



Larry Hogan | Governor
Boyd Rutherford | Lt. Governor
R. Michael Gill | Secretary of Commerce
Benjamin H. Wu | Deputy Secretary of Commerce

January 9, 2017

The Honorable Thomas V. Mike Miller, Jr.
President, Maryland Senate
State House, H-107
Annapolis, Maryland 21401-1991

The Honorable Michael E. Busch
Speaker, Maryland House of Delegates
State House, H-101
Annapolis, Maryland 21401-1991

**RE: The Advisory Council on the Impact of Regulations on Small Businesses –
Annual Report**

Dear President Miller and Speaker Busch:


Pursuant to Economic Development Article § 3-508, I am pleased to submit an update on the Advisory Council on the Impact of Regulations on Small Businesses.

I look forward to your review of this information and will be available to furnish any additional information that is needed. If my staff or I can be of further assistance, or if you have any questions regarding this report, please contact me at 410-767-6301.

Sincerely,

R. Michael Gill
Secretary

Enclosure



2016 ANNUAL REPORT
OF THE
ADVISORY COUNCIL ON THE IMPACT OF
REGULATIONS ON SMALL BUSINESSES
As required by the Maryland Code of Laws, Economic Development Article,
Section 3-508

Respectfully submitted to the General Assembly of Maryland by

Secretary R. Michael Gill, Chairman

401 East Pratt Street

Baltimore, MD 21202

December 2016



Larry Hogan, Governor | Boyd Rutherford, Lt. Governor

OPEN *for* **Business**

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Background

The Advisory Council on the Impact of Regulations on Small Businesses (Advisory Council) was created by Chapter 137, Acts of 2015. The statutory responsibilities of the Advisory Council are to:

- (1) review each proposed regulation required to be submitted to the Advisory Council under Section 10-110(c) of the State Government Article;
- (2) determine whether the proposed regulation poses a significant small business impact;
- (3) provide an estimated range of costs for small businesses affected by the proposed regulation; and
- (4) identify whether a proposed regulation is necessary to comply with federal law.

If a proposed State regulation establishes a more restrictive or stringent standard than the standard established under federal law or regulation, then the Advisory Council is to:

- (1) identify the specific manner in which the proposed regulation is more restrictive than the applicable federal standard;
- (2) estimate the range of additional costs that small business may incur from compliance with the more restrictive standard, as compared with the cost of compliance with a less stringent standard that complies with federal law;
- (3) identify alternative standards that are adopted by one or more states, or other potential standards, that are less restrictive but comply with federal law; and
- (4) identify the potential benefit to the public health, safety or welfare, or the environment, expected from adopting the proposed regulation with a more restrictive standard.

In addition to its statutory responsibilities, the Advisory Council may also: (1) review existing regulations and any matter related to the effect of a regulation or the regulatory process on small businesses in Maryland; and (2) may adopt guidelines to assist State agencies with considering the impact of regulations on small businesses, and writing small business impact statements for proposed regulations.

Membership

The Advisory Council is comprised of eight members required by statute, and appointed by the Governor, Speaker of the House, and Senate President. The membership is:

- (1) the Secretary of Commerce or the Secretary's designee;
- (2) one Secretary of a principal department with experience in the regulatory process, or designee of the Secretary, appointed by the Governor;
- (3) one member of the Senate of Maryland, appointed by the President of the Senate;
- (4) one member of the House of Delegates, appointed by the Speaker of the House; and
- (5) two small business owners; one minority business enterprise owner; and one women's business enterprise owner, with two appointed by the President of the Senate and two appointed by the Speaker of the House.

2016 Update

In December of 2016, the Advisory Council was fully appointed, and an informational and organizational meeting will be held on February 13, 2017. In addition to reviewing its statutory responsibilities, the Advisory Council will receive a staff briefing on the State's promulgation process for regulations and the role of the Advisory Council in that process.

Staff for the Advisory Council was designated in November of 2016. The Advisory Council's staff has been working with the Division of State Documents to implement the required review of proposed regulations by the Advisory Council. Staff is also completing a comparative analysis of how various states conduct small business economic impact analyses for proposed regulations to assist the Advisory Council with developing guidelines for State agencies.

Obstacles to Full Implementation of Chapter 137

Chapter 137, Acts of 2015 requires State agencies to submit non-emergency proposed regulations to the Advisory Council at least 15 days before a proposed regulation is submitted to the Maryland Register for publication. In essence, State agencies are required to submit proposed regulations to the Advisory Council at the same time they submit proposed regulations to the Joint Committee on Administrative, Executive and Legislative Review (AELR), and the Department of Legislative Services (DLS).

State agencies use an electronic filing system, known as ELF, for submitting regulations to AELR and DLS. The ELF system is administered by the Division of State Documents within the Secretary of State's Office.

ELF is an internet-based system that was designed in 2001 and implemented in 2003. Certain third party software that make up the ELF system are now obsolete. The limitations of the obsolete third party software presents challenges such as limiting the number of documents that can be processed in a 24-hour period. The system was not designed with evolving technologies in mind. The ELF system is compatible with all versions of Microsoft Word, however, the 97-2003 file format (.doc) must be used. The web-browsers for which it was designed were Explorer, and Netscape which ceased to be available in 2008.

State agencies are required to submit proposed regulations that are more stringent than an applicable federal standard to the Department of Commerce under Executive Order 01.01.1996.03. However, all proposed State regulations with an applicable federal standard are submitted to Commerce, including proposed regulations that are not more stringent than an applicable federal standard. This is because the decision path of ELF allows only for regulations with an applicable federal standard to be submitted to Commerce, and cannot differentiate regulations that are more stringent than an applicable federal standard. This limitation of ELF causes an unnecessary administrative burden.

While Commerce currently receives all proposed regulations that have an applicable federal standard, the Division of State Documents advises State agencies will not be able to use ELF to submit all proposed regulations electronically to the Advisory Council. Specifically, State

agencies will not be able to submit State specific regulations, or proposed regulations that do not have an applicable federal standard.

Compounding this problem is the timing of submitting proposed regulations. When ELF was designed in 2001, its design incorporated the submission of proposed regulations with an applicable federal standard to Commerce before the electronic submission of proposed regulations to AELR and DLS. Under Chapter 137, Acts of 2015, State agencies are required to submit proposed regulations to the Advisory Council at the same time they are submitted to AELR and DLS. However, ELF does not have the capability to comply with this requirement.

Commerce will work with the Department of Information and Technology (DoIT), and the Division of State Documents (DOD), to try and resolve the technological limitations of ELF currently preventing the full implementation of the Chapter 137, Acts of 2015. However, due to the obsolescence of the technology utilized by ELF, it is likely that it cannot be upgraded and may need to be replaced in order for the Advisory Council to receive proposed regulations electronically.

A meeting is scheduled with the necessary Commerce, DoIT, and DOD staff in January of 2017 to fully assess this problem, and to identify possible solutions. If it is determined that ELF cannot be used to submit proposed regulations to the Advisory Council, then alternative workaround solutions for submitting proposed regulations to the Advisory Council will be discussed.

Appendix

The Advisory Council on the Impact of Regulations on Small Businesses Roster		
Member	Represents	Appointing Authority
R. Michael Gill, Chair	Department of Commerce	Statute
Ellington Churchill, Dept. of General Services	Secretary Familiar w/ Regulation	Governor
Senator James DeGrange	Senate Designee	General Assembly (Senate)
Delegate William Smith*	House Designee	General Assembly (House)
Michael Whitson	Small Business	General Assembly (House)
Steve Samaras	Small Business	General Assembly (House)
Leslie Goodwyn	Women's Business Enterprise Owner	General Assembly (Senate)
Claudia Towles	Minority Business Enterprise Owner	General Assembly (Senate)

Staff: Malachy Rice

*Nominated to the Senate and will likely need to be replaced.