

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Department of Agriculture's Maryland Nutrient Management Manual (November 1999), Supplement No. 1 (September 2000), Supplement No. 2 (November 2001), Supplement No. 3 (September 2004), Supplement No. 4 (November 2005), and Supplement No. 5 (November 2006), Supplement No. 6 (May 2009), and Supplement No. 7 (May 2012), has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 39:2 Md. R. 104 (January 27, 2012), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

.02 Incorporation by Reference.

The performance and technical standards provided in this subtitle are found in the Department of Agriculture's Maryland Nutrient Management Manual (November 1999), Supplement No. 1 (September 2000), Supplement No. 2 (November 2001), Supplement No. 3 (September 2004), Supplement No. 4 (November 2005), and Supplement No. 5 (November 2006), [and] Supplement No. 6 (May 2009), and Supplement No. 7 (May 2012), which are incorporated by reference.

EARL F. HANCE
Secretary of Agriculture

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Notice of Proposed Action

[12-146-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to amend:

- (1) Regulation .01 under COMAR 27.01.01 General Provisions;
- (2) Regulations .03, .04, .05, and .08 under COMAR 27.01.02 Development in the Critical Area;
- (3) Regulations .05 and .07 under COMAR 27.01.03 Water-Dependent Facilities;
- (4) Regulations .02 and .03 under COMAR 27.01.06 Agriculture;
- (5) Regulation .03 under COMAR 27.01.07 Surface Mining in the Critical Area;
- (6) Regulations .01 and .01-8 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area;
- (7) Regulation .01 under COMAR 27.02.01 General Provisions; and
- (8) Regulation .01 under COMAR 27.03.01 Notification of Project Applications.

This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on

May 2, 2012, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to modify and streamline the Critical Area regulations in order to reduce unnecessary, duplicative, or outdated regulations to promote economic growth and job creation. This review was pursuant to Executive Order .01.01.2011.20.

In subtitle .01 the definition of "Buffer Exemption Areas" will be repealed and renamed "Modified Buffer Area" to eliminate the confusion associated with the word "exemption". Amending the definition of "Critical Area" is necessary to reflect the gradual reliance of local governments on the Statewide Base Map. In the definition of "Project approvals" the words "Chesapeake Bay" need to be repealed so as to not exclude the "Atlantic Coastal Bays" from the definition since this definition was drafted before the inclusion of the Coastal Bays into the Critical Area.

In the development regulations the existing criteria requirement to cluster to reduce impervious areas is proposed for repeal and now proposed as a policy to help streamline this requirement in local jurisdictions Critical Area programs. Also, outdated stormwater requirements are proposed for repeal and the sediment and erosion control language is being amended for streamlining purposes. The word "rezone" is being replaced with "may not be located" since the former term was not the original intent of this section. In the Lot Consolidation and Reconfiguration regulations the reference to "buffer exemption area" is being repealed and "modified buffer area" is being inserted in its place.

Chapter 3, the Shore Erosion Control Chapter, includes clarification changes and repeal of any reference to "moorings" since they were removed from this section by statute and are regulated under the Boating Act.

Chapter 4, the Agriculture Chapter, is being updated including repealing the need for a State 208 water quality plan since this is no longer required and adding the requirement for a nutrient management plan since this is now required by the Department of Agriculture.

The changes to Chapter 7, the Surface Mining Chapter consist of outdated cross-references and repealing unnecessary text.

Chapter 9, the Habitat Protection Areas Chapter includes repealing the reference to "buffer exemption area" and proposing the term "modified buffer", inserting the word "institutional" so it is recognized as a land use that can be mapped as a modified buffer area, inserting the provision for mitigation since all local jurisdictions with these areas require mitigation, and changing the requirement of a local jurisdiction to propose other measures to achieve water quality and habitat protection to be an option in their local Critical Area programs.

In Subtitle 02 the definitions of "Buffer", "Critical Area", "Developed woodlands", and "Forests" are being amended to be consistent with these definitions in COMAR 27.01.01.01.

In Subtitle 03 the definitions of "Buffer" and "Critical Area" are being amended to be consistent with these definitions in COMAR 27.01.01.01.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Lisa Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100 Annapolis, Maryland 21401, or call 410-260-3478, or email to lhoerger@dnr.state.md.us, or fax to 410-974-5338. Comments will be accepted through July 16, 2012. A public hearing has not been scheduled.

**Subtitle 01 CRITERIA FOR LOCAL
CRITICAL AREA PROGRAM
DEVELOPMENT**

27.01.01 General Provisions

Natural Resources Article, §8-1806, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (8) (text unchanged)

[(8-1) "Buffer exemption area" means an area of land:

(a) Where a pattern of residential, industrial, commercial, or recreational development existed in the 100-foot Buffer on December 1, 1985 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical Area; and

(b) That, as part of a local program approved by the Commission, is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions.]

(9) — (17) (text unchanged)

[(18) "Critical Area" means all lands and waters defined in Natural Resources Article, §8-1807, Annotated Code of Maryland. They include:

(a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Natural Resources Article, Title 9, Annotated Code of Maryland;

(b) All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Natural Resources Article, Title 9, Annotated Code of Maryland; and

(c) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.]

(18) Critical Area.

(a) "Critical Area" means the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d), Annotated Code of Maryland.

(b) "Critical Area" includes:

(i) The initial planning area of the Chesapeake Bay Critical Area consisting of all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;

(ii) The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all waters of and lands under the coastal bays and their tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;

(iii) Except in accordance with §B(18)(b)(iv) of this regulation, all water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article;

(iv) All water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119, Acts of 2008, where the process of transition from reliance on the State wetlands maps to the Statewide base maps has occurred and these maps were approved by the Commission; and

(v) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.

(19) — (39-1) (text unchanged)

(39-2) Modified Buffer Area.

(a) "Modified buffer area" means an area of land:

(i) Where a pattern of residential, industrial, commercial, or recreational development existed in the 100-foot Buffer on December 1, 1985 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical Area; and

(ii) That, as part of a local program approved by the Commission, is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions.

(b) "Modified buffer area" includes an area referred to by a local jurisdiction as a buffer exemption area, buffer exempted area, buffer modification area, buffer management area, buffer management overlay, buffer modified area, special buffer management area, special buffer area, or any other similar term that has the same substantive meaning as modified buffer area.

(40) — (53) (text unchanged)

(54) Project Approvals.

(a) "Project approvals" means the approval of development, other than development by a State or local government agency, in the [Chesapeake Bay] Critical Area by the appropriate local approval authority. [The term]

(b) "Project approvals" includes approval of subdivision plats and site plans[;], inclusion of areas within floating zones[;], issuance of variances, special exceptions, and conditional use permits[;] and issuance of zoning permits. [The term]

(c) "Project approvals" does not include building permits.

(55) — (78) (text unchanged)

27.01.02 Development in the Critical Area

Authority: Natural Resources Article, §§8-1806, 8-1808(c), and 8-1811, Annotated Code of Maryland

.03 Intensely Developed Areas.

A.—B. (text unchanged)

C. In developing their Critical Area programs, local jurisdictions shall follow these policies when addressing [Intensely Developed Areas] intensely developed areas:

(1) — (7) (text unchanged)

(8) If the location of a development activity is authorized under §C(7) of this regulation, design and construct the development activity so as to:

(a) — (b) (text unchanged)

(c) Provide a natural substrate for affected streambeds; [and]

(9) Minimize the adverse water quality and quantity impact of stormwater and encourage the use of retrofitting measures to address existing stormwater management problems; and

(10) Cluster future development as a means to reduce lot coverage and to maximize areas of natural vegetation.

D. In developing their Critical Area programs, local jurisdictions shall use the following criteria for intensely developed areas:

(1) — (3) (text unchanged)

[(4) If practicable, permeable areas shall be established in vegetation and, whenever possible, redevelopment shall reduce existing levels of pollution.]

measures may include, but are not limited to], including public education and urban forestry programs.

Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS

27.02.01 General Provisions

Authority: Natural Resources Article, §8-1814, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)–(5) (text unchanged)

[(6) “Buffer” means an existing, naturally vegetated area, or an area established in vegetation and managed to protect aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbances.]

(6) *Buffer.*

(a) “Buffer” means an area that:

(i) Based on conditions present at the time of development, is immediately landward from mean high water of tidal waters, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland; and

(ii) Exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.

(b) “Buffer” includes an area of:

(i) At least 100 feet, even if that area was previously disturbed by human activity; and

(ii) Expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

(7)–(12) (text unchanged)

[(13) “Critical Area” means all lands and waters defined in Natural Resources Article, §8-1807, Annotated Code of Maryland. They include:

(a) All waters of and lands under the Chesapeake Bay and its tributaries to the heads of tides as indicated on the State wetlands maps, and all State and private wetlands designated under Natural Resources Article, Title 9, Annotated Code of Maryland;

(b) All land and water within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Natural Resources Article, Title 9, Annotated Code of Maryland; and

(c) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.]

(13) *Critical Area.*

(a) “Critical Area” means the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d), Annotated Code of Maryland.

(b) “Critical Area” includes:

(i) The initial planning area of the Chesapeake Bay Critical Area consisting of all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Environment Article, Title 16, Annotated Code of Maryland;

(ii) The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all waters of and lands under the coastal bays and their tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;

(iii) Except in accordance with §B(13)(b)(iv) of this regulation, all water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Environment Article, Title 16, Annotated Code of Maryland;

(iv) All water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119, Acts of 2008, where the process of transition from reliance on the State wetlands maps to the Statewide base maps has occurred and these maps were approved by the Commission; and

(v) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.

(14) (text unchanged)

(15) “Developed woodlands” means [those areas of 1 acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses] an area of trees or an area of trees and natural vegetation that is interspersed with residential, commercial, industrial, institutional, or recreational development.

(16)–(20) (text unchanged)

(21) [“Forests” means biological communities dominated by trees and other woody plants covering a land area of 1 acre or more] “Forest” has the meaning stated in Natural Resources Article, §5-1601, Annotated Code of Maryland.

(22)–(65) (text unchanged)

Subtitle 03 PROJECT APPLICATIONS

27.03.01 Notification of Project Applications

Authority: Natural Resources Article, §§8-1806, 8-1808(c), and 8-1811, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

[(2) “Buffer” means all lands and waters defined by the local jurisdiction’s approved Critical Area program pursuant to COMAR 27.01.09.01.]

(2) *Buffer.*

(a) “Buffer” means an area that:

(i) Based on conditions present at the time of development, is immediately landward from mean high water of tidal waters, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland; and

(ii) Exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.

(b) “Buffer” includes an area of:

(i) At least 100 feet, even if that area was previously disturbed by human activity; and

(ii) Expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

(3)–(5) (text unchanged)

[(6) "Critical Area" means all lands and waters defined by the local jurisdiction's approved Critical Area program pursuant to Natural Resources Article, §8-1807, Annotated Code of Maryland.]

(6) *Critical Area.*

(a) "Critical Area" means the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d), Annotated Code of Maryland.

(b) "Critical Area" includes:

(i) The initial planning area of the Chesapeake Bay Critical Area consisting of all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Environment Article, Title 16, Annotated Code of Maryland;

(ii) The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all waters of and lands under the coastal bays and their tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Environment Article, Title 16, Annotated Code of Maryland;

(iii) Except in accordance with §B(6)(b)(iv) of this regulation, all water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Environment Article;

(iv) All water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119, Acts of 2008, where the process of transition from reliance on the State wetlands maps to the Statewide base maps has occurred and these maps were approved by the Commission; and

(v) Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.

(7) — (13) (text unchanged)

MARGARET G. McHALE
Chair

Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 10 HEALTH INSURANCE — GENERAL

31.10.01 Health Insurance

Authority: Insurance Article, §§2-109, 12-203, 12-205, and §14-126(a)(1),
Annotated Code of Maryland

Notice of Proposed Action

[11-327-R]

The Insurance Commissioner proposes to amend Regulation .01, adopt new Regulation .02, and amend and recodify existing Regulation .02 to be Regulation .03 under COMAR 31.10.01 Health Insurance. Because substantive changes have been made to the original proposal as published in 38:24 Md. R. 1548 — 1549 (November 18, 2011), this action is being repropose at this time.

Statement of Purpose

The purpose of this action is to add the definition of "mail". This definition is added to respond to comments raised by the industry asking for clarification regarding whether the notice of premium increase may be provided electronically.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to klawhorn@mdinsurance.state.md.us, or fax to 410-468-2020. Comments will be accepted through July 30, 2012. A public hearing has not been scheduled.

Ed. Note: Pursuant to State Government Article, §10-113, Annotated Code of Maryland, if a promulgating agency substantively alters the text of regulations that have been previously proposed in the Maryland Register, the altered text must be published in the Maryland Register as though it were initially proposed. The text of regulations appearing immediately below has been altered substantively from the initially proposed text.

Symbols: Roman type indicates existing text of regulations. *Italic* type indicates initially proposed new text. **Helvetica Bold Italic** type indicates new text that substantively alters the text as initially proposed. [Single brackets] indicate existing text proposed for repeal. [[[Triple brackets]]] indicate text proposed for deletion which substantively alters the originally proposed text.

.01 (originally proposed text unchanged)

.02 Definition.

A. (originally proposed text unchanged)

B. *Terms Defined.*

(1) — (3) (originally proposed text unchanged)

(4) ***Mail*** means first class mail or compliance with the Uniform Electronics Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

[[[(4)]]] (5) (originally proposed text unchanged)

.03 (originally proposed text unchanged)

THERESE M. GOLDSMITH
Insurance Commissioner