

Title 24 DEPARTMENT OF COMMERCE

Subtitle 01 OFFICE OF THE SECRETARY

24.01.07 Corporate Diversity

Authority: Business Regulation Article, §19-106; Economic Development Article, §2-108; Annotated Code of Maryland

Notice of Proposed Action

[22-107-P]

The Department of Commerce, in conjunction with Governor's Office of Small, Minority & Women Business Affairs, proposes to adopt new Regulations .01—.07 under a new chapter, **COMAR 24.01.07 Corporate Diversity**.

Statement of Purpose

The purpose of this action is to adopt new regulations for Corporate Diversity.

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 Jennifer Cox LaHatte, Managing Director of Policy, Research, and Government Affairs, Department of Commerce, 401 E. Pratt Street, 9th Floor, Baltimore, MD 21202, or call 410-767-6979, or email to corporatediversity.regulations@maryland.gov, or fax to 410-333-8298. Comments will be accepted through July 18, 2022. A public hearing has not been scheduled.

.01 Definitions.

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

B. Terms Defined.

(1) "Annual Report" means the report submitted to the Department of Assessments and Taxation pursuant to Tax-Property Article, §11-101, Annotated Code of Maryland.

(2) "Entity" means:

(a) A commercial enterprise or business that is required to be in good standing with the State Department of Assessments and Taxation and is:

(i) Formed in the State; or

(ii) Registered to do business in the State; or

(b) A corporation, foundation, school, hospital, or other legal entity for which none of the net earnings inure to the benefit of any private shareholder or individual holding an interest in the entity.

(3) "Person" has the meaning stated in Tax-Property Article, §1-101, Annotated Code of Maryland.

(4) "Secretary" means the Secretary of Commerce.

(5) "Special Secretary" means the Special Secretary of the Governor's Office of Small, Minority & Women Business Affairs.

(6) "State benefit" has the meaning stated in Business Regulation Article, §19-106, Annotated Code of Maryland.

(7) "Underrepresented community" has the meaning stated in Business Regulation Article, §19-106, Annotated Code of Maryland.

.02 Corporate Diversity Requirements.

A. The Department of Assessments and Taxation shall include a Corporate Diversity Addendum form with the Annual Report form published by that department.

B. If the person submitting the Annual Report is an entity subject to this chapter, that person shall complete, on behalf of the entity, the Corporate Diversity Addendum included with the Annual Report.

C. As more fully described in §D of this regulation, the Corporate Diversity Addendum shall include information on:

(1) Membership of underrepresented communities in the entity's board or executive leadership; and

(2) The entity's support for underrepresented communities in the entity's mission.

D. Required Information.

(1) In providing information about membership of underrepresented communities in an entity's board or executive leadership in the Corporate Diversity Addendum, the entity shall report whether it has individuals on its board or in executive leadership from any of the following underrepresented communities:

(a) Alaska Native;

(b) Asian-Pacific Islander;

(c) Black or African-American;

(d) Hispanic or Latino;

(e) Native American;

(f) Native Hawaiian;

(g) One or more of the racial or ethnic groups listed above; or

(h) None of the above.

(2) In providing information about its support for underrepresented communities in its mission, an entity shall report whether it engages in any of the following activities, also known as diversity indicators:

(a) Maintains written workforce diversity, equity, and inclusion (DEI) policies;

(b) Offers DEI training to its workforce;

(c) Assigns a senior-level employee as responsible for oversight and direction of the entity's DEI efforts;

(d) Reports performance of workforce DEI programs on the entity's website;

(e) Includes DEI objectives in performance plans of its managers;

(f) Publishes information about DEI commitments and efforts on the entity's website;

(g) Provides career advancement training and opportunities for its employees, which include members of underrepresented communities;

(h) Collaborates with educational institutions serving significant or predominant student populations or affinity groups from underrepresented communities;

(i) Has a supplier diversity policy that provides business opportunities to diverse suppliers, including businesses owned by members of underrepresented communities, such as State-certified minority business enterprises (MBEs);

(j) Publicizes procurement opportunities to encourage participation from businesses owned by members of underrepresented communities;

(k) Measures the percentage of contract dollars awarded to businesses owned by members of underrepresented communities, including MBEs; and

(l) Provides support and outreach to underrepresented communities or organizations that represent underrepresented communities.

.03 Qualification for a State Benefit.

A. A State agency shall deny a State benefit to an entity unless the entity:

(1) Completes the Corporate Diversity Addendum described in Regulation .02 of this chapter and satisfies §C of this regulation; or

(2) Provides to the State agency providing a State benefit the affidavit described in §B of this regulation, affirming that the entity is not required to submit the Corporate Diversity Addendum.

B. To affirm that an entity is not required to submit the Corporate Diversity Addendum, the entity shall submit to the State agency providing a State benefit an affidavit signed by a corporate officer or principal of the entity, stating under penalties of perjury, with the name and title of the individual submitting the affidavit, that the entity for which the affidavit is submitted is:

(1) A sole proprietor;

(2) A limited liability company owned by a single member;

(3) A privately held company if at least 75 percent of the company's shareholders are family members; or

(4) An entity that:

(a) Has an annual operating budget or annual sales less than \$5,000,000; and

(b) Does not qualify for a State benefit.

C. An entity satisfies this section if it engages in at least 33 percent of the diversity indicators listed in Regulation .02 of this chapter.

D. To the extent that an entity qualifies for State tax credits totaling \$1,000,000 or more but for the entity's failure to meet the requirement in §C of this regulation, a State agency may not deny the entity tax credits available under Tax-General Article, §§8-207, 8-208, 8-303, 8-406(a), 9-214, 9-315, 10-701, 10-701.1, 10-703, 11-105, and 12-303, Annotated Code of Maryland.

E. The affidavit required in §B of this regulation shall be submitted in the form and manner prescribed by the State agency conferring the State benefit.

.04 Administration of Chapter.

A. This chapter applies to a State benefit for which application is made after June 30, 2022.

B. If a State agency receives an application from an entity for a State benefit after June 30, 2022, but before the entity files the Annual Report first due by April 15, 2023, the State agency shall require that the entity provide directly to the State agency either the information required under Regulation .03A of this chapter or the affidavit described in of Regulation .03B of this chapter.

C. Except as provided in §D of this regulation, after the filing deadline of the 2023 Annual Report, a State agency that receives an application from an entity for a State benefit shall require the entity to provide either the information required under Regulation .03A of this chapter or the affidavit described in Regulation .03B of this chapter .

D. An entity that has been formed or registered, but which has not yet reached an Annual Report filing deadline and seeks to be considered for a State benefit, shall be permitted to satisfy the requirements of Regulation .03A of this chapter by providing information directly to the State agency providing the benefit.

E. An entity that was not required to complete the Corporate Diversity Addendum for a prior fiscal year because it was one of the types of entities described in Regulation .03B of this chapter, but to which the corporate diversity requirements become applicable before an Annual Report filing deadline in a subsequent fiscal year, shall be permitted to satisfy the requirements of Regulation .03A of this chapter by providing information directly to the State agency providing the benefit.

F. An entity may file an Annual Report or an amended Annual Report:

- (1) To file the Corporate Diversity Addendum necessary to satisfy the requirements of Regulation .03A of this chapter; or
- (2) To correct a misstatement on the Annual Report or the Corporate Diversity Addendum.

.05 Calculation of State Benefit.

In the case of a State benefit disbursed over more than 1 fiscal year, only the amount disbursed in 1 fiscal year shall count toward the \$1,000,000 threshold.

.06 Audit; Cancellation or Repayment of State Benefit.

A. An entity shall keep complete and accurate records supporting any information or statement provided to an agency by the entity in the Corporate Diversity Addendum or the affidavit described in Regulation .03B of this chapter for a period of 5 years from the date of submission.

B. A State agency that has provided a State benefit to an entity subject to this chapter may at any time before or up to 5 years after the provision of the State benefit require any information provided to the agency by the entity in the Corporate Diversity Addendum be audited by the State.

C. If the State agency that has provided a State benefit to an entity subject to this chapter determines that any representation made by the entity in its Corporate Diversity Addendum or the affidavit described in Regulation .03B of this chapter in connection with its application for the State benefit is false when made, the agency may:

- (1) Cancel the award of the State benefit, in whole or in part as the agency may determine;
- (2) Require repayment of any capital grant or recapture of any tax credit;
- (3) Initiate a State debarment proceeding against an entity that has received a State contract; and
- (4) Seek any other remedy available at law.

.07 Waiver.

The Secretary and the Special Secretary may jointly waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with the provisions of Business Regulation Article, §19-106, Annotated Code of Maryland, or Economic Development Article, §2-108, Annotated Code of Maryland, if:

A. Conformance to the requirement of any federal, State, or local program necessitates waiver or variance of a regulation; or

B. In the joint determination of the Secretary and the Special Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Acts.

R. MICHAEL GILL
Secretary of Commerce