

# **Regulatory Flexibility Analysis and Impact Statement Form**

## **For Proposed New and Amended Regulations Affecting Small Businesses or Individuals**

### **Introduction**

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**).

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 amended regulations that are substantially likely to impose additional costs or burdens on small businesses<sup>1</sup> or individuals<sup>2</sup> 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 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.

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<sup>1</sup>"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.

<sup>2</sup>"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.

*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) \_\_\_\_\_

Regulation # \_\_\_\_\_ Title \_\_\_\_\_

## 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

*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):*

*End of Exemption Section*

**Technical Support Document  
For the Proposed Amendments to 7 DE Admin. Code 1124**

**Updating References Incorporated in Section 36.0  
Vapor Emission Control at Gasoline Dispensing Facilities**

**Division of Air Quality  
Department of Natural Resources and Environmental Control  
Delaware**



**October 2020**

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## Acronym List

|       |       |   |
|-------|-------|---|
| AST   | ----- | Aboveground storage tank                                  |
| CAA   | ----- | Clean Air Act Amendments of 1990                          |
| CARB  | ----- | California Air Resources Board                            |
| CF    | ----- | Compatibility factor                                      |
| CPM   | ----- | Continuous pressure monitoring                            |
| DNREC | ----- | Department of Natural Resources and Environmental Control |
| EO    | ----- | Executive order   |
| EVR   | ----- | Enhanced vapor recovery                                   |
| GDF   | ----- | Gasoline dispensing facility                              |
| GPM   | ----- | Gallons per month   |
| NAAQS | ----- | National Ambient Air Quality Standards                    |
| OBD   | ----- | Onboard diagnostics                                       |
| ORVR  | ----- | On-board refueling vapor recovery                         |
| PEI   | ----- | Petroleum Equipment Institute                             |
| P/V   | ----- | Pressure/Vacuum (vent valve)                              |
| SIP   | ----- | State Implementation Plan                                 |
| TPY   | ----- | Tons per year   |
| TSD   | ----- | Technical support document                                |
| UST   | ----- | Underground storage tank                                  |
| VOC   | ----- | Volatile organic compound                                 |
| VRS   | ----- | Vapor recovery system                                     |
| OTR   | ----- | Ozone Transport Region                                    |

## 1. Introduction and Background

Since the early 1990s, the ambient air quality in Delaware, in particular in New Castle County, has been in nonattainment for the health-based national ambient air quality standard (NAAQS) for the pollutant ground-level ozone (O<sub>3</sub>). Because gasoline vapors contain mainly volatile organic compounds (VOC) that contribute to the formation of ground-level ozone in the ambient air, Section 182(b)(3) of the Clean Air Act Amendments of 1990 (CAA) requires states with moderate and higher ozone nonattainment areas, including Delaware,<sup>1</sup> to revise their State Implementation Plans (SIP) to require “owners or operators of gasoline dispensing systems to install and operate.....a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.”

To comply with the above CAA requirement, Delaware has required, since 1993, gasoline dispensing facilities (GDF) in the state to install Stage II vapor recovery systems (VRS) to control gasoline vapor emissions from motor vehicles during refueling processes. Stage II VRS controls gasoline vapor emissions by collecting gasoline vapors displaced from vehicle’s gasoline tank during the transfer of gasoline from GDF to vehicle’s tanks, and returning the collected vapors to GDF’s underground storage tanks (UST) or aboveground storage tanks (AST). Delaware has also required, since 1993, the GDFs to install Stage I VRS for their gasoline storage tanks to control gasoline vapor emissions during gasoline delivery. Stage I VRS controls gasoline vapor emissions by collecting gasoline vapors displaced from GDF’s UST or AST when a delivery truck delivers gasoline into the UST or AST, and returning the collected vapors to the tank of the delivery truck. A properly designed and installed Stage I VRS will assist in maintaining a vapor tight UST or AST and thereby prevent the escape of gasoline vapors during the daily operation at a GDF.

Since 1998, automobile manufacturers in the United States have been required by Section 202(a)(6) of the CAA to install on-board refueling vapor recovery (ORVR) systems on new vehicles. Both Stage II and ORVR systems are effective for controlling gasoline vapor emissions during vehicle refueling. However, the vacuum-assist Stage II systems<sup>2</sup> and the ORVR systems are incompatible. When such Stage II-equipped GDFs are refueling ORVR-equipped vehicles, the ORVR system will force the Stage II’s vacuum pump to pull fresh air into the UST or AST, causing vapor pressure growth in the storage tanks. The vapor pressure growth leads to additional vapor emissions from the USTs or ASTs, especially when those tanks are not vapor-tight.

In May 2012, the US Environmental Protection agency (EPA) determined that the ORVR systems were in widespread use nationwide on gasoline-powered vehicles, and issued a final rule to waive Section 182(b)(3) Stage II requirements (77 *FR* 28772).<sup>3</sup> The final rule aimed at reducing the adverse effect of the functional overlap and incompatibility between the vacuum-assist Stage II systems at GDFs and the ORVR system on vehicles. Under the final rule, the states in the Ozone Transport Region (OTR), including Delaware, are allowed to remove their GDF’s Stage II vapor

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<sup>1</sup> In early 1990s, two counties in Delaware, New Castle and Kent Counties, were designated as “severe non-attainment areas” under the 1-hour ozone national ambient air quality standard.

<sup>2</sup> There are two types of Stage II vapor recovery systems, the vacuum-assist system and the balance system. The Stage II systems installed at Delaware GDFs are all vacuum-assist systems.

<sup>3</sup> Federal Register 77 *FR* 28772, May 16, 2012. Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver, at <https://www.govinfo.gov/content/pkg/FR-2012-05-16/pdf/2012-11846.pdf>.

recovery requirements, provided the overall emissions from the GDFs without Stage II systems do not increase.

Pursuant to the above final rule, Delaware Department of Natural Resources and Environmental Control (the Department, or DNREC) amended the 7 DE Admin. Code 1124 Section 36.0 in September 2015 (hereafter referred to as the 2015 amendment of Section 36.0) to allow the option for Delaware gasoline dispensing facilities (GDFs) to decommission their Stage II systems or to continue the use of Stage II systems for an unspecified trial period. It also adopted certain interim requirements, such as installing Stage I Enhanced Vapor Recovery (EVR) system, optional trial on continuous pressure monitoring (CPM) system, and new monthly inspection and annual testing schedules.

In July 2020, the Department amended Section 36.0 again (hereafter referred to as the 2020 amendment of Section 36.0, Appendix 1). The 2020 amendment of Section 36.0 maintains in general the requirements in the 2015 amendment, with minor adjustments, and establishes specific compliance schedules. The 2020 amendment of Section 36.0 requires GDFs in Delaware to install one of the Stage I EVR systems certified in California Air Resources Board (CARB) Executive Orders (EOs) as meeting 98% VOC emission control efficiency. The Executive Orders are written documents that demonstrate compliance with the CARB certification and list the individual components that can be used within a certified Stage I EVR system. Six (6) CARB Executive Orders for Stage I EVR are incorporated as references in the 2020 amendment of Section 36.0.

Between July 17, 2019 and June 3, 2020, CARB modified its Executive Orders for Stage I EVR systems. Since those modifications are not included in the 2020 amendment of Section 36.0, the Department is proposing to amend Section 36.0 again, to update the CARB EOs referenced in the regulation.

This technical support document (TSD) presents background information, regulatory amendments and impact analyses for these proposed amendments to Section 36.0.

## **2. Regulatory Amendments and Impact Analyses**

The modifications that CARB made to its Stage I Executive Orders (EOs) between July 17, 2019 and June 3, 2020 are summarized in Table 2-1. Since the CARB EOs are incorporated as references in the 2020 amendment of Section 36.0, these proposed amendments to Section 36.0 are to update CARB EOs' names and the latest effective dates, as presented in the first and second columns in Table 2-1. Specifically, the related amendments to the EOs' names and the latest dates are made in subsection 36.4.1, subsection 36.10.2, and subsection 36.11.3 of Section 36.0 (Appendix 2).

Details of the CARB's modifications to individual Stage I EOs are presented in the third column of Table 2-1. In the fourth column of Table 2-1, the Department lists its analyses on technical and financial impacts of the modifications that CARB made in individual Executive Orders.

Table 2-1. Summary of CARB Executive Order (EO) Updates and AQ's Analyses

| EO # & System Name    | EO Date    | EO Changes and Edits   | AQ's Analyses  |
|-----------------------|------------|--|--|
| VR-101-T<br>Phil-Tite | 06/03/2020 | <ul style="list-style-type: none"> <li>• Extension of CARB EO expiration date to 05/31/2021.</li> <li>• Modifications made to the Husky Model 5885 P/V vent valve to address failures found by CARB staff.</li> </ul>  | <ul style="list-style-type: none"> <li>• Extension added more time for the regulated communities to use the certified EVR components.</li> <li>• Modifications made to a specific vent valve, no additional technical need and compliance cost for the regulated communities.</li> <li>• Note that the Phil-Tite system is seldom used in Delaware.</li> </ul>   |
| VR 101-S<br>Phil-Tite | 10/04/2019 | <ul style="list-style-type: none"> <li>• Global change, OPW 723 P/V vent valve added for E85 applications.</li> </ul>  | <ul style="list-style-type: none"> <li>• The added valve provided flexibility for compliance with no additional cost.</li> </ul>   |
| VR-102-U<br>OPW       | 06/03/2020 | <ul style="list-style-type: none"> <li>• Extension of CARB EO expiration date to 05/31/2021.</li> <li>• Modifications made to the Husky Model 5885 PV vent valve to address failures found by CARB staff.</li> <li>• Update to testing protocol (TP-201.1C and TP-201.1D) for remote fill configurations.</li> </ul> | <ul style="list-style-type: none"> <li>• Extension added more time for the regulated communities to use the certified EVR components.</li> <li>• Modifications made to a specific vent valve, no additional technical need and compliance cost for the regulated communities.</li> <li>• The updated testing protocol provided more flexibility for testing compliance with no additional cost.</li> <li>• Note that the OPW system is the most commonly used system in Delaware.</li> </ul> |
| VR 102-T<br>OPW       | 10/04/2019 | <ul style="list-style-type: none"> <li>• Franklin Fueling drop tube and Defender Overfill Protection Valve included as an alternative to the OPW drop tube and Overfill Prevention Device.</li> <li>• OPW 723 P/V vent valve added for E85 applications.</li> </ul>  | <ul style="list-style-type: none"> <li>• The added drop tube and valve provided alternative parts and provided more flexibility for compliance.</li> <li>• The added valve provided flexibility for compliance with no additional cost.</li> </ul>   |
| VR-104-K<br>CNI       | 06/03/2020 | <ul style="list-style-type: none"> <li>• Extension of CARB EO expiration date to 05/31/2021.</li> </ul>  | <ul style="list-style-type: none"> <li>• Extension added more time for the regulated communities to use the certified EVR components.</li> </ul>   |

|  |            |  |  |
|--|------------|--|--|
|  |            | <ul style="list-style-type: none"> <li>• Modifications made to the Husky Model 5885 PV vent valve to address failures found by CARB staff.</li> </ul>  | <ul style="list-style-type: none"> <li>• Modifications made to a specific vent valve, no additional technical need and compliance cost for the regulated communities.</li> <li>• Note that the CNI system is seldom used in Delaware.</li> </ul>   |
| VR-105-I<br>EMCO                       | 06/03/2020 | <ul style="list-style-type: none"> <li>• Extension of CARB EO expiration date to 05/31/2022.</li> <li>• Modifications made to the Husky Model 5885 PV vent valve to address failures found by CARB staff.</li> </ul>     | <ul style="list-style-type: none"> <li>• Extension added more time for the regulated communities to use the certified EVR components.</li> <li>• Modifications made to a specific vent valve, no additional technical need and compliance cost for the regulated communities.</li> </ul> |
| VR-105-H<br>EMCO                       | 11/25/2019 | <ul style="list-style-type: none"> <li>• Added anodized drop tube and collar assembly.</li> </ul>  | <ul style="list-style-type: none"> <li>• The added parts provided a vapor-tight system under working condition with no additional cost.</li> <li>• Note that the EMCO system is seldom used in Delaware.</li> </ul>  |
| VR-401-F<br>OPW for ASTs               | 07/17/2019 | <ul style="list-style-type: none"> <li>• Extension of CARB EO expiration date to 07/17/2023.</li> <li>• Non-substantive changes made to legal language to harmonize with all Vapor Recovery Executive Orders.</li> </ul> | <ul style="list-style-type: none"> <li>• Extension added more time for the regulated communities to use the certified EVR components.</li> <li>• The non-substantive changes provided consistency among relevant executive order, with no additional cost.</li> </ul>                    |
| VR-402-E<br>Morrison-Brothers for ASTs | 07/17/2019 | <ul style="list-style-type: none"> <li>• Extension of CARB EO expiration date to 07/17/2023.</li> <li>• Non-substantive changes made to legal language to harmonize with all Vapor Recovery Executive Orders.</li> </ul> | <ul style="list-style-type: none"> <li>• Extension added more time for the regulated communities to use the certified EVR components.</li> <li>• The non-substantive changes provided consistency among relevant executive order, with no additional cost.</li> </ul>                    |

### 3. Conclusions

The proposed regulatory amendments will update the numbers and the latest effective dates of the CARB Executive Orders (EOs) referenced in the 2020 revision of Section 36.0. Based on the impact analyses presented in Table 2-1 in the previous section of this TSD, the Department concludes:

- The recent modifications in the CARB EOs provide compliance timing flexibility and Stage I component flexibility for the regulated communities, i.e., gasoline dispensing facilities (GDFs), and GDF emission testing companies, in Delaware.
- The proposed regulatory amendments will not have any significant financial and technical impacts on the regulated GDFs and GDF emission testing companies in Delaware.
- The proposed regulatory amendments are not anticipated to be controversial for implementing the requirements of the 2020 revision of Section 36.0.
- The proposed regulatory amendments will not substantially be likely to impose additional costs or burdens upon individuals and/or small businesses in Delaware.

### Appendices

1. The 2020 revision of 7 **DE Admin. Code** 1124 Section 36.0 Vapor Emission Control at Gasoline Dispensing Facilities. Available at <https://regulations.delaware.gov/AdminCode/title7/1000/1100/1124.pdf>.
2. The Proposed Regulatory Amendments to 7 **DE Admin. Code** 1124 Section 36.0 Vapor Emission Control at Gasoline Dispensing Facilities. Available at <https://dnrec.alpha.delaware.gov/air/permitting/under-development/>, under the title “Amendments to the Control of Volatile Organic Compound Emissions (Vapor Recovery at Gasoline Dispensing Facilities)”, posted in Section “Public Hearing.” (*This link needs to be modified later*)

# Regulatory Flexibility Analysis

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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:

*End of Regulatory Flexibility Analysis Section*



- 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:***

|    | <b>Cost Estimate Option 2</b>  | <b>Yes</b> | <b>No</b> | <b>Unknown</b> |
|----|--|------------|-----------|----------------|
| 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)<br>Ongoing                  One Time                  Unknown                               |            |           |                |
| 8b | If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation?<br>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?       |            |           |                |

|     | <i>Cost Estimate Option 2 (continued)</i>   | Yes | No | Unknown |
|-----|---|-----|----|---------|
| 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  | 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.            |     |    |         |

- 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:

*End of Regulatory Impact Statement Section*