

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Maryland Insurance Administration**
(DLS Control No. 15-256)

Overview and Legal and Fiscal Impact

The regulations make several substantive and technical changes to COMAR 31.02.05, Public Information Act Requests, to bring the chapter into conformity with legislation enacted during the 2014 and 2015 sessions of the General Assembly.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Powers and Duties – Hearings: Public Information Act Requests:
COMAR 31.02.05.01, .02, .03, .04, .06, .08, and .09

Legal Analysis

Background

Chapter 94 of 2014 recodified the Maryland Public Information Act (PIA), which formerly was part of Title 10, Subtitle 6 of the State Government Article, as Title 4 of the General Provisions Article. Chapter 94 reorganized and renumbered provisions of the PIA as part of the recodification. In addition, Chapters 135 and 136 of 2015 made a number of substantive changes to the PIA.

Summary of Regulations

The regulations update COMAR 31.02.05 to conform with changes made by Chapters 94, 135, and 136. More specifically, the regulations:

- substitute cross-references to provisions of the General Provisions Article for obsolete cross-references to the State Government Article in Regulations .01, .02B(1), .04, .06, and .08A;
- amend Regulation .04 to (1) require a custodian who reasonably believes that it will take more than 10 working days to produce a public record to give a specified notice to the

requestor to conform to § 4-203(b)(2) of the General Provisions Article, which was added by Chapters 135 and 136 and (2) alter the contents of the notice that a custodian must give if the custodian denies an application to inspect a record to conform to changes made by Chapters 135 and 136 to § 4-203(c) of the General Provisions Article;

- repeal Regulation .06A and B, which specify the process an applicant must follow to request an administrative hearing under the Administrative Procedure Act (APA) if inspection of a public record is denied, because Chapters 135 and 136 eliminated review through the APA;
- revise Regulation .09D to alter the fees a custodian is authorized to charge for the search for, preparation of, and reproduction of a public record to reflect changes made by Chapters 135 and 136 to § 4-206(b) of the General Provisions Article; and
- revise Regulation .09F to alter the circumstances under which a custodian may waive a fee if an applicant is and files an application of indigency to conform to § 4-206(e)(2)(i) of the General Provisions Article, which was added by Chapters 135 and 136. In addition, this regulation is revised to authorize a waiver of fees if the custodian determines that the waiver would be in the public interest. This provision was part of the statutory law before enactment of Chapters 135 and 136, but was not included in Regulation .09E.

The regulations also (1) make stylistic and clarifying changes to the definition of “public record” contained in Regulation .02B(6); (2) amend Regulation .03 to reflect that applications for inspection may be made by electronic mail; and (3) amend Regulation .09C to provide that a custodian’s obligation to produce responsive records is suspended until it receives a commitment to pay or actual payment of any required fees.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Maryland Insurance Administration cites §§ 2-109 and 2-112 of the Insurance Article and Title 4 of the General Provisions Article as statutory authority for the regulations.

More specifically, § 2-109(a)(1) of the Insurance Article establishes the general authority of the Maryland Insurance Commissioner to adopt regulations to carry out the Insurance Article. Section § 2-112 is not relevant to these regulations.

Title 4 of the General Provisions Article contains provisions of law governing the Public Information Act.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Reason for Emergency Status

The administration requests emergency status beginning October 1, 2015, and expiring March 29, 2016. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The administration indicates that emergency status is necessary to bring the regulations into conformity with changes to provisions of law governing the Public Information Act, which were made by Chapters 135 and 136 of 2015 and take effect October 1, 2015.

Technical Corrections and Special Notes

As originally submitted to the committee, the regulations presented several issues of concern relating to legislative intent and statutory authority. First, the original changes to Regulation .04B (renumbered as section “C” in the original version) required a custodian who denies a written request to do so “within 10 working days” after receipt of the written request. This conflicted with § 4-203(a) of the General Provisions Article, which requires a custodian to grant or deny an application “promptly, but not more than 30 days after receiving the application.” In addition, an item added to the contents of the notice required under Regulation .04B did not include language in § 4-203(c)(1)(i)3 of the General Provisions Article requiring a brief description of the undisclosed record “that will enable the applicant to assess the applicability of the legal authority for the denial.” Second, the original changes to Regulation .09D relating to fees conflicted with § 4-206(b)(1) of the General Provisions Article, which distinguishes between the fees authorized for public records prepared in a “customized” format, for which a “reasonable fee” may be charged, and public records prepared in a “standard” format, for which “actual costs” may be charged. The regulation instead authorized “reasonable fees” for records in a “standard” format. Finally, the language added to Regulation .09C establishing a condition to a custodian’s obligation to produce records, discussed above, did not seem to be supported by statutory law.

In response to suggestions from the Department of Legislative Services, the administration agrees to conform Regulations .04B and .09D to reflect statutory law and to not include the provision added to Regulation .09C when the regulations are published in the *Maryland Register*.

In addition, as originally submitted, Regulation .09D referred to an individual’s “actual salary and time” instead of an individual’s “time and actual salary,” and Regulation .09E referred to an “application” of indigency instead of an “affidavit” of indigency. The administration agrees to correct these references for consistency with §§ 4-206(b)(2) and 4-206(e)(2)(i) of the General Provisions Article, respectively, when the regulations are published in the *Maryland Register*.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulations implement Chapter 94 of 2014 (House Bill 270) and Chapters 135 and 136 of 2015 (Senate Bill 695 and House Bill 755). The changes required to implement Chapter 94 are wholly technical; however, the fiscal and policy notes for Senate Bill 695 and House Bill 755 advised that any operational or fiscal impact of implementation would vary by agency. That legislation expands agency responsibilities when responding to Maryland Public Information Act requests, and the administration can handle the enhanced responsibilities with existing budgeted resources.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Service concurs.

Contact Information

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