

# 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*

# 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><i>Cost Estimate Option 2</i></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) 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?			



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

## ATTACHMENT

### Text for # 17

Although some users of liquid phase solvent cleaning machines are large companies, such as major automobile dealers, the refinery and Dover Air Force Base, many are small service and manufacturing companies.

Existing facilities may need to purchase new equipment more compatible with aqueous, low-VOC cleaning solutions. Facilities may be able to offset equipment costs by selling their old, incompatible equipment. Also, part of these additional costs can be counteracted by using new lower VOC solutions, which can be less expensive to obtain and dispose.

New facilities, that were previously exempted under the current regulation, will be required to keep and report a small amount of additional information. Most small businesses may not require a permit under 7 DE Admin. Code 1102, as potential VOC emissions might be below the permitting threshold; but the facilities will still need to meet the requirements of the proposed regulation. A more detailed analysis of potential costs is shown below.

### COST ANALYSES

This amendment is based upon an Ozone Transport Commission (OTC) model rule (2012). The OTC develops model rules that member states can use as a template for the implementation of regulatory changes designed to reduce ground-level ozone. The OTC model rule was based on two documents:

- EPA Control Techniques Guidelines (CTG) for Industrial Cleaning Solvents (EPA 453/R-06-001; September, 2006)
- South Coast Air Quality Management District (SCAQMD) rule for Solvent Degreasing (Rule 1122; October, 2004).

EPA's 2006 CTG recommended using cleaning solutions containing 50 grams per liter (g/l) of cleaning solution and SCAQMD Rule 1122 requires the use of 25 g/l of cleaning solution. As an OTC state, Delaware is obligated by 42 U.S. Code 7511c (b)(1)(B) to adopt CTGs or an equivalent.

#### Annualized Cost Savings - Switching From 100% VOC to 50 g/l - CTG

The 2006 CTG presents annualized 2006 costs for operating with 100% VOC cleaners vs. 50 g/l cleaners. In relation to costs, the CTG found that "...there is a cost saving associated with replacing high-VOC cleaning materials with low-VOC, water-based cleaning materials...".

Costs associated with switching from High-VOC cleaners to aqueous, or Low-VOC cleaners include: the initial cost of equipment amortized over a 10-year life, solvent costs, filters, electricity, and waste disposal costs. Many of these costs are also incurred when operating High-VOC solvent cleaners. While it can cost more to dispose of Low-VOC cleaners, this can be offset by the lower cost of some Low-VOC solutions.

Users that switch from 100% VOC to 50 g/l may be required to replace cold cleaning machines to accommodate the use of aqueous based solutions, as these solutions will corrode oil-based cold cleaning machines. A study on parts cleaners has shown typical 2006 annualized costs for 100% VOC parts cleaners as \$1,453<sup>1</sup>. Estimates of annualized costs for Low-VOC parts cleaners, in comparison, range from \$1,171 to \$1,480, as shown in the table below.

Since the proposed compliance year will be 2022, the 2006 annualized cost savings data must be adjusted for inflation in 2022. The increase in inflation from 2006 to 2022 can be determined by adjusting the 2006 CTG information above by the Consumer Price Index (CPI) between 2006 and 2020, and then adding an inflationary increase of 2 percent per year from 2020 until the 2022 compliance date. Estimated annualized costs for High-VOC cleaners increase to \$1,976 per year. Estimated annualized Low-VOC cleaners increase to a range of \$1,595-\$2,013. Estimated annualized cost savings for switching from a high-VOC cleaner to a low-VOC cleaner are shown for 2006 and 2022 in the table below:

<b>ANNUALIZED COSTS for COLD SOLVENT CLEANERS</b>				
<b>Year</b>	<b>High-VOC Cleaner</b>	<b>Low-VOC Cleaner</b>	<b>Annualized Cost Savings High-VOC vs Low-VOC Cleaners</b>	
			<b>Lower Estimate</b>	<b>Upper Estimate</b>
2006	\$1,453	\$1,171-\$1,480	\$282	-\$27
2022	\$1,976	\$1,595-\$2,013	\$383	-\$37

Annualized Cost Savings - Using 25 Grams VOC/Liter Instead of 50 g/l

The proposed Delaware regulation is more stringent than the CTG and requires the use of 25 grams VOC per liter of cleaning solution. There are minimal cost differences between the use of 50 g/l (as analyzed above) and 25 g/l solutions.

The primary cost in switching from a 100% cleaner to a 50 g/l cleaner is the cost of a new cold cleaning machine to accommodate the use of more corrosive aqueous based solutions. Both 50 g/l and 25 g/l solutions contain water; therefore, this change would not require users to purchase a different cleaning machine.

It is possible that 50g/l solutions could be diluted to meet the 25g/l limit and still adequately meet the users cleaning requirements. Therefore, the switch from 50 g/l to 25 g/l solution would not cause a substantial increase in operational costs. In fact, the overall cost of purchasing, using and disposing of a 25 g/l VOC containing cleaning solution could be slightly lower, since less VOC would be used.

There are many lower VOC cleaners commercially available. SCAQMD has a website devoted to listing manufacturers of certified low-VOC cleaning solutions, which currently contains 97 products from 38 manufacturers (SCAQMD Rule 1122 requires the use of 25 g/l solution).

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<sup>1</sup> Bay Area Air Quality Management District, Staff Report: Proposed Amendments to BAAQMD Regulation 8, Rule 16: Solvent Cleaning Operations, September 2002.

- 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*