

Title 29
State Government
General Regulations for State Agencies
CHAPTER 104. REGULATORY FLEXIBILITY ACT

§ 10401 Short title.

This chapter shall be known and may be cited as the "Regulatory Flexibility Act."

[64 Del. Laws, c. 51, § 1.](#);

§ 10402 Declaration of policy.

(a) The General Assembly finds and declares that:

(1) Numerous instances of obtaining compliance with state regulatory and reporting requirements impose inequitable demands on individuals of limited means and on small businesses.

(2) Regulatory efforts to protect the state's health, safety and economic welfare have imposed burdensome legal, accounting and consulting costs upon individuals, organizations and businesses of limited resources and are adversely affecting competition in that sphere of the marketplace.

(3) The scope and volume of regulations already in effect have created high entry barriers in many small industries and has discouraged potential entrepreneurs from introducing beneficial products and processes.

(4) The practice of treating all regulated individuals, organizations and businesses in uniform manner for purposes of regulatory and reporting requirements has led to inefficient use of regulatory agency resources, enormous enforcement problems and, in some cases, action inconsistent with the legislative intent of health, safety and economic welfare legislation.

(5) Government information collection has not adequately weighed the privacy rights of individuals and organizations against the government's need for information because the design of the regulatory process has encouraged regulators to treat information as a free good.

(6) The deep public dissatisfaction with the regulatory process has stemmed in large part from a public perception of burdensome regulations failing to correct key state problems.

(b) It is the purpose of this chapter to establish as a principle of regulatory policy that regulatory and reporting requirements fit the scale of those being regulated, that fewer, simpler requirements be made of individuals and small businesses and that to achieve these ends agencies be empowered and encouraged to issue regulations which apply differently to individuals and small businesses than to larger entities.

[64 Del. Laws, c. 51, § 1.](#);

§ 10403 Definitions [For application of this section, see 80 Del. Laws, c. 112, 7; and 80 Del. Laws, c. 113, 8]

As used in this chapter:

(1) "Agency" means any authority, department, instrumentality, commission, offices, board or other unit of state government authorized by law to make regulations or issue licenses. Agency does not include the General Assembly, courts, municipalities, counties or other political subdivisions, joint state-federal, interstate or inter-municipal authorities or their agencies.

(2) "Agency regulatory statement" means any analysis or statement required to be submitted for publication by an agency to the Registrar of Regulations in accordance with this chapter.

(3) "Executive branch agency" means, for purposes of this chapter only, the Department of Agriculture, Department of Correction, Delaware National Guard, Delaware State Housing Authority, Department of Education, Department of Finance, Department of Health and Social Services, Department of Labor, Office of Management and Budget, Department of Natural Resources and Environmental Control, Department of Safety and Homeland Security, Department of Services for Children, Youth and Their Families, Department of State, Department of Technology and Information, Department of Human Resources and Department of Transportation.

(4) "Individual" means any natural person; provided, however, that the term "individual" shall not include any natural person who is affected by a regulation in such person's capacity as an officer, director or employee of an organization which is not a small business.

(5) "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.

[64 Del. Laws, c. 51, § 1](#); [80 Del. Laws, c. 111, § 1](#); [80 Del. Laws, c. 112, § 1](#); [80 Del. Laws, c. 113, § 1](#); [81 Del. Laws, c. 49, § 3](#); [81 Del. Laws, c. 66, § 62](#);

§ 10404 Consideration of possible exemptions [For application of the repeal of this section, see 80 Del. Laws, c. 112, § 7; and 80 Del. Laws, c. 113, § 8]

[64 Del. Laws, c. 51, § 1](#); [repealed by 80 Del. Laws, c. 112, § 2, eff. July 22, 2015](#);

§ 10404A Regulatory impact statements [For application of this section, see 80 Del. Laws, c. 112, § 7]

(a) Any agency that proposes to adopt or amend any regulation under the Administrative Procedures Act, § 10101 et seq. of this title, that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall submit a regulatory impact statement to be published by the

Registrar of Regulations as part of the notice requirements set forth in § 10115 of this title. Each regulatory impact statement shall include:

- (1) A specific reference to the statutory provision which allows for the adoption or amendment of the rule or regulation and the statutory provisions which address the subject matter of the rule or regulation;
- (2) A description of the purpose of the regulation;
- (3) An identification of the individuals and/or small businesses that would be subject to compliance under the regulation;
- (4) A good-faith estimate by the agency 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; and
- (5) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, to the extent such methods are not otherwise described herein.

(b) The following regulations are exempt from this section:

- (1) Regulations that are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses; provided, however, that any agency making such a determination shall include a statement to that effect as part of the notice requirements set forth in § 10115 of this title;
- (2) Emergency regulations adopted pursuant to § 10119 of this title;
- (3) Regulations that are exempt from the procedural requirements of the Administrative Procedures Act, § 10101 et seq. of this title, pursuant to § 10113(b) of this title;
- (4) Regulations that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals;
- (5) Regulations that are required by federal law and have already complied with the federal Regulatory Flexibility Act [5 U.S.C. § 601 et seq.]; and
- (6) Such other regulations as may be determined from time to time in accordance with this chapter.

[80 Del. Laws, c. 112, § 3.](#);

§ 10404B Regulatory flexibility analyses [For application of this section, see 80 Del. Laws, c. 113, § 8]

(a) Any agency that proposes to adopt or amend any regulation under the Administrative Procedures Act, § 10101 et seq. of this title, that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall submit a regulatory flexibility analysis to be published by the Registrar of Regulations as part of the notice requirements set forth in § 10115 of this title. In connection herewith, agencies 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.
- (b) The following regulations are exempt from this section:
- (1) Regulations that are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses; provided, however, that any agency making such a determination shall include a statement to that effect as part of the notice requirements set forth in § 10115 of this title;
 - (2) Emergency regulations adopted pursuant to § 10119 of this title;
 - (3) Regulations that are exempt from the procedural requirements of the Administrative Procedures Act, § 10101 et seq. of this title, pursuant to § 10113(b) of this title;
 - (4) Regulations that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals;
 - (5) Regulations that are required by federal law and have already complied with the federal Regulatory Flexibility Act [5 U.S.C. § 601 et seq.]; and
 - (6) Such other regulations as may be determined from time to time in accordance with this chapter.

[80 Del. Laws, c. 113, § 3.](#);

§ 10405 Transmission of notice of proposed regulation to General Assembly standing committees; comments [For application of this section, see 80 Del. Laws, c. 112, § 7]

Upon receipt of a notice from an agency pursuant to § 10115 of this title that includes an agency regulatory statement, the Registrar of Regulations shall forthwith transmit such notice and agency regulatory statement to, and obtain the comments, if any, of, the appropriate standing committees of the General Assembly with oversight responsibilities for legislation affecting that agency with respect to

the potential impact of such proposed regulation upon individuals and/or small businesses. Nothing in this section shall require any standing committee to meet, to consider any notice hereunder, or to provide any comments in connection herewith.

[64 Del. Laws, c. 51, § 1](#); [80 Del. Laws, c. 112, § 4](#);

§ 10406 Application of exemption.

Whenever the results of such consideration by an agency indicate that it is lawful, desirable and feasible to exempt individuals and/or small businesses or to set lesser standards of compliance by individuals and/or small businesses, the agency shall issue a rule or regulation containing an appropriate exemption for such individual and/or small businesses or setting lesser standards for compliance by individuals and/or small businesses.

[64 Del. Laws, c. 51, § 1](#);

§ 10407 Review of regulations of executive branch agencies.

In accordance with the provisions of this section, each executive branch agency shall conduct a periodic review of regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The review process hereunder shall commence no later than January 1, 2016, and shall recommence on a recurring basis every 4 years. Reviews by executive branch agencies hereunder shall be conducted in accordance with the following procedures:

(1) Each executive branch agency shall be assigned a 3-month regulatory review period by the Office of the Governor or any executive branch agency designated thereby. During such regulatory review period, each executive branch agency shall solicit public input, and shall conduct its own in-depth internal review, to identify regulations promulgated by such agency 4 years ago or more for possible modification or elimination.

(2) During its regulatory review period, each executive branch agency:

a. Shall conduct at least 1 public hearing in each county, notice of which shall be provided in accordance with the Administrative Procedures Act, § 10101 et seq. of this title ("APA");

b. Shall accept recommendations and input, in person, by mail, by fax, and via an online submission form; and

c. Shall adopt procedures to allow for the submission of anonymous recommendations and input.

(3) At the conclusion of its regulatory review period, each executive branch agency shall evaluate the comments, proposals, and recommendations received or generated, and shall submit any revisions (i.e., regulations to be eliminated or modified) to the Register of Regulations for publication in accordance with the APA.

(4) No later than 12 months from the commencement of any regulatory review process described herein, the Office of the Governor, or any executive branch agency designated thereby, shall submit a report to General Assembly detailing the regulations eliminated or modified as a result of such process.

(5) Notwithstanding the foregoing, each executive branch agency shall be required to consider only those regulations adopted pursuant to the APA 4 years ago or more for which it has direct promulgating authority. In connection herewith, no executive branch agency shall be required to consider regulations administered by an executive branch agency but require adoption or amendment by a board, commission, or other agency, including but not limited to regulations administered by the Department of State's Division of Professional Regulation that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals. If an executive branch agency does not have any regulations adopted pursuant to the APA 4 years ago or more for which it has direct promulgating authority, it shall not be subject to the procedures described in this section.

(6) In connection herewith, the Office of the Governor, or any executive branch agency designated thereby, may promulgate guidelines to assist executive branch agencies in implementing the requirements of this section. Such guidelines shall be subject to the APA, and may include but shall not be limited to:

- a. Coordinating the regulatory review period of each executive branch agency to maximize public input, and to minimize the administrative burden imposed upon such agency and the Register of Regulations to the extent possible;
- b. Requirements relating to the timing and content of any notice to be published by each executive branch agency in connection with its regulatory review period; and
- c. A description of procedures to allow for the submission of anonymous recommendations and input.

[64 Del. Laws, c. 51, § 1](#); [80 Del. Laws, c. 111, § 2](#);

§ 10408 Interagency cooperation.

Every agency of state government is authorized and required to furnish upon request such advice and assistance to any other agency considering exemptions pursuant to this chapter.

[64 Del. Laws, c. 51, § 1](#);

§ 10409 Guidelines [For application of this section, see 80 Del. Laws, c. 112, § 7; and 80 Del. Laws, c. 113, § 8]

(a) No later than November 15, 2015, the Registrar of Regulations, the Office of Management and Budget (OMB), and the Department of State, in consultation with such regulatory agencies, boards, and commissions as may be necessary or desirable, shall submit for final publication guidelines to assist state agencies in preparing the agency regulatory statements required pursuant to this chapter. The adoption

of such guidelines shall be subject to the Administrative Procedures Act, § 10101 et seq. of this title, with the OMB serving as the adopting agency.

(b) The guidelines shall include, but are not limited to:

(1) Determining when, and under what circumstances, a proposed regulation is substantially likely to impose additional costs or burdens on individuals and/or small businesses;

(2) Identifying and evaluating alternative methods of achieving the purpose of a proposed regulation;

(3) Determining the potential cost of complying with a proposed regulation, including projected reporting, recordkeeping, and other administrative costs; and

(4) Evaluating and adopting such additional exemptions from the requirements applicable to agency regulatory statements as may be necessary or desirable.

[80 Del. Laws, c. 112, § 5](#); [80 Del. Laws, c. 113, § 4](#);