

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 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 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.

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.

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.

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

The Background Concentration subsection has been significantly modified from the existing *Guideline* to include a clearer and more comprehensive discussion of “nearby” and “other” sources. This is intended to eliminate confusion over how to identify nearby sources that should be explicitly modeled and all other sources that should be generally represented by air quality monitoring data. In addition, a brief discussion on the use of photochemical grid modeling to appropriately characterize background concentrations has been included in this section. Updates to Tables 8–1 and 8–2 are made per changes in the considerations for nearby sources, as discussed in section IV.A.8 of this preamble. Based on several public comments, Table 8–2 was further updated to correctly state that the operational level for nearby sources for short-term average times is the “temporally representative level when actually operating, reflective of the most recent 2 years.”

The use of prognostic mesoscale meteorological models to provide meteorological input for regulatory dispersion modeling applications has been incorporated throughout the “Meteorological Input Data” subsection, including the introduction of the MMIF as a tool to inform regulatory model applications. We made additional minor modifications to the recommendations in this subsection based on current EPA practices, of which the most substantive edit was the recommendation to use the AERMINUTE meteorological data processor to calculate hourly average wind speed and direction when processing NWS ASOS data for developing AERMET meteorological inputs to the AERMOD dispersion model.

10. Section 9

As proposed, we moved all of the information previously in section 9 related to model accuracy and evaluation into other sections in the revised *Guideline* (primarily to the revised section 2 and some to the revised section 4). This provides greater clarity in those topics as applied to selection of models under the *Guideline*. We removed a subsection on the “Use of Uncertainty in Decision Making.” Also, we revised section 9 to focus on the regulatory application of models, which includes the majority of the information found previously in section 10.

We revised the discussion portion of section 9 to more clearly summarize the general concepts presented in earlier sections of the *Guideline* and to set the

stage for the appropriate regulatory application of models and/or, in rare circumstances, air quality monitoring data in lieu of modeling. The importance of developing and vetting a modeling protocol is more prominently presented in a separate subsection.

The information related to design concentrations is updated and unified from previous language found in sections 7 and 10. An expanded discussion of receptor sites is based on language from the previous section 7 and new considerations given past practices of model users tending to define an excessively large and inappropriate number of receptors based on vague guidance.

We added the recommendations for NAAQS and PSD increments compliance demonstrations that had been in section 10. In additions, we updated the recommendations to more clearly and accurately reflect the long-standing practice of performing a single-source impact analysis as a first stage of the NAAQS and PSD increments compliance demonstration and, as necessary, conducting a more comprehensive cumulative impact analysis as the second stage. The appropriate considerations and applications of screening and/or refined model are described in each stage.

Finally, we revised the “Use of Measured Data in Lieu of Model Estimates” subsection to provide more details on the process for determining the rare circumstances in which air quality monitoring data may be considered for determining the most appropriate emissions limit for a modification to an existing source. As with other portions of the revised section 9, the language throughout this subsection is updated to reflect current EPA practices, as appropriate.

11. Section 10

As proposed, we incorporated the majority of the information found previously in section 10 into the revised section 9. Section 10 now consists of the references that were in the previous section 12. Each reference is updated, as appropriate, based on the text revisions throughout the *Guideline*.

12. Section 11

In a streamlining effort, we removed the bibliography section from the *Guideline* as proposed.

13. Section 12

As stated earlier, this references section is now section 10 with appropriate updates.

14. Appendix A to the *Guideline*

As proposed, we revised appendix A to the *Guideline* to remove the BLP model, CALINE3, and CALPUFF as refined air quality models preferred for specific regulatory applications. The rationale for the removal of these air quality models from the preferred status can be found in section IV.A.2, section IV.A.4, and section IV.A.6 of this preamble. Finally, we made minor modifications, including a few typographical corrections, to appendix A based on public comment and additional review of the proposed regulatory text.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. The OMB determined that this regulatory action could potentially interfere with an action taken or planned by another agency. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This final action does not impose an information collection burden under the PRA. This action does not contain any information collection activities, nor does it add any information collection requirements beyond those imposed by existing NSR requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The modeling techniques described in this action are primarily used by air agencies and by industries owning major sources subject to NSR permitting requirements. To the extent that any small entities would have to conduct air quality assessments, using the models and/or techniques described in this action are not expected to pose any additional burden on these entities. The

revisions to the existing EPA-preferred model, AERMOD, serve to increase efficiency and accuracy by changing only mathematical formulations and specific data elements. Also, this action will streamline resources necessary to conduct modeling with AERMOD by incorporating model algorithms from the BLP model. Although this final action calls for new models and/or techniques for use in addressing ozone and secondary PM_{2.5}, we expect most small entities will generally be able to rely on existing modeling simulations. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector beyond those imposed by the existing NSR requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. The final rule provides revisions to the *Guideline* which is used by the EPA, other federal, state, territorial, local, and tribal air quality agencies, and industry to prepare and review new source permits, source permit modifications, SIP submittals and revisions, conformity, and other air quality assessments required under EPA regulation. The Tribal Air Rule implements the provisions of section 301(d) of the CAA authorizing eligible tribes to implement their own tribal air program. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive Order 13175, the EPA provided an informational webinar with the National Tribal Air Association (NTAA) on September 10, 2015, and also received comment on the proposed action from the NTAA and several individual tribes. These comments and

our responses are included in the docket for this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this action is not likely to have any adverse energy effects because its purpose is to streamline the procedures by which stakeholders apply air quality modeling and technique in conducting their air quality assessments required under the CAA and, also, increases the scientific credibility and accuracy of the models and techniques used for conducting these assessments.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action provides updates and clarifications to the *Guideline* and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 20, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending title 40, chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Appendix W to part 51 is revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

Preface

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act (CAA), Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emissions limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Historically, three primary activities have provided direct input to revisions of the *Guideline*. The first is a series of periodic EPA workshops and modeling conferences conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity was the solicitation and review of new models from the technical and user community. In the March 27, 1980, **Federal Register**, a procedure was outlined for the submittal to the EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by the EPA, have been considered for recognition in the *Guideline*. The third activity is the extensive on-going research efforts by the EPA and

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:

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:

	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?			

	<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