

Proposed Action on Regulations

Title 01

EXECUTIVE DEPARTMENT

Subtitle 02 SECRETARY OF STATE

01.02.04 Charitable Organizations: Substantive Regulations

Authority: Business Regulation Article, §6-204, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of State proposes to amend Regulations .01-.03, .10, .19, and .20-1 and repeal .08 under COMAR 01.02.04 Charitable Organizations: Substantive Regulations.

Statement of Purpose

The purpose of this action is to update regulations to conform to current procedures and practices followed by the Secretary of State in the administration of the Maryland Solicitations Act. This action clarifies the definition of bona fide religious organizations and adds a definition for exempt charitable organizations. This action also requires charitable organizations to identify in each annual registration or fundraising notice the names and alternative names used in the solicitation of charitable contributions. This action sets forth when the Secretary of State is required to notify charitable organizations of annual filing requirements, and includes requirements for charitable organizations who submit incomplete forms. This action clarifies the timelines for organizations who are delinquent in their annual filing requirements to request additional time, and makes certain technical changes.

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 Michael P. Schlein, Division Administrator, Charitable Organizations Division, Office of the Secretary of State, 16 Francis Street, Annapolis, MD 21401, or call 410-260-3863, or email to michael.schlein @maryland.gov, or fax to . Comments will be accepted through June 21, 2022. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2023

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:

No funds are necessary for the implementation of these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The proposed changes to the regulations have no economic impact because they simply updated the previous regulations to align them with our business practices.

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

The proposed changes to the regulations have no economic impact on small businesses because they simply updated the previous regulations to align them with our business practices.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

Businesses, specifically charitable organizations.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries,

identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

Neither charities nor for profit businesses will be affected by the proposed action.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

None.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

None.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

There is no long-term economic impact.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency

in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) There is no anticipated effect on the work force; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Attached Document:

.01 Definitions.

A.—C. (text unchanged)

[F.] D. (text unchanged)

E. *“Charitable organization affiliated with a State agency” means a charitable organization which engages in activities for the benefit of the State agency or to further the purposes of the State agency, or both, through the use of contributions solicited from the public.*

[G.] F.—[H.] G. (text unchanged)

H. *“Exempt filer” means a charitable organization that is required to file an annual fundraising notice and an IRS Form 990 pursuant to §6-407 of the Act, but is otherwise exempt from the registration and disclosure requirements of the Maryland Solicitations Act pursuant to §6-102(c) of the Act because the organization did not raise more than \$25,000 in its most recently completed fiscal year or solicited for a named individual and the gross amount was delivered to the individual.*

I.—J. (text unchanged)

K. *“Organization” means a charitable organization as defined by §6-101(d)(1)—(3) of the Act.*

[L. *“Private foundation affiliated with a State agency” means a charitable organization which engages in activities for the benefit of the State agency or to further the purposes of the State agency, or both, through the use of contributions solicited from the public.*]

[M.] L.—[N.] M. (text unchanged)

.02 Responsibilities of Persons Regulated.

A.—C. (text unchanged)

D. *Identification of Alternate Names. A charitable organization which uses more than one name, or a name other than the name or names filed at the time of registration to solicit charitable contributions, shall include in their registration materials the name of the organization and any alternate names it uses or used in the previous year when soliciting contributions. An exempt filer which uses more than one name or a name other than the name or names filed in the most recently submitted annual fundraising notice shall include the name of the organization and any alternate names it uses or used in the previous year while soliciting contributions.*

.03 Responsibilities of the Secretary.

A. Notification to Persons Not Registered. The Secretary shall:

(1) (text unchanged)

(2) Send to those identified the necessary forms and instructions and *with instructions on how to access* a copy of the Act and regulations; and

(3) Advise the person not in compliance of the person's unlawful solicitation and note that a failure to register [will] *may result in the institution of enforcement proceedings by the Secretary of State or Attorney General as set forth in §6-205 of the Act.*

B. Notice of Annual Report Filing. The Secretary shall [mail] *issue* each registered charitable organization a report reminder notice 30 days before the charitable organization's annual report is due. Failure to receive the reminder does not affect the organization's responsibility to timely file the annual fiscal report.

C. *Notice of Annual Fundraising Notice. The Secretary shall issue each exempt filer a reminder 30 days before the organization's annual fundraising notice is due. Failure to receive the reminder does not affect the exempt filer's responsibility to timely file the annual fundraising notice.*

[C.] D. Substitution of [Registration Form] *Required Forms. If information asked for on [the registration] any form required by the Maryland Solicitations Act or regulations promulgated by the Secretary of State pursuant to §6-204 of*

the Act is contained in any other written material, the Secretary may accept other material in hard copy or electronic form instead of the completed [registration] form.

[D.] E. (text unchanged)

F. *Incomplete Annual Fiscal Report.* An organization's annual fiscal report required by the Act to be filed with the Secretary under §6-408 of the Act which does not contain the requested information or is not accompanied by the required fee, if any, is incomplete. The Secretary shall notify the person who submitted the incomplete form of the incompleteness and of the items required to comply. The Secretary shall allow that person 60 days in which to comply before late fees shall be assessed pursuant to §6-407(c) of the Act.

G. *Incomplete Annual Fundraising Notice.* If an exempt filer has failed to submit an annual fundraising notice due under §6-405 of the Act, or has filed an incomplete or incorrect annual fundraising notice, the Secretary may notify the exempt filer and identify each of the items required to comply. If an exempt filer has been so notified, the exempt filer shall submit the required documents within 30 days of the notice. A person so notified may request, in writing, additional time to comply

H. *Incomplete Application for Registration.* For persons who have filed an incomplete application for registration under §6-404 of the Act, the Secretary may allow an additional 15 days from the date of the notice of an incomplete application in which to comply. A person so notified of an incomplete application for registration may request, in writing, an additional 30 days in which to comply.

.10 [Official Address and Telephone Number of the Secretary] Method of Delivery of Required Forms and Other Written Materials.

A. *Mailing Address.* The official mailing address of the Secretary for delivery and receipt of [all] any mail, [telegrams,] information, filings, registrations, applications, [and] or other material required by the Act or [these] regulations promulgated by the Secretary of State pursuant to §6-204 of the Act is: Office of the Secretary of State, Charitable Organizations Division, [State House] 16 Francis Street, Annapolis, [Maryland] MD 21401.

B. [Telephone Number. For the purposes of the Act, the official telephone number of the Secretary is (410) 974-5534.] *Electronic Submission.* The Secretary may accept forms or other written materials required by the Act or regulations promulgated by the Secretary of State pursuant to §6-204 of the Act, by electronic transmission. The Secretary may specify or adopt additional forms or electronic filing requirements.

C. *The signature of a person signing forms or other materials required by the Act or regulations promulgated by the Secretary of State pursuant to §6-204 of the Act shall be an original or electronic signature acceptable to the Secretary under Commercial Law Article, §21-117, Annotated Code of Maryland.*

.19 Prohibited Acts.

A.—B. (text unchanged)

[C. Use of Vague or Misleading Terms. A person who solicits contributions may not use vague or misleading terms, including but not limited to, “disadvantaged”, “underprivileged”, “retarded”, “blind”, “crippled children”, and “handicapped”, unless specific individuals, groups, organizations, or places are named in connection with these terms and the person obtains written authorization from the individual or a representative of the group or organization. A copy of the authorization shall be filed with the Secretary.

D. *Misrepresentation in Solicitation.* A person who solicits contributions may not state or imply that goods are produced or sold by handicapped, retarded, blind, or other individuals unless the goods are in fact produced or sold by those individuals.]

[E.] C.—[G.] E. (text unchanged)

.20-1 [Private Foundations] Charitable Organizations Affiliated with State Agencies.

A. A [private foundation] *charitable organization* affiliated with a State agency that is required to register with the Secretary of State as a charitable organization shall file with its registration statement and with each annual report an audit prepared in accordance with generally accepted auditing standards if it is required to do so under [Business Regulation Article,] §6-402(b)(7)(i)[, Annotated Code of Maryland] of the Act.

B. The auditor's opinion shall state whether the financial statements present fairly the financial position of the [private foundation] *charitable organization affiliated with a State agency* and the results of its operations and changes in fund balance for the year then ended, in conformity with generally accepted accounting principles.

C. The auditor shall give an agreed-upon procedures report describing the procedures performed and shall make a finding with respect to each of the following items, stating whether anything came to the attention of the auditor which would cause the auditor to have an adverse opinion as to each item:

(1)—(3) (text unchanged)

(4) Whether the [foundation] *organization* is in compliance with agreements between the [foundation] *organization* and its affiliated State agency, particularly as they relate to money due the State agency from the private foundation;

(5) Whether the [foundation's] *organization's* expenditures and activities are in compliance with the Internal Revenue Code, the Maryland Solicitations Act under Business Regulation Article, Title 6, Annotated Code of Maryland, and other federal, State, and local laws governing financial matters;

(6) Whether securities owned by the [foundation] *organization* are in existence and adequately accounted for;

(7)—(10) (text unchanged)

(11) Whether grants by the [foundation] *organization* have been authorized by the governing board and procedures have been established to ascertain whether the grants made have been expended for their intended purposes.

D. (text unchanged)

E. The auditor's written recommendations for corrective action shall be filed by the [foundation] *organization* with its affiliated State agency and with the Secretary of State.

F. (text unchanged)

JOHN C. WOBENSMITH
Secretary of State