

E. Compensation received under the terms and conditions of any State wetlands license is credited to the Department's Wetlands [Compensation] and Waterways Program Fund [for acquisition of wetlands and conservation purposes].

SHEILA McDONALD  
Executive Director  
Board of Public Works

## **Title 26** **DEPARTMENT OF THE ENVIRONMENT**

### **Subtitle 02 OCCUPATIONAL, INDUSTRIAL, AND RESIDENTIAL HAZARDS**

#### 26.02.03 Control of Noise Pollution

Authority: Environment Article, §3-401, Annotated Code of Maryland

##### **Notice of Proposed Action** [12-285-P]

The Secretary of the Environment proposes to amend the Preface and Regulations .01 and .02, amend and recodify existing Regulation .03A, B, D to be Regulation .02B, C, D, and repeal existing Regulations .03C, .04, and .05 under **COMAR 26.02.03 Control of Noise Pollution**.

##### Statement of Purpose

The purpose of this action is to:

- (1) Repeal the requirements for the Maryland Department of the Environment (MDE) to enforce noise control standards, making it an option for local governments;
- (2) Clarify and simplify the noise standards by removing one definition, combining standards from two regulations into one regulation, and repealing one unused regulation;
- (3) Extend the exemption of noise and vibration prohibitions to marina equipment used to move boats during certain times; and
- (4) Repeal the regulation pertaining to penalties.

##### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

##### Estimate of Economic Impact

**I. Summary of Economic Impact.** Under current noise regulations the existing standard for residential (receiving) districts is 65db (decibels). Noise level testing on new model forklifts by Department of Environment staff has indicated that it may not be possible for the forklifts used to move boats at some marinas and "boatels" to achieve this standard at the property line of the receiving property. The excursion of the current noise standard could potentially result in a marina owner having to cease operations. This regulation creates an exception in the regulation that should be technologically achievable, thus reducing economic impact that could result in the closure of some marinas.

For the amendments to the overall noise program, this action does not materially affect State finances, as MDE has implemented only a minimal program in recent years. MDE workloads decreased minimally beginning in FY 2013 due to the elimination of MDE involvement in handling noise complaints and due to any future reduction in workload associated with revising noise standards under current administrative procedures. Local government workloads may

increase beginning in FY 2013 due to the elimination of MDE involvement in handling noise complaints. However, based on the recent history of the State noise control program, the impact on local government operations and finances is likely minimal. To the extent a local government opts to expand implementation of noise control efforts due to the elimination of State involvement, expenditures may increase in the form of salaries and equipment costs to implement the program locally. However, the increased burden on an individual county is not anticipated to be substantial as the Department receives fewer than 75 complaints, on average, per year, statewide. Further, when MDE administered a statewide program there was only one full time employee handling noise enforcement. Any expenses could be partially or fully offset by additional fine revenue collected through any expanded enforcement activities by the local jurisdiction.

MDE has determined that this bill has minimal or no impact on small business.

#### II. Types of Economic Impact.

Revenue (R+/R-)

Expenditure  
(E+/E-)

Magnitude

##### A. On issuing agency:

Noise Program

(E-)

Minimal

##### B. On other State agencies:

NONE

##### C. On local governments:

Local Noise Programs

(E+)

Minimal

Benefit (+)  
Cost (-)

Magnitude

##### D. On regulated industries or trade groups:

NONE

##### E. On other industries or trade groups:

Marina operators

(+)

Moderate

##### F. Direct and indirect effects on public:

(1) Public

(+)

Minimal

(2) Public

(-)

Minimal

#### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. All noise complaints will be re-directed to local governments.

B. Does not impact other state agency noise programs.

C. Local enforcement of noise programs may require an increase in salary or equipment needs to handle noise complaints previously received by MDE. However, it is anticipated that an individual jurisdiction would receive fewer than 5 additional noise complaints, on average, per year.

Fewer noise violations from routine marina activities should result in fewer actionable complaints received by local authorities.

E. Action would require fewer and/or less costly noise mitigation measures by marina operators.

F(1). The public would be better served by state rules fostering resolution of noise complaints at the local level where incompatible uses exist.

F(2). Would permit the current noise levels from marina activities without requiring mitigation. These could be perceived as a nuisance to nearby landowners.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Marina operators would be exempt from potentially expensive noise mitigation measures. This exemption could potentially prevent their business from closing.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to John Backus, Environmental Program Manager, Maryland Department of the Environment, 1800 Washington Blvd. Baltimore, MD 21230, or call 410-537-3965, or email to jbackus@mde.state.md.us, or fax to 410-537-3998. Comments will be accepted through December 3, 2012. An informational public meeting will be held at MDE Headquarters on Tuesday, November 13, 2012 at 1 p.m., Montgomery Business Park, 1800 Washington Blvd., Baltimore, MD 21230. Please notify John Backus if you plan to attend.

**Preface**

The Environmental Noise Act of 1974 of the State of Maryland declares as policy the limitation of noise to that level which will protect the health, general welfare, and property of the people of the State. It requires that the Department assume responsibility [for the jurisdiction over the level of noise, and] to prepare regulations for the control of noise, including the establishment of standards for ambient noise levels and equipment performance with respect to noise, for adoption by the Secretary of the Environment. *It allows political subdivisions to adopt environmental noise standards.* Enforcement of the regulations and standards is the responsibility of [the Department] *political subdivisions* in all areas[, using the facilities and services of local agencies within the areas to the greatest extent possible. The Department shall coordinate the programs of all State agencies relating to noise abatement, and each State agency prescribing sound level limits or regulations respecting noise shall obtain the endorsement of the Department in prescribing any limits or regulations].

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(3) (text unchanged)

[(4) “Day-night average sound level ( $L_{dn}$ )” means in decibels, the energy average sound level for a 24-hour day with a 10 decibel penalty applied to noise occurring during the nighttime period; i.e., noise levels occurring during the period from 10 p.m. one day until 7 a.m. the next are treated as though they were 10 dBA higher than they actually are. The use of the A-weighting is understood. The mathematical expression for  $L_{dn}$  is as follows:

$L_{dn} = 10 \log_{10}[(15/24) 10^{L_d/10} + (9/24) 10^{(L_n + 10)/10}]$  where  $L_d$  = The daytime average sound level.

$L_n$  = The nighttime average sound level. ]

[(5)] (4) —[(27)] (26) (text unchanged)

**.02 Environmental Noise Standards.**

A. (text unchanged)

B. Standards for Environmental Noise—General.

(1)—(2) (proposed for repeal)

[A. Noise and Vibration Prohibitions.]

(1) A person may not cause or permit noise levels which exceed those specified in [Table 2] *this table* except as provided in [§A(2) or (3), or §B] *§B(2) or (3), or §C*, of this regulation.

Table 1 Maximum Allowable Noise Levels (dBA) for Receiving Land Use Categories				
[Effective Date]	Day/Night	Industrial	Commercial	Residential
	Day	75	67	65
[Upon Adoption]	Night	75	62	55

(2) A person may not cause or permit noise levels emanating from construction or demolition site activities which exceed:

(a) 90 dBA during daytime hours;

(b) The levels specified in Table [2] *1* during nighttime hours.

(3) A person may not cause or permit the emission of prominent discrete tones and periodic noises which exceed a level which is 5 dBA lower than the applicable level listed in Table [2] *1*.

(4) (text unchanged)

(5) A person may not operate or permit to be operated an off-road internal combustion engine powered recreational vehicle, including, but not limited to, a dirt bike, an all terrain vehicle, a go cart, a snowmobile, or a similar vehicle, on private property closer than 300 feet to a neighboring residence or the associated curtilage, without the written permission of the affected resident, unless it can be demonstrated to the Department that the vehicle can be operated within the noise limits specified in Table [2] *1* under [§A(1)] *§B(1)* of this regulation.

[B.] C. Exemptions.

(1) (text unchanged)

(2) The provisions of this regulation do not apply to the following:

(a) —(p) (text unchanged)

(q) *Marina equipment used to move boats during the period from 7 am to 7 pm provided that the noise level does not exceed 80 dBA at 20 meters from the equipment.*

(3)—(4) (text unchanged)

D. Measurement.

(1)—(2) (text unchanged)

(3) Sound level meters used to determine compliance with Regulation [.03] *.02* shall meet or exceed the specifications for Type II sound level meters.

ROBERT M. SUMMERS, Ph.D.  
Secretary of the Environment

## Subtitle 09 MARYLAND CO<sub>2</sub> BUDGET TRADING PROGRAM

**Notice of Proposed Action**

[12-295-P]

The Secretary of the Environment proposes to amend:

(1) Regulation **.02** under **COMAR 26.09.01 General Administrative Provisions**; and

(2) Regulations **.03** and **.06** — **.09** under **COMAR 26.09.02 Applicability, Determining Compliance, and Allowance Distribution**.

**Statement of Purpose**

The purpose of this action is to amend regulations under COMAR 26.09, Maryland CO<sub>2</sub> Budget Trading Program, with regard to the following:

(1) Add certain definitions.

(2) Revise the process by which allowances are allocated to the set-aside accounts.