

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
Statutory Authority: 29 Delaware Code, Section 10409 (29 **Del.C.** §10409)

FINAL

ORDER

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

NATURE OF THE PROCEEDINGS:

The Office of Management and Budget (OMB) initiated proceedings to adopt the Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act. The OMB proceedings to adopt guidelines were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 29 **Del.C.** Ch. 104, §10409.

On October 1, 2015 (Volume 19, Issue 4), OMB published in the Delaware *Register of Regulations* its notice of proposed guidelines, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed guidelines be delivered to OMB by November 5, 2015 or be presented at a public hearing on October 20, 2015, after which time OMB would review information, factual evidence and public comment to the said proposed guidelines.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence." This is OMB's "conclusion" and "order" as required by 29 **Del.C.** §10118(b).

SUMMARY OF EVIDENCE

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

In accordance with Delaware Law, public notices regarding proposed Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act. were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Written and verbal comments were received on the proposed guidelines during the public comment period (October 1, 2015 through November 5, 2015). Individuals offering comments included:

- David Stevenson; Caesar Rodney Institute
- Bill Satterfield; Delmarva Poultry Institute
- Howard Fortunato; Delaware Home Builders Association
- James T. (Jay) Fuess; White Pine Energy Consulting LLC
- Combined comments from the following state agencies: DNREC, DeIDOT and DHSS.

Public comments and the OMB (Agency) responses are as follows:

David Stevenson; Caesar Rodney Institute

Comment: The definition of "small business" should be changed from "fewer than 50 persons", to "100 persons or less". This is consistent with definitions used elsewhere in business literature, and is consistent with the \$10,000,000 in annual revenue as the average revenue for small businesses is about \$100,000/year according to www.entrepreneur.com which equates to 100 employees.

Agency response: Thank you for your comment. The statute (29 **Del.C.** §10403 (4)) and authorizing legislation provide the definition of "Small Business" used in the guidelines. As such it is not within the scope of the proposed guidelines to expand the definition of "Small Business" beyond what is in the statute, and the guidelines will not be amended.

Comment: Under the section Regulatory Impact Statements the proposed guidelines discuss "Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation". Since this will be identified it should be easy to notify industry groups associated with the identification of regulations that will be impacted. For example, a regulation impacting construction companies might be sent to the Association of Building Contractors, and the Home Builders Association of Delaware. Any new regulation impacting small business should be published in newspapers and on social media, not just the Delaware *Register* as proposed.

Agency response: Thank you for your comment. The General Assembly has defined in statute procedures for the proper notification of the public of a proposed regulation and it is beyond the scope of these proposed guidelines to

mandate additional requirements over and above those in statute. However the following language has been added to encourage agencies to disseminate Regulatory Flexibility Analyses (RFA) and Regulatory Impact Statements (RIS) to stakeholders:

"State agencies are encouraged to widely disseminate proposed regulations and any accompanying RFAs and RIS's in an effort to reach impacted citizens and interest groups. Citizens and interest groups are encouraged to subscribe to receive proposed regulations from agencies by selecting "Subscription Services" on the Delaware *Register of Regulations* website and to visit the online Delaware Public Meeting calendar for notices of agency meetings and regulatory hearings. Proposed regulations are held open for public comment for a minimum of 30 days after a proposal is published in the *Register of Regulations*."

Comment: What is the appeals process to challenge a determination of cost or other aspect of a regulation? Such an appeals process has to be a low cost process or paid by the state as small businesses do not have the resources for an expensive appeal. We note legal challenges we have been involved in with state regulations have cost \$20,000 to \$40,000 with no reimbursement if we win.

Agency response: Thank you for your comment. The General Assembly has defined the appeals process in 29 **Del.C.** §10141. Additional appeals provisions over and above current statutory provisions are beyond the scope of the proposed guidelines.

Bill Satterfield; Delmarva Poultry Institute

Comment: Ensuring that small business owners and operators know what statements state agencies, boards, and commissions have prepared, we believe there are several outreach methods that should be required.

- They should be posted on the so-called social media such as Facebook and Twitter in a fashion that would be easy for people to see and make comments.
- They should be posted on the submitting agency's website since not all business owners use Facebook or Twitter.
- They should be shared with persons on the agency's e-mail communication lists. Some agency communication officers send periodic e-mails to persons on their lists. It would be helpful if the agency Public Information Officer sent to its list the information on the costs of new regulations.
- We agree with the Caesar Rodney Institute's comments that comments should be shared directly with industry trade groups or other organizations working for the affected individuals and small businesses. For example, a regulation impacting the chicken industry or farming in general could be sent to Delmarva Poultry Industry, Inc. and the Delaware Farm Bureau.

Agency response: Thank you for your comment. Please refer to the response to the second comment from David Stevenson.

Comment: This may be beyond the scope of the new law and the guidelines, but it could be helpful to have the agency list what groups it worked with to develop the regulations and cost estimates. This would put the agencies on notice to reach out to interested groups/individuals early during regulation development rather than springing surprises on persons and groups who have not been consulted beforehand. This could help guide the agencies in the development of the RFA and RIS.

Agency response: Thank you for your comment. It is beyond the scope of the proposed guidelines to mandate an agency report each entity consulted in developing the regulation and RFA/RIA. However, the following guidance has been added as optional to the guidelines:

[(Optional) Agencies are encouraged to list trade or industry groups, small businesses or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS to them upon completion

Comment: We agree with the Caesar Rodney Institute that the definition of "small business" should be changed from "fewer than 50 persons" to "100 persons or less". This is consistent with definitions used elsewhere in business literature.

Agency response: Thank you for your comment. Please refer to the first response to David Stevenson, Caesar Rodney Institute.

Comment: We also agree with the Caesar Rodney Institute's issues with seeking to know the appeals process to challenge a determination of cost or other aspect of a regulation. Such an appeals process has to be a low cost process or paid by the state as small businesses and individuals do not have the resources for an expensive appeal.

Agency response: Agency response: Thank you for your comment. Please refer to the third response to David Stevenson, Caesar Rodney Institute.

Howard Fortunato; Delaware Home Builders Association

Comment: The proposed definition of small business as those "enterprises engaged in manufacturing, agricultural production and personal service" is quite narrow. We believe that the process of developing land, constructing and selling new homes, remodeling activity and general construction should be explicitly recognized within this definition or at least considered as manufacturing. The process of construction, and developing and building homes is heavily regulated by State agencies and many homebuilders are small businesses.

Why not include "construction, construction services, engineering, professional (accounting, legal services, etc.), retail," etc.? What is meant by "personal service"?

Agency response: Thank you for your comment. While we have no reason to believe the General Assembly meant to exclude the businesses you mention, the definition of "Small Business" is established in the authorizing legislation and in Delaware statute. We have added guidance to the definition of "personal service", based on language found in 8 **Del.C. §603** as follows that we believe addresses your concern:

A "personal service" is generally construed to mean the rendering of a service to the public, whether by an individual or a legal entity, that requires a license or other legal authorization.

Comment: The definition of small business limits the firm's gross receipts to less than \$10 million dollars. Where did this figure come from? As an example, a homebuilding firm constructing homes averaging sales price of \$300,000 would yield 33 homes. Many small firms will sell more than that especially as the housing market improves. And not to mention the gross receipts by remodelers, construction services, engineering and professional services. We think a higher threshold, say \$40 million dollars, would be reasonable.

Agency response: Thank you for your comment. Please refer to the first response to David Stevenson, Caesar Rodney Institute.

Comment: Generally, the draft guidelines for the Regulatory Flexibility Analysis and the Regulatory Impact Statements are very good. However, since regulations can apparently be self-exempted by State Agencies from preparing these statements, there is no process noted to allow or disallow the claim of exemption. Is there any process that someone reviews and approves or disapproves of the exemption claim?

Agency response: Thank you for your comment. The assertion of an exemption claim as permitted under the statute is made by the agency proposing the regulation. The proposed regulations -- including any exemption claim specified on the standard form for an RFA/RIS -- would be open for public comment for a minimum of 30 days after a proposal is published. Any public comments on the exemption claim would be reviewed by the agency. Ultimately approval or disapproval rests with the agency head who issues any final findings and regulatory orders.

Comment: Following #4 above, we think there should be a public hearing process for agencies that claim their regulations are exempt. Such public hearings should be noted in a more user friendly format than the one used for the October 20, 2015 public hearing (ie the October State *Register of Regulations*) which we understand had only one member of the public in attendance. Small businesses do not regularly scour this register; and instead to benefit small business as is the scope and intent of the legislation, the notice for hearing should be circulated to organizations of small businesses likely to be impacted including Chambers of Commerce, business groups and trade associations such as us, Realtors, Engineers, Architects, etc. It should also be published using social media outlets.

Agency response: Thank you for your comments. Please refer to the above response regarding the 30 day comment period and the response to the second comment from David Stevenson.

James T. (Jay) Fuess; White Pine Energy Consulting LLC

Comment: I support Gerald Hocker's Senate Bills 113 and 120. We need less regulation not more.

Agency response: Thank you for your comments. The proposed guidelines are intended only to guide the preparation of RFAs and RIAs and do not address the volume of regulations.

Joint comments from Kara Coates (DNREC), Nicole Majeski (DeIDOT), and Deborah Gottschalk (DHSS)

Comment: On p. 290 of the *Register* publication, under "Guidelines", under the section of "Introduction", we suggest the addition of the following sentences at the end of the first paragraph:

For agencies proposing amendments to existing regulation, the promulgating agency shall complete the RFA and RIS for the proposed amended portion of the existing regulation only and not for the entire existing regulation. All proposed regulations submitted on or before December 31, 2015 to the Registrar for initial publication do not need to comply with these regulations.

Agency response: Thank you for your comments. The Introductions on page 290 has been amended to read as follows:

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 **Del.C.** Ch. 104). For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

Comment: On p. 297 of the *Register* publication, under "Regulatory Flexibility Analysis and Impact Statement Form for Proposed New and Amended Regulations Affecting Small Businesses or Individuals, under the section of "Introduction", we suggest the addition of the following sentence at the end of the first paragraph of that section:

All proposed regulations submitted on or before December 31, 2015 to the Registrar for initial publication do not need to comply with these regulations.

Agency response: Thank you for your comments. The Introductions on page 297 has been amended to read as follows:

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 **Del.C.** Ch. 104).

Comment: On p 297 of the *Register* publication, under "Regulatory Flexibility Analysis and Impact Statement Form for Proposed New and Amended Regulations Affecting Small Businesses or Individuals, under the section of "Introduction", we suggest the addition of the following sentence at the end of the last paragraph of that section:

For agencies proposing amendments to existing regulation, the promulgating agency shall complete the RFA and RIS for the proposed amended portion of the existing regulation only, and not for the entire existing regulation.

Agency response: Thank you for your comment. The recommended sentence has been added to the paragraph.

Comment: The entire body of the proposed regulations should be consistent with regards to the use of the terms "amendment" and "revision" throughout the document - and it is not. This should be corrected prior to finalization of this promulgation:

Agency response: Thank you for your comment. The final version will be corrected.

Comment: On p 292 of the *Register* publication, under the section of "Regulatory Flexibility Analysis (RFA)", we believe this section of the proposed regulation should specifically state who determines that a proposed regulation is "substantially likely to impose additional costs or burdens....". Thus we suggest the following additional language be inserted into the first sentence of the first paragraph of that section as follows: (added language in italics).

The RFA is required when the promulgating agency's Cabinet Secretary or applicable agency head, in consultation with the agency's Deputy Attorney General has determined that a proposed regulation is substantially likely to impose additional costs or burdens on small businesses and individual regulated parties.

Agency response: Thank you for your comment. Though we believe the recommendation may be best practice for agencies to follow we do not agree that it should be mandatory. The paragraph has been amended to include that point.

FINDINGS OF FACT:

The Department finds that the proposed guidelines as set forth in the October 2015 *Register of Regulations* with the insubstantial changes noted above should be adopted. While the Office of Management and Budget appreciates the other suggestions brought forth, it is felt the existing content of the guidelines as published in the October 2015 *Register of Regulations* with the noted changes fulfills the requirements of the authorizing legislation.

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the Guidelines be adopted. The guidelines are applicable for all new and amended regulations submitted to the Registrar for initial publication on or after January 1, 2016.

Ann Shepard Visalli, Director
Office of Management and Budget

Guidelines for Agency Regulatory Statements Required under the Regulatory Flexibility Act

Regulatory Flexibility Analysis and Impact Statement Guidelines for State Agencies, Boards, and Commissions

For Regulations Affecting Small Businesses or Individuals per the Regulatory Transparency and Accountability Acts of 2015

Introduction

Beginning January 1, 2016, agencies [proposing submitting proposed] new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 Del.C. Ch. 104). [For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.]

The Acts require the Office of Management and Budget (OMB) to adopt and publish guidelines to assist state agencies in preparing the statements required by the Acts. These guidelines have been prepared by OMB, the Department of State, and the Registrar of Regulations in consultation with the Department of Justice and a variety of regulatory agencies that issue state regulations.

The guidelines are intended to clarify the requirements contained in the Acts as well as provide state agencies with a specific form and general format for preparing and publishing the RFA and RIS. The form is also intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations. [State agencies are encouraged to widely disseminate proposed regulations and any accompanying RFAs and RIS's in an effort to reach impacted citizens and interest groups. Citizens and interest groups are encouraged to subscribe to receive proposed regulations from agencies by selecting "Subscription Services" on the Delaware Register of Regulations website and to visit the online Delaware Public Meeting calendar for notices of agency meetings and regulatory hearings. Proposed regulations are held open for public comment for a minimum of 30 days after a proposal is published in the Register of Regulations.]

Definitions

"Small business" means any not-for-profit enterprise, sheltered workshop, or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

To meet the definition of "small business" there are three components:

- 1) A not for profit enterprise, sheltered workshop, or business enterprise engaged in manufacturing, agricultural production, or personal service regardless of form of organization

AND

- 2) Employs fewer than 50 persons
Has gross receipts of less than \$10M

AND

- 3) Is not owned, operated, or controlled by another business enterprise (note: the owner controller entity is not limited by size or receipts)

[A "personal service" is generally construed to mean the rendering of a service to the public, whether by an individual or a legal entity, that requires a license or other legal authorization.]

"Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

Exemptions

All proposed regulations, whether new or amended, must have an accompanying RFA and RIS to be published by the Registrar of Regulations as part of the notice of proposal, unless exempted. The General Assembly has provided exemptions from the requirement to prepare an RFA and RIS for certain types of regulations. If the agency, board, or commission is claiming an exemption, please still include the RFA and RIS form with the proposed regulation. To claim an exemption, complete the beginning contact information, and then check the appropriate reason why the exemption applies. If the agency, board, or commission is claiming an exemption, the remainder of the RFA and RIS form is not required to be completed.

Under the statute, there are two categories of exemptions:

- : Exemption A: "This proposed regulation is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to small businesses or individuals at all."
- : Exemption B: "The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation."

If the agency, board, or commission is claiming an exemption, then choose either Exemption A or Exemption B.

- : Exemption A does not require further clarification.
- : Exemption B requires further clarification.

It is possible for a proposed regulation to meet the conditions of both Exemption A and Exemption B. However, agencies are encouraged to check only A or B, not both.

() Exemption A: This proposed regulation is not subject to Chapter 104, Title 29 of the Delaware Code, because it will not apply to small businesses or individuals at all.

Discussion: If Exemption A is checked, then the agency is asserting that the proposed regulation does not apply to any persons that meet the definition of "small business" or "individuals". For example, a proposed regulation that applies to governmental entities only, and does not impact any small businesses or individuals would not be subject to the RFA or RIS section of the Delaware Code.

() Exemption B: The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

Discussion: If Exemption B is checked, the agency must also further clarify the nature of the proposed regulation by choosing one exemption that best fits from the list of subgroup options that follows (B1, B2, B3, B4, or B5):

() B1. This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:

Discussion: If the B1 exemption is selected, the agency must explain how it arrived at the conclusion that the regulation is not likely to impose additional costs or burdens upon small businesses or individuals.

() B2. This is an emergency regulation pursuant to 29 Del.C. §10119.

Discussion: Emergency regulations are exempt, even if they affect small businesses or individuals. Such regulations must qualify as emergency regulations under the Administrative Procedures Act.

() B3. This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, 29 Del.C. §10113(b). Choose which reason:

- : () B3a. Descriptions of agency organization, operations and procedures for obtaining information
- : () B3b. Rules of practice and procedure used by the agency
- : () B3c. Delegations of authority to subordinates
- : () B3d. Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- : () B3e. Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
- : () B3f. Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

Discussion: Certain regulations are exempt from the procedural requirements of the Administrative Procedures Act pursuant to 29 Del.C. §10113(b). An agency, board, or commission may determine that one or more of the exemptions set forth above apply. If the B3 exemption is chosen, the agency, board, or commission must select the statutory reason (B3a, B3b, B3c, etc.).

() B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to: _____

Discussion: Regulations dealing solely with standards for the licensing of professionals are exempt. Standards and procedures for licensing and qualifications for various professions and occupations are found throughout the Delaware Code, and many are found in Title 24. It is important to note, that the B4 exemption may not be claimed if a proposed regulation would affect a business in ways other than standards for professional licensing qualification or certification. In such case, the agency, board, or commission would be required to prepare an RFA and RIS specific to how the aspects of the regulation unrelated to standards of conduct and qualifications of individuals impacts such small businesses.

() B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* (If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL here: _____).

Discussion: Where a Federal RFA has been published related to a state regulation required by federal law, the agency, board, or commission may select this exemption, and no state RFA or RIS is required. Include the copy of the Federal RFA or provide a URL, for the purpose of informing the public and businesses as to where to find more information.

Where no Federal RFA has been published related to a regulation required by Federal law, and where considering whether the B5 exemption may be used, it is important to distinguish between federally required *specific* regulation(s) or, a federal directive, that *may be eligible* for this exemption, versus general regulatory authority which *may not be eligible* for this exemption.

In the case of federally required specific regulations, agencies may receive guidance from their federal counterparts that a specific regulation or amendment to an existing regulation is required to be promulgated by the state agency, board, or commission to remain in compliance with the requirements of the federal program. **The agency, board, or commission may be given flexibility to alter the substance of the proposed regulation.** These regulations or amendments are exempt from the requirements of the RFA and RIS. If claiming this exemption, an agency, board, or commission should discuss and cite (if applicable) the specific federal requirement prompting the promulgation of the state regulation or amendment, and why this exemption should apply.

Other regulations may be promulgated pursuant to general regulatory authority authorized by the federal government, and promulgation of regulation by the state agency, board or commission is not mandatory. **State agencies, boards, and commissions are given substantial flexibility to compose and promulgate these regulations.** These regulations and any subsequent amendments are subject to the requirements of the RIS and RFA.

Regulatory Flexibility Analysis (RFA)

The RFA is intended to show the public how the state agency, board, or commission made its determination that a regulation might impact small businesses or individuals. The RFA is required when **[the promulgating agency has determined that]** a proposed regulation is **substantially likely to impose additional costs or burdens** on small businesses and individual regulated parties. **[A best practice for agencies, boards, and commissions in determining whether a proposed regulation would impact small businesses or individuals, is to work with agency executive leadership and to consult with legal counsel when necessary.]**

Where such costs or burdens are anticipated, other alternatives should be considered, in terms of whether they are lawful, applicable, feasible, and desirable. The methods to consider are set forth below. In the response, explain the rationale and conclusions after the agency, board, or commission has considered each of these methods. In addition, address each method individually. It is important to consider methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

• Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. _____

2. _____

- 3. _____

- 4. _____

- 5. _____

- 6. _____

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above.

Regulatory Impact Statement[s]

Please answer the following questions as completely as possible.

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below regulatory impact statement.

Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

- : Statutory Citation:

- : URL:

- : Subject Matter Statutory Citation:

- : URL:

Discussion: If referencing specific citations in Delaware Code, include the citation and provide a URL to the relevant section or chapter of the Code.

- : Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

Discussion: Include rationale for the need and purpose for the regulation. The response can include text from the preamble of the proposed regulation.

- : What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

Discussion: Explain any anticipated benefits, even if they are qualitative rather than quantitative (public health, public safety, security, etc.).

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

Discussion: “Types of individuals and or small businesses” means explaining which types of businesses (e.g. dry cleaners, salons, construction companies, etc.) or individuals. Estimate the number of businesses or individuals if this is available (e.g., there are over 3500 licensed food establishments operating in the State of Delaware, therefore if a regulation that affects all food establishments is proposed, you can estimate that 3500 businesses are affected by such a change).

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation:

Discussion: When estimating the cost of compliance for individuals and/or small businesses, absolute costs are not required; a **general estimate** or a **range of costs** will suffice. The intent of this question is not to define every possible cost, but rather to generally assess the types of costs, time, and materials that might be imposed on small businesses or individuals as a result of the implementation of the regulation. Questions the agency, board, or commission should ask when estimating the cost of compliance include:

- Does the regulation require **capital costs** (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?
- Does the regulation require additional **recurring** costs?
- Does the regulation require **paperwork** of any kind for the small business or individual? If so, is it ongoing reporting or one time? How long will the paperwork take (a general range of time)?
- Does the regulation require new or changed **record keeping** that will create new processes or change processes already in place for small businesses or individuals?
- Will the class of small businesses or individuals need to **hire an outside professional** to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)? If an outside professional is needed, **how many hours** will they be needed to assist? Will retaining or hiring the outside professional be on an **ongoing basis**?
- Does the regulation require small businesses to purchase goods or services that are **unusual or not commercially reasonable**?
- Does the regulation require that small businesses exceed commercially reasonable **data storage and transmission standards**?

There are two options for completing the cost estimate section of the RIS:

Cost Estimate Option 1: free-text response.

The agency, board, or commission may choose to address this question via a free-text response. At a minimum, this response shall address the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation.

Cost Estimate Option 2: series of questions to guide the response along with a free-text response.

Cost Estimate Option 2:

- Use the following questions to guide the response. The free-text section is also required when electing this option (see #17 in the chart below).

	Cost Estimate Option 2	Yes	No	Unknown
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?			
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?			
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?			

4	Does this regulation follow industry standards and best practices?			
5	Are there potential costs in not establishing these standards?			
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?			
7	Does the regulation require additional recurring costs on small businesses or individuals?			
8	Does the regulation impose additional administrative burden for a small business or individual?			
8a	• If answering yes to #8, is it ongoing reporting or one time? (Choose answer)	Ongoing	One Time	Unknown
8b	• If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation?	Large Amount	Small Amount	Unknown
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?			
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?			
10a	• If answering yes to #10, estimate how many hours an outside professional may be needed to assist: _____	---	---	
10b	• If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?			
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?			
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?			
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?			
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?			
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?			
16	Does the regulation require small businesses to [obtain] additional education to keep up to date with regulatory requirements?			

17	<p>Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation:</p> <hr/> <hr/> <hr/> <hr/> <hr/>			
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- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation.

Discussion: This question is similar to the Regulatory Flexibility Analysis, where the agency, board, or commission explained each alternative method and what the conclusions were after considering each method.

- Optional – estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

Discussion: This question is optional. If the agency, board, or commission chooses to estimate the amount of time it spent on preparing this statement, please include that information here.

- [(Optional) Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

Discussion: This question is optional. The agency, board, or commission is encouraged to list stakeholders who were consulted in preparing this statement here.]

Regulatory Flexibility Analysis and Impact Statement Form
For Proposed New and Amended Regulations Affecting Small Businesses or Individuals

Introduction

Beginning January 1, 2016[,], agencies [~~proposing~~ **submitting proposed**] new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 Del.C. Ch. 104).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or [~~revised~~ **amended**] regulations that are substantially likely to impose additional costs or burdens on small businesses¹ or individuals² must submit a Regulatory Flexibility Analysis (RFA) **and** a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. **[For agencies proposing**

1. "Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.]

What is a Regulatory Flexibility Analysis (RFA)?

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation’s purpose, while minimizing the impact upon individuals and/or small businesses.

What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.

Date _____

Agency _____

Division/Office _____

Contact Name _____

Contact Email (or mailing address for comments) _____

Exemptions

Exemption A: This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.

Exemption B: The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

B1. This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:

B2. This is an emergency regulation pursuant to 29 Del.C. §10119.

B3. This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, 29 Del.C. §10113(b). Choose which reason:

- B3a. Descriptions of agency organization, operations and procedures for obtaining information
- B3b. Rules of practice and procedure used by the agency
- B3c. Delegations of authority to subordinates
- B3d. Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- B3e. Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations

2. "Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

- () B3f. Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings
- () B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

- () B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. (If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):

Regulatory Flexibility Analysis

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1.

2.

3.

4.

5.

6.

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain

why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

Regulatory Impact Statement[s]

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

: Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.

: Statutory Citation:

: URL:

: Subject Matter Statutory Citation:

: URL:

: Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

: What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

: Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

: Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

Cost Estimate Option 1:

	<u>Cost Estimate Option 2</u>	<u>Yes</u>	<u>No</u>	<u>Unknown</u>
1	<u>Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?</u>			
2	<u>If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?</u>			
3	<u>Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?</u>			
4	<u>Does this regulation follow industry standards and best practices?</u>			
5	<u>Are there potential costs in not establishing these standards?</u>			
6	<u>Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?</u>			
7	<u>Does the regulation require additional recurring costs on small businesses or individuals?</u>			
8	<u>Does the regulation impose additional administrative burden for a small business or individual?</u>			
8a	<u>: If answering yes to #8, is it ongoing reporting or one time? (Choose answer)</u>	<u>Ongoing</u>	<u>One Time</u>	<u>Unknown</u>
8b	<u>: If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation?</u>	<u>Large Amount</u>	<u>Small Amount</u>	<u>Unknown</u>
9	<u>Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?</u>			
10	<u>Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?</u>			
10a	<u>: If answering yes to #10, estimate how many hours an outside professional may be needed to assist</u> <u>_____</u>	<u>----</u>	<u>----</u>	
10b	<u>: If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?</u>			
11	<u>Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?</u>			
12	<u>Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?</u>			
13	<u>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</u>			

14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?			
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?			
16	Does the regulation require small businesses to [obtain] additional education to keep up to date with regulatory requirements?			
17	Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation: <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

- (Optional) Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

- **[(Optional) Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:**
