



ANNE ARUNDEL COUNTY PUBLIC LAW LIBRARY

ANNE ARUNDEL COUNTY CIRCUIT COURT

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The Honorable John P. McDonough
Secretary of State of Maryland
Jeffrey Building
16 Francis Street
Annapolis, MD 21401

Dear Mr. Secretary:

The Division of State Documents has announced that it is discontinuing the print version of the Maryland Register. In its place, the Division will send to subscribers a pdf file of an issue of the Register via email. According to the notice accompanying this change, subscribers to this "e-Subscription," however, "may not make copies of the pdf for others, may not send the pdf to others, and may not engage in any commercial or other distribution of the pdf, in whole or in part."

Both the change in format and the restrictive license accompanying the subscription pose significant concerns for libraries, library users, and, indeed, for the preservation of history. In our view, government documents, especially those with legal significance, should be publicly and easily accessible, in order to provide actual notice of government operations. Such publications also must allow for permanent archiving to ensure the historic record. Finally, digital copies of government documents, as the U.S. Government Printing Office is learning, must be capable of permanency and authentication to ensure validity and integrity. Unfortunately, the e-Subscription of the Register, as currently planned, does not possess any of these attributes.

The proposed change also has more practical implications for libraries and subscribers. The overly-restrictive license, which contains many more limitations than do other legal research databases, will completely prohibit libraries from providing any copy of the Register to library users. The public will be barred from receiving the notice published in the Register, even though the copy exists in a library's email inbox. Similarly, in the law firm environment, associate attorneys will not be allowed to copy proposed regulations for supervising attorneys—at least unless both attorneys have subscriptions. Libraries and other subscribers will be unable to save copies in most situations because such copies presumably would be shared by others. Additionally, because pdf files the size of the Register are often fairly large, subscribers may have difficulty even receiving the attachment in their email systems.

Even if the license were changed to permit greater access, the nature of digital materials themselves makes preservation highly challenging. E-Subscribers who would like to archive the Register would be forced to depend on adequate system backups and operational hard drives, occurrences that, in practice, often do not happen. Files also might be downloaded and named in a haphazard fashion, making later access difficult. Most significantly, there is no guarantee that pdf files will be in use in the distant future. The same problem arises with CD and DVD copies of the Register: over the long-term, there is uncertainty regarding

the continuation of these media. Printing copies of the Register from laser printers is not a viable solution because toner ink is not always of a high quality and tends to fade with time.

The availability of the current free web version is not a substitute for the e-Subscription. The free version only includes six issues, even though the State Government Article provides that direct online search of the register should be made available to the public. (MD. CODE ANN., State Gov't §7-206.2 (b)(2) (2009)) With this limitation, a retrospective search for regulatory history is impossible. The web edition lacks proper pagination, as well, making legal citation out of the question.

Because there is reference in the State Government Article to printing (MD. CODE ANN., State Gov't § 7-211(a) (2009)) and mailing (MD. CODE ANN., State Gov't § 7-206(a)(1)(ii) (2009)) of the Register, we are uncertain how the Division can make the proposed change and comply with statutory directives. Additionally, regulations of the State Archives have special requirements for digital records. (COMAR 14.18.04) We trust that the proper measures are being undertaken with regard to the Register.

Other government entities that have chosen to create digital government document repositories, such as the U.S. Government Printing Office, have planned technical processes to ensure both permanency and authenticity. A government-hosted repository, with such advanced measures as file integrity checks, security certificates and plans for file-type or software migration or emulation, is the only way for the public to have some assurance of continued access. Unfortunately, no such system appears to be planned for the Register.

For all of these reasons, we are requesting that the Division confirm the proposed change with the Maryland Attorney General and provide an opportunity for the public to provide input. Additionally, we request that the Division convene a stakeholder committee, comprised of subscribers, attorneys, librarians and archivists, to exchange practical and technical information about publishing practices. Finally, we request that the decision to discontinue the Maryland Register in print be delayed until the preceding can be accomplished.

Respectfully,



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Cc: The Honorable Martin O'Malley, Governor of Maryland
The Honorable Douglas F. Gansler, Attorney General of Maryland
Gail S. Klakring, Acting Administrator, Division of State Documents
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