARR version since the text in COMAR will be the same as the text in MARR. Additionally, the Administrative History could indicate that the regulations did not exist before July 1, 1974, thereby eliminating the need to research before that date.

XI. EXECUTIVE ORDERS

All Executive Orders promulgated by the Governor are published in the *Maryland Register*. The Governor's section of the Register is clearly identified in the Register's Table of Contents. The codification system for Executive Orders differs slightly from the typical COMAR codification. Executive Orders are codified by the year they are issued rather than grouped under a particular chapter heading. Therefore, a typical codification number for an Executive Order is COMAR 01.01.1988.02. In this codification, the first 01 is the Executive Department, the second .01 is the Governor's subtitle, 1988 is the year the Executive Order was issued, and .02 was the second Executive Order issued that year.

Executive Orders are published in COMAR under Title 01 Executive Department. State Government Article, § 7-205(a)(1) requires that all orders which are "generally permanent in nature" be published in COMAR. Consequently, only those orders which are judged by the Division of State Documents to meet this criteria are published in COMAR. However, it should be noted that the Table of Contents to Title 01 lists every Executive Order issued by each Governor since 1969. This list may be used in researching Executive Orders from that date.

XII. STATE ETHICS COMMISSION ADVISORY OPINIONS

Advisory Opinions issued by the State Ethics Commission are also published in both the Register and COMAR. In the Register, they are found in the section entitled "Advisory Opinions". In COMAR, they are published as part of Title 19A. COMAR contains all Advisory Opinions issued since the inception of the Commission. None have been removed because, once issued, the Opinions are not amended or changed in the manner of regulations. Research is facilitated by a comprehensive synopsis index.

XIII. CONCLUSIONS

Rule-making in Maryland falls within three separate time periods: (1) before 1970; (2) 1970-1974; and (3) 1974 to the present. The State Documents Law (now a part of the Administrative Procedure Act) was enacted in 1974, and formalized the manner in which regulations were codified, promulgated, and supplemented.

The Code of Maryland Regulations (COMAR) and the Maryland Register are both documents in which a researcher

may reliably trace the history of a regulation issued between 1974 and the present. For earlier periods, however, the researcher may encounter difficulties both in locating the original regulation and in tracing its subsequent amendments. The farther a researcher must go back in time, the more problematic the research is likely to become. The period before 1970 may prove especially troublesome.

The Division of State Documents is always available as a resource to help researchers locate regulations. For further information, call or write:

Division of State documents
P.O.Box 2249
Annapolis, MD 21404-2249
4101974-2486

Illustrations/Examples

Illustration A

REGULATION PROMULGATION PROCESS

Promulgating Agency Submits Proposal
to AELR Committee

(15 days)

Promulgating Agency Submits Proposal
to Maryland Register

(15 days)

Notice and Text Published

(45 days)

AELR delay - 75 days from publication or 30
days from notice of intention
to adopt

(2 weeks notice to presiding officers)

Oppose regulation

(notice to unit and Governor - 5 days)

Adoption Possible
Submit Notice to Maryland Register

(9 days)

Notice Published

(10 days)

Effective

Unit

withdraw

appeal to Governor

withdraw

decision

modify

adopt

Minimum time: 94 days

Example 1

CERTIFICATE

Supplement No. 14

As provided in State Government Article, **§7-205**, I certify that COMAR Title 03, Comptroller of the Treasury, contains all regulations promulgated and effective as of April 1, 1991. New, amended, or repealed regulations effective **after** this **date** appear in the Maryland Register. Consult the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" in the most recent **issue** of the Maryland Register.

ROBERT J. COLBORN
Administrator
Division of State Documents

Example 2

PUBLICATION STATUS

Original publication issued October 21, 1977
Supplement 1 issued May 19, 1978
Supplement 2 issued April 3, 1979
Supplement 3 issued May 9, 1980
Supplement 4 issued May 6, 1981
Supplement 5 issued June 11, 1982
Supplement 6 issued May 20, 1983
Supplement 7 issued May 11, 1984
Supplement 8 issued May 10, 1985
Supplement 9 issued May 23, 1986
Supplement 10 issued May 28, 1987
Supplement 11 issued May 20, 1988
Supplement 12 issued July 23, 1989
Supplement 13 issued May 29, 1990
Supplement 14 issued August 30, 1991

Example 3

INCOME TAX

03.04.02.05

.04 Filing Composite **Return** on Behalf of Nonresident.

A. With the approval of the Comptroller, any partnership or S corporation doing business in this State may file a composite return on behalf of its nonresident partners or shareholders if the:

(1) Return accurately reflects the Maryland taxable income and **tax** liability of each partner or shareholder shown on the return and attached schedule;

(2) Attached schedule contains the following information for each partner or shareholder:

- (a) Name, social security number, and address,
- (b) Distribution share (percentage of partnership),
- (c) Number of exemptions and filing status,
- (d) Maryland apportioned income,
- (e) Standard deduction,
- (f) Maryland taxable income, and
- (g) Maryland **tax**; and

(3) Partnership or S corporation pays the tax, interest, and penalty due by each partner or shareholder shown on the return.

B. A composite **return** with the required schedule filed on behalf of nonresident partners or shareholders under this regulation is considered to be the return of each nonresident included in the return.

.05 **Allocation of Nonresident Business Income.**

A. Income of a nonresident for personal services rendered partly within and partly without this State **shall** be determined as follows:

(1) Commissions of a traveling salesman or agent which depend directly on sales made are allocated outside this **State** if the:

- (a) Sales are outside this State, or
- (b) Merchandise is delivered to points outside this State;

(2) Compensation other than commissions which depend directly on sales made for **service performed** partly within and partly outside this State shall be allocated based on the total number of working **days** employed outside this State compared to all working days employed both within and outside this State.

COMAR Research Aids

REGULATIONS CODIFICATION SYSTEM

Under the COMAR codification system, every regulation is assigned a unique four-part codification number by which it may be identified. All regulations found in COMAR are arranged by title. Each title is divided into numbered subtitles, each subtitle is divided into numbered chapters, and each chapter into numbered regulations.

A regulation may be divided into lettered sections, a section divided into numbered subsections, a subsection divided into lettered paragraphs, and a paragraph divided into numbered subparagraphs.

For example, components of the citation **COMAR 09.12.01.02D(2)(c)(iii)** are as follows:

09	Title
12	Subtitle
01	Chapter
02	Regulation
D	Section
(2)	Subsection
(c)	Paragraph
(iii)	Subparagraph

Cumulative Table of COMAR Regulations
Adopted, Amended, or Repealed

The table printed below lists the regulations, by COMAR title, that have been adopted, amended, or repealed in the **Maryland Register** since the regulations were originally published or last supplemented in the Code of Maryland Regulations (COMAR). Temporary emergency regulations are listed, followed by the designation "(emer.)" Errata pertaining to regulations at the time of their adoption is listed, followed by "(err.)" Errata to COMAR is also listed, followed by "(COMAR err.)". Beginning with the October 5, 1990 issue of the Maryland Register, regulations referencing a document incorporated by reference are followed by (ibr). Proposed regulations are not listed.

The table lists the regulations in numerical order, by their COMAR number, followed by a citation to that issue of the Register in which the regulations were affected.

01 EXECUTIVE DEPARTMENT

(Changes since July 1, 1991 — Supplement No. 14)

01.01.1991.25 • 18:17 Md. R. 1904 (8-23-91)
01.01.1991.26—27 • 18:19 Md. R. 2089 (9-20-91)
01.01.1991.28—30 • 18:20 Md. R. 2191 (10-4-91)
01.01.1991.31,32 • 18:22 Md. R. 2386 (11-1-91)
01.01.1992.01 • 19:3 Md. R. 232 (2-7-92)
01.01.1992.02—03 • 19:4 Md. R. 372 (2-21-92)
01.01.1992.04 • 19:5 Md. R. 534 (3-6-92)
01.01.1992.05—08 • 19:6 Md. R. 651 (3-20-92)
01.02.04.01,20-1 • 19:4 Md. R. 471 (2-21-92)
01.04.02.01—07 • 18:26 Md. R. 2829 (12-27-91)

02 OFFICE OF THE ATTORNEY GENERAL

(Changes since December 15, 1991 — Supplement No. 6)

02.02.05.10,11,13 • 18:26 Md. R. 2826 (12-27-91) (emer.)
 19:2 Md. R. 152 (1-24-92)

03 COMPTROLLER OF THE TREASURY

(Changes since April 1, 1991 — Supplement No. 14)

03.01.01.01 • 19:1 Md. R. 23 (1-10-92)
03.02.01.02,03,12 • 18:8 Md. R. 863 (4-19-91)
03.04.02.04 • 19:1 Md. R. 23 (1-10-92)
03.04.07.01—05 • 19:1 Md. R. 23 (1-10-92)
03.06.01.05 • 18:24 Md. R. 2641 (11-29-91)
03.06.03.08,09 • 18:24 Md. R. 2641 (11-29-91)
03.08.01.01—06 • 19:6 Md. R. 670 (3-20-92)

04 DEPARTMENT OF GENERAL SERVICES

(No Changes since Jan. 3, 1989 — Supplement No. 3)

05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

(Changes since Jan. 2, 1991 — Supplement No. 3)

06.02.01.03 • 18:14 Md. R. 1609 (7-12-91)
06.03.01.01—17 • 18:14 Md. R. 1609 (7-12-91)

05.03.02.01—21 • 18:19 Md. R. 2098 (9-20-91)
05.03.06.01—12 • 19:1 Md. R. 23 (1-10-92)
05.04.01.01—21 • 18:14 Md. R. 1609 (7-12-91)
05.04.12.02—04 • 18:7 Md. R. 771 (4-5-91)
05.05.01.01—29 • 18:4 Md. R. 446 (2-22-91)
05.05.04.03—24 • 18:3 Md. R. 302 (2-8-91)
05.05.05.01—27 • 18:22 Md. R. 2393 (11-1-91)
05.05.07.01—31 • 18:19 Md. R. 2098 (9-20-91)
05.06.01.01,06,09,10 • 18:4 Md. R. 446 (2-22-91)
05.06.01.02,07,18 • 18:10 Md. R. 1114 (5-17-91) (emer.)
 18:18 Md. R. 2003 (9-6-91)
05.06.01.16 • 18:21 Md. R. 2304 (10-18-91)
05.06.03.01—09 • 18:4 Md. R. 446 (2-22-91)
05.07.02.07,10 • 18:3 Md. R. 302 (2-8-91)
05.07.04.03,06—17 • 18:7 Md. R. 771 (4-5-91)
05.07.08.03,04,06—08,16 • 18:11 Md. R. 1186 (5-31-91)
M.08.06.01—11 • 18:22 Md. R. 2393 (11-1-91)
05.11.01.01—12 • 18:9 Md. R. 982 (5-3-91) (emer.)
 18:18 Md. R. 2003 (9-6-91)

06 DEPARTMENT OF PERSONNEL

(Changes since March 1, 1991 — Supplement No. 13)

06.01.01.42 • 18:24 Md. R. 2642 (11-29-91)
06.01.01.43 • 19:4 Md. R. 466 (2-21-92) (emer.)
06.01.01.55,57,59—61,63,65 • 18:19 Md. R. 2098 (9-20-91)
06.01.01.56 • 18:24 Md. R. 2641 (11-29-91)
06.01.01.68 • 18:21 Md. R. 2304 (10-18-91)
06.01.09.03,04,10,14 • 18:9 Md. R. 1007 (5-3-91)
06.01.11.01—23 • 18:24 Md. R. 2642 (11-29-91)

07 DEPARTMENT OF HUMAN RESOURCES

(Changes since Sept. 15, 1991 — Supplement No. 16)

07.01.02.01—11 • 18:21 Md. R. 2305 (10-18-91)
07.01.07.01—12 • 18:21 Md. R. 2306 (10-18-91)
07.02.02.01,08—11 • 18:22 Md. R. 2394 (11-1-91)
07.02.04.11 • 18:21 Md. R. 2307 (10-18-91)
07.02.11.34 • 19:2 Md. R. 152 (1-24-92)
07.03.04.01—23 • 19:6 Md. R. 670 (3-20-92)
07.03.08.05 • 18:24 Md. R. 2642 (11-29-91)
07.03.09.01—09 • 19:6 Md. R. 671 (3-20-92)
07.03.09.04,07 • 18:24 Md. R. 2642 (11-29-91)
07.03.11.01,08—11 • 18:22 Md. R. 2394 (11-1-91)
07.04.01.14 • 19:1 Md. R. 20 (1-10-92) (emer.)
W.04.02.01—76 • 18:21 Md. R. 2300 (10-18-91) (emer.)

08 DEPARTMENT OF NATURAL RESOURCES

(Changes since Sept. 29, 1991 — Supplement No. 13)

08.02.01.01 • 18:22 Md. R. 2395 (11-1-91)
08.02.01.03 • 19:1 Md. R. 23 (1-10-92)
08.02.05.01 • 19:1 Md. R. 24 (1-10-92)
08.02.05.02 • 18:26 Md. R. 2826 (12-27-91) (emer.)
08.02.05.05 • 19:1 Md. R. 24 (1-10-92)
08.02.08.01 • 18:22 Md. R. 2395 (11-1-91)

Example 5

Final Action On Regulations

23

For information **concerning** Final **Action** on Regulations, **see** inside front **cover**.

Symbol Key

Roman type indicates text already existing at the time of the **proposed** action. Italic type indicates new text added at the time of proposed action. A **single underline** indicates text added at the time of final action. [Single brackets] indicate deleted text. **[[Double brackets]]** indicate text deleted at the time of final action.

Computer Printouts Available

Computer **printouts** of newly adopted **regulations** are available to the general public and to **State** agencies from the Maryland Information Retrieval **System** (MIRS) database. MIRS automatically updates **COMAR**, integrating new and amended text into **existing** text, and removing all symbols and obsolete material. **State** agencies may find MIRS printouts particularly valuable in preparing the next generation of regulation amendments for publication in the *Maryland* Register. For **more** information, call (410) 974-3500.

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 01 OFFICE OF THE COMPTROLLER

03.01.01 General Regulations

Authority: **State** Government Article. §10-613(b),
Annotated Code of Maryland

Notice of Final Action [91-434-F]

On December 31, 1991, an amendment to Regulation .01 under COMAR 03.01.01 General Regulations, was adopted by the Comptroller of the Treasury. **This** action, which was proposed for adoption in 18:23 Md. R. 2494 — 2495 (November 15, 1991), has been adopted as proposed.

Effective Date: **January 20, 1992.**

LOUIS L. GOLDSTEIN
Comptroller of the Treasury

Subtitle 04 INCOME TAX

Authority: Tax-General Article. §§2-103 and 10-102.1E,
Annotated Code of Maryland

Notice of Final Action [91-429-F]

On December 31, 1991, the Comptroller of the Treasury repealed existing Regulation .04 and adopted new Regulation .04 under COMAR 03.04.02 Individual, and adopted new Regulations .01 — .05 under a new chapter, COMAR 03.04.07 Partnership and S Corporation Nonresident Tax. These actions, which were proposed for adoption in 18:23 Md. R. 2495 — 2497 (November 15, 1991), have been adopted as proposed.

Effective Date: **January 20, 1992.**

LOUIS L. GOLDSTEIN
Comptroller of the Treasury

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 03 Homeownership Programs

05.03.06 Special Purpose Investment Fund Loan Program

Authority: Article 83B, §§2-201—2-208,
Annotated Code of Maryland

Notice of Final Action [91-324-F]

On November 6, 1991, the Secretary of Housing and Community Development adopted new Regulations .01 — .12 under a new chapter, **COMAR 05.03.06 Special Purpose Investment Fund Loan Program**. This action, which was proposed for adoption in 18:19 Md. R. 2104 — 2108 (September 20, 1991), has been adopted as proposed.

Effective Date: **January 20, 1992.**

JACQUELINE H. ROGERS
Secretary of Housing and Community Development

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 TIDEWATER ADMINISTRATION

08.02.01 General

Authority: **Natural Resources** Article. Title 4,
Annotated Code of Maryland

Notice of Final Action [91-382-F]

On December 24, 1991, an amendment to Regulation .03 under **COMAR 08.02.01 General**, was adopted by the Secretary of Natural Resources. **This amendment**, which was proposed

(1) When the duplication is performed by the applicant or by an employee of the Comptroller's Office without supervision by a senior official, on conventional duplicating equipment located in an office of the Comptroller, the charge for copies or photographs of a public record provided pursuant to this regulation shall be [15] 25 cents per page. A charge of [25] 50 cents per page shall be made for copies which the Comptroller is required to make in order to delete privileged or confidential information from public records which an applicant will personally inspect and for copies which must be made under the supervision of a senior official.

(2) - (3) (text unchanged)

LOUIS L. GOLDSTEIN
Comptroller of the Treasury

Subtitle 04 INCOME TAX

Authority: Tar-General Article, §2-103
Annotated Code of Maryland

Notice of Proposed Action 191-429PI

The Comptroller of the Treasury proposes to repeal Regulation .04 and adopt new Regulation .04 under COMAR 03.04.02 Individual, and to adopt new Regulations .01 - .05 under a new chapter, COMAR 03.04.07 Partnership and S Corporation Nonresident Tax.

Statement of Purpose

The proposed action to Regulation .04 will allow the Comptroller to adopt a replacement regulation to clarify the requirements for the filing of a composite return on behalf of certain nonresident partners and shareholders of partnerships and S corporations doing business in Maryland.

The proposed adoption of new Regulations .01 - .05 under COMAR 03.04.07 will clarify the requirements for partnerships and S corporations to report and pay a tax imposed under Chapter 86 of the Acts of 1991 by defining certain terms, providing rules for the computation of the tax, providing for the filing of returns and payment of the tax, the due dates for filing of returns and payment of the tax, the reporting requirements of partnerships and S corporations to their nonresident partners and shareholders, and the filing of a composite return by the partnership or S corporation on behalf of the nonresident partners and shareholders.

Estimate of Economic Impact

The proposed action has no economic impact.

Opportunity for Public Comment

Written comments may be sent to George H. Spriggs, Jr., Director of the Income Tax Division, Comptroller of the Treasury, Income Tax Building, Annapolis, Maryland 21411, or call (410) 974-3441. Comments must be received by 4:30 p.m., December 17, 1991. No public hearing has been scheduled.

03.04.02 Individual

.04 Filing Composite Return on Behalf of a Nonresident.

A. Who May File.

(1) Partnership or S Corporation Subject to the provisions under §§B and C of this regulation, a partnership or S corporation doing business in this State may file a composite return on behalf of all or some of its nonresident partners or shareholders.

(2) Due Date. A composite return shall be filed by the due date for the filing of an information return under COMAR 03.04.07.03A.

B. Nonresident Qualifications. Nonresident partners or shareholders may not be included in a composite return unless:

(1) They elect in writing to the partnership or S corporation to be included in the composite return;

(2) Their only source of income in Maryland is from the partnership or S corporation filing the composite return; and

(3) They agree that the partnership or S corporation is acting as their agent for the following purposes:

(a) Filing an income tax return on their behalf;

(b) Receipt of any refund, and

(c) Payment of any tax due

C. Requirements for Filing.

(1) Statement of Verification. The composite return shall contain a statement signed by an authorized official of the partnership or S corporation verifying that the nonresident individuals included in the return qualify under §B of this regulation

(2) The composite return shall contain a schedule which includes:

(a) A statement showing the percentage of stock ownership or shares in the partnership of each nonresident shareholder or partner;

(b) The total income of the partnership or S corporation and the amount attributable to Maryland sources;

(c) The name, address, and social security number of each nonresident partner or shareholder;

(d) The filing status of each nonresident partner or shareholder;

(e) The distributive income allocable to Maryland for each nonresident partner or shareholder;

(f) The allowable exemptions for each nonresident partner or shareholder;

(g) The amount of the standard deduction of each nonresident partner or shareholder;

(h) The taxable income of each nonresident partner or shareholder;

(i) The income tax liability of each partner or shareholder using the graduated tax rates;

(j) The amount of taxes paid on behalf of the nonresident partner or shareholder;

(k) The balance of tax due which shall be paid in full with the filing of the composite tax return; and

(l) The amount of any refund.

(3) Credit for Taxes Paid Other States. Credit for taxes paid other states is not permitted on the composite return

(4) Signature.

(a) Partnership. A general partner shall sign the composite return.

(b) S Corporation. The president or other authorized officer of the S corporation shall sign the composite return.

(5) Effect of Filing a Composite Return. The filing of a composite return on behalf of nonresident partners or shareholders is considered the return of each nonresident partner or shareholder included in the return.

03.04.07 Partnership and S Corporation Nonresident Tax

.01 Definitions.

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

B. Terms Defined

(1) "Distributable cash flow" has the meaning stated in Tax-General Article, §10-102.1(a), Annotated Code of Maryland.

Example 7

INCOME TAX

03.04.02.11

taxpayer shall report to the Income Tax Division the increase of federal net taxable income or the nature of the change within 90 days after the **IRS** has made its final determination.

B. A disposition of an assessment by the IRS by way of abatement, settlement, or compromise may not be construed as an abatement, settlement, or compromise of the taxpayer's liability to this State.

C. The report filed with the Comptroller's Office shall consist of:

(1) **A** complete copy of the federal audit including any exhibits attached to it; and

(2) The taxpayer's acceptance of the **IRS** final determination or the taxpayer's grounds for objection to the **IRS** determination.

D. If the taxpayer fails to file the report within 90 days, the Comptroller may make an assessment under Tax-General Article, §13-1101(b).

E. If a taxpayer files a timely report, the Comptroller shall make an assessment within 1 year after receipt of the report as provided by Tax-General Article, §13-1101(c).

F. After receipt of the federal audit report, the Comptroller shall recompute the amount of tax due on the Maryland return and mail a report of income **tax** audit changes to the taxpayer's last known address.

G. If the taxpayer is dissatisfied with the Comptroller's changes, the taxpayer may pursue the administrative remedies provided for under Regulation .10.

Administrative History

Effective date:

Regulations .01 — .05 adopted as an emergency provision effective November 3, 1980 (7:23 Md. R. 2159); adopted **permanently** effective March 13, 1981 (8:4 Md. R. 337)

Regulations .01E — H, .02B — I, .04C, and .05A — D amended effective September 26, 1983 (10:19 Md. R. 1689)

Regulations .01 — .05 **Tax Refund Intercept Program** repealed effective October 3, 1988 (15:20 Md. R. 2333)

Regulations .01 — .11 Individual adopted effective January 9, 1989 (15:27 Md. R. 3126)

Regulation .06 amended effective August 20, 1990 (17:16 Md. R. 1989)

Regulation .07A amended effective August 20, 1990 (17:16 Md. R. 1989)



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