

MARYLAND REGISTER

Proposed Action on Regulations

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| Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations | Date Filed with AELR Committee | TO BE COMPLETED BY DSD |
| | 09/23/2015 | Date Filed with Division of State Documents |
| | | |
| | | Document Number |
| | | Date of Publication in MD Register |
| | | |

1. Desired date of publication in Maryland Register: 10/16/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

31 02 05 01, .02, .03, .04, .06, .08, .09

3. Name of Promulgating Authority

Maryland Insurance Administration

4. Name of Regulations Coordinator

Catherine E Grason

Telephone Number

410-468-2201

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200 St. Paul Place, Suite 2700

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Catherine.Grason@maryland.gov

5. Name of Person to Call About this Document

Catherine Grason

Telephone No.

410-468-2201

Email Address

catherine.grason@maryland.gov

6. Check applicable items:

- New Regulations
 - Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: June 8, 2015.
 - Repeal of Existing Regulations
 - Recodification
 - Incorporation by Reference of Documents Requiring DSD Approval
 - Reproposal of Substantively Different Text:
 - : Md. R
 - (vol.) (issue) (page nos) (date)
- Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

If yes, corresponding proposed text published in:

- same issue
 - future issue
 - previous issue; it appeared in
 - : Md. R
 - (vol.) (issue) (page no's) (date)
- Under Maryland Register docket no.: --E.

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.
- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by J. Van Dorsey, Assistant Attorney General, (telephone #410-468-2023) on 9/22/15. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Alfred W. Redmer, Jr.

Title

Insurance Commissioner

Date

9/23/15

Telephone No.

410-468-2090

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 02 POWERS AND DUTIES — HEARINGS

31.02.05 Public Information Act Requests

Authority: See attached document.

Notice of Proposed Action

□

The Insurance Commissioner proposes to adopt amendments to Regulations .01, .02, .03, .04, .06, .08, and .09 of COMAR 31.02.05 Public Information Act Requests.

Statement of Purpose

The purpose of this action is to update chapter .05 of this subtitle consistent with recently enacted legislation.

HB270 (Chapter 94 of 2014) recodified the Maryland Public Information Act into Title 4 of a new article entitled “General Provisions.” Exemptions and other provisions of the law were reorganized at the same time, requiring updates to certain cross references and the enabling authority for these regulations.

HB755 (Chapter 136 of 2015) made significant substantive revisions to the Act. Consistent with these statutory changes, these proposed regulations update: definitions; requirements regarding the Maryland Insurance Administration's written response to a Public Information Act request; and provisions regarding fee calculations and requestor payment obligations.

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 Catherine Grason, Director of Regulatory Affairs, Maryland Insurance Administration, 200 Saint Paul Place, Ste. 2700, Baltimore, MD 21202, or call 410-468-2201, or email to insuranceregreview.mia@maryland.gov, or fax to 410-468-2020. Comments will be accepted through November 16, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 16

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

Implementation can be handled with existing resources.

E. If these regulations have no economic impact under Part A, indicate reason briefly: These regulations are largely technical. The substantive provisions can be implemented with existing resources.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations address the obligations of the Maryland Insurance Administration when responding to Public Information Act requests. These obligations do not extend to small businesses.

G. Small Business Worksheet:

Attached Document:

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 02 POWERS AND DUTIES — HEARINGS

Chapter 05 Public Information Act Requests

Authority: Insurance Article, §§2-109 and 2-112; [State Government Article, §§10-611—10-623] *General Provisions Article, Title 4*; Annotated Code of Maryland

.01 General.

These regulations set out procedures for filing requests with the Maryland Insurance Administration for the inspection and copying of records under [State Government Article, 10-611-----10-628] *General Provisions Article, Title 4*, Annotated Code of Maryland.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Act" means the Public Information Act, [State Government Article, 10-611-----10-628] *General Provisions Article, Title 4*, Annotated Code of Maryland.

(2)-(5) (text unchanged)

(6) "Public record" means:

(a) *The original or any copy of [A] any documentary material that is made or received by State government in connection with the transaction of public business and is in any form, including a:*

(i) *a [C]card[.];*

(ii) *[Correspondence,] a computerized record;*

(iii) *[computerized record,] a correspondence;*

(iv) *a [D]drawing[.];*

(v) *[Form,] film or microfilm;*

(vi) *[Book,] a form;*

(vii) *[Photograph or photostat,] a map;*

(viii) *[Film or microfilm, or] a photograph or photostat;*

(ix) *a [R]recording[, tape, or map]; or*

(x) *a tape.*

(b) (text unchanged)

(7) (text unchanged)

.03 Applications.

A. (text unchanged)

B. A written request shall contain:

(1) The applicant's name [and address];

(2) The applicant's [signature] *mailing address or email address*; and

(3) A brief description of the record sought.

.04 Response to Written Request.

A. (text unchanged)

B. *If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian must inform the requestor in writing, to include email, within 10 working days of receipt of the request. That notice must include:*

a. The amount of time anticipated to produce the public record;

b. An estimate of the range of fees that may be charged to produce the requested record; and

c. The reason for the delay.

[B.]C. If the custodian denies the written request, the custodian shall do so [immediately, but not later than 30 days] *within 10 working days* after receipt of the written request. [Within 10 working days after mailing the notification of the denial, the custodian shall provide to the applicant] *Notification of the denial must be in the form of a written statement that gives:*

(1) The reason for the denial;

a. if the denial is based on §4-343 of the PIA, a brief explanation of why the denial is necessary;

(2) The legal authority for the denial; [and]

(3) *A brief description of the denied record, without disclosing the protected information; and*

(4) Notice of the remedies as stated in [State Government Article, 10-622 and 10-623] *General Provisions Article, §§ 4-1A-04, 4-1B-04, and 4-362*, Annotated Code of Maryland, for review of the denial.

C. If the custodian denies the written request, the custodian shall permit inspection of any part of the record that is subject to inspection [and is reasonably severable].

D. The custodian shall deny inspection of all or any part of a public record as provided in [State Government Article, 10-615-----10-617] *General Provisions Article, Title 4, Subtitle 3*, Annotated Code of Maryland.

E. (text unchanged)

.05 (text unchanged)

.06 Review of the Denial.

[A. Within 30 days after receipt of the notice of the denial, the applicant may request an administrative hearing, unless the records are destroyed, lost, or temporarily unavailable.

B. If the applicant requests an administrative hearing, the hearing shall be conducted by an administrative law judge at the Office of Administrative Hearings and the hearing shall be governed by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. After the hearing, the administrative law judge shall prepare a recommended decision for the Insurance Commissioner. The Insurance Commissioner shall issue the final decision of the Administration.] [C.]A. If the custodian denies a written request, the applicant may file an action with the circuit court pursuant to [State Government Article, §10-623]*General Provisions Article, §4-362*, Annotated Code of Maryland, without exhausting the administrative remedy under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.07 (text unchanged)

.08 Inspection of Insurance Licensing Data for Compelling Public Purpose.

A. If a compelling public purpose exists under [State Government Article, §10-617(h)(3)] *General Provisions Article, §4-333(C)(1)*, Annotated Code of Maryland, the custodian may permit inspection of insurance licensing data, including the application record, on individuals other than that data specified under [State Government Article, §10-617(h)(2)]*General Provisions Article, §4-333(B)*, Annotated Code of Maryland, as set forth in this regulation.

B.-C. (text unchanged)

.09 Fees.

A.-B. (text unchanged)

C. Before copying a record, the official custodian shall estimate the cost of reproduction and either obtain the agreement of the applicant to pay the cost or demand prepayment of any estimated fee before reproducing the record. *The custodian's obligation to produce responsive records is suspended until it receives a commitment to pay or actual payment, as applicable.*

D. Except as provided in §E of this regulation, the official custodian may charge reasonable fees for [official or employee time expended searching] *the search for, preparation, and reproduction of a [requested] public record[s] in standard format [or for any time expended preparing records for inspection and copying] including media and mechanical processing costs. The staff and attorney review costs included in the calculation of such actual costs shall be prorated to reflect each individual's actual salary and time attributable to the search for and preparation of the requested records.*

E. (text unchanged)

F. Upon request, the official custodian may waive or reduce any fee charged pursuant to this regulation if [the official custodian determines that the waiver or reduction is in the public interest. The official custodian shall consider, among other relevant factors, the ability of the applicant to pay the cost or fee] *the applicant is indigent and files an application of indigency; or, if after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.*

G. (text unchanged)