



Larry Hogan | Governor  
Boyd Rutherford | Lt. Governor  
Kelly M. Schulz | Secretary of Commerce  
Benjamin H. Wu | Deputy Secretary of Commerce

December 2, 2019

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

The Honorable Adrienne A. Jones  
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 Jones:


Pursuant to Economic Development Article § 3-508, I am pleased to submit the 2018 Annual Report of 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,

Kelly M. Schulz  
Secretary

KMS/rjr



**2019 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 Kelly M. Schulz, Chairman

401 East Pratt Street

Baltimore, MD 21202

December 2019



Larry Hogan, Governor | Boyd Rutherford, Lt. Governor

**OPEN** *for* **Business**

**The Advisory Council on the Impact of Regulations  
on Small Businesses**

**Membership Roster**

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**Kelly M. Schulz, Chair**

Secretary of the Maryland Department of Commerce

**Ellington Churchill**

Secretary of the Maryland Department of General Services

**Senator Pamela Beidle**

**Delegate Benjamin Brooks**

**Michael Whitson**

Tri-County Abstracts

**Steve Samaras**

Zachary's Jewelers

**Claudia Towles**

aMuse Toys

**Leslie Goodwyn**

SpeedPro Imaging

**Staff**

Malachy Rice

Regulations Analyst, Maryland Department of Commerce

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## **INTRODUCTION**

The Advisory Council on the Impact of Regulations on Small Businesses (Advisory Council) was created by Chapter 137, Acts of 2015. The Advisory Council stems from a recommendation made to the Maryland Economic Development and Business Climate Commission, more commonly known as the Augustine Commission. In its final report, the Augustine Commission recommended to “authorize a member of the Joint Committee on Administrative, Executive and Legislative Review to hold a hearing on a proposed regulation if the State’s analysis of the proposed regulation notes a meaningful adverse, small business impact.” This recommendation was made in response to comments received by the Augustine Commission that sufficient attention is not paid to the small business economic impact analysis required for proposed regulations.

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 businesses 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 is authorized to: (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) 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 on the Impact of Regulations on Small Businesses (Advisory Council) had several changes to its membership in 2019. Kelly M. Schulz became the new Chairman for

the Advisory Council when she became the Secretary of the Department of Commerce. Senator Pamela Beidle was appointed to the Advisory Council after the retirement of Senator Edward DeGrange. Steve Samaras, a small business owner member, resigned from the Advisory Council at the end of August, and a successor has yet to be appointed.

## **2019 ACTIVITY**

At its inaugural meeting in February of 2017, the Advisory Council decided to focus on developing recommendations to improve the State's regulatory process by making it more transparent and assisting small businesses with regulatory compliance. In its 2017 annual report, the Advisory Council made a series of recommendations to achieve these goals, with the majority of the recommendations requiring changes to the Administrative Procedures Act (APA). Legislation to make changes to the APA proposed by the Advisory Council was introduced during the 2018 legislative session, but it did not pass. However, legislation containing the Advisory Council's recommendations did pass during the 2019 legislative session.

The Advisory Council met in August to receive an update on the status of its recommendations, and to discuss what its role should be now that its recommendations were adopted. Staff provided an update on the legislation containing the Advisory Council's recommendations (House Bill 1124 – State Government – Regulations Impacting Small Businesses) that was passed by the General Assembly and signed into law by Governor Hogan (2019 Maryland Laws, Chapter 212).

As a result of Chapter 212, Executive Branch agencies are now required to:

- create an electronic registry that allows small businesses, their trade associations, non-profits, and interested parties to register to receive an electronic notification when an Executive Branch agency proposes a regulation determined to have a significant economic impact on small businesses;
- post proposed regulations impacting small businesses to receive input for at least fifteen days before the regulations are submitted for review to the Joint Committee on Administrative, Executive, and Legislative Review; and
- provide a plain-language compliance guide to assist small businesses with complying with new regulations that affect them.

Chapter 212 also requires that training on how to conduct a small business economic impact analysis be provided to State employees, and sunsets the Advisory Council on October 1, 2021.

After receiving updates staff updates, including an update on the implementation status of Chapter 212, the Advisory Council decided to focus its efforts on continuing to provide oversight on the implementation of its recommendations. This oversight will likely include convening focus groups of small business owners and trade associations representing small businesses to ensure the new processes created by Chapter 212 are in fact helping to make the State's regulatory process more transparent for small businesses, and are assisting small businesses with regulatory compliance. A detailed discussion on the status of all of the Advisory Council's recommendations follows.

# Status of the Advisory Council's Recommendations

## HISTORY

In its 2017 annual report, the Advisory Council made eleven recommendations to Governor Larry Hogan and the General Assembly for making the State's regulatory process more transparent, and regulatory compliance easier, for small businesses. The eleven recommendations were categorized as primary recommendations and secondary recommendations, with the primary recommendations offering the most potential benefit to small businesses. Legislation (HB 855/SB 1082) was introduced in the 2018 session that contained ten of the Advisory Council's eleven recommendations. The House unanimously passed House Bill 855; however, no action was taken on the bill in the Senate. The Advisory Council's eleventh recommendation was implemented in December of 2017, when Governor Hogan issued Executive Order 01.01.2017.33 requiring Executive Branch agencies to use the Advisory Council's *Guidelines for Estimating and Minimizing the Economic Impact of Regulations on Small Business*.

Two pieces of legislation that contained the Advisory Council's recommendations were introduced during the 2019 legislative session. The House member of the Advisory Council, Delegate Benjamin Brooks, reintroduced the legislation he sponsored for the Advisory Council in 2018 (HB 1124). Governor Hogan introduced legislation (SB 173/HB 157) that contained the primary and selected secondary recommendations of the Advisory Council. The General Assembly passed House Bill 1124, which was amended to conform to the legislation introduced by Governor Hogan. However, the provision to allow for potential relief to small businesses from regulatory fines and penalties in the Governor's proposed legislation was not included in House Bill 1124.

## IMPLEMENTATION OF RECOMMENDATIONS (CHAPTER 212)

Upon enactment of Chapter 212, the Advisory Council's staff developed an implementation plan and worked with the Department of Budget and Management (DBM), the Department of Information Technology (DoIT), and the Governor's Office on implementing the changes required by Chapter 212.

DoIT created a centralized website, <https://regulations.maryland.gov/>, to meet the electronic registry, notification, and posting requirements established by Chapter 212. This website allows small businesses, their trade associations, non-profits and interested parties to register to receive electronic notification when a State agency proposes a regulation determined to have an economic impact on small businesses. It also allows agencies to post proposed regulations affecting small businesses prior to their submission to AELR for review.

Advisory Council staff will assist DBM with preparing a Request for Proposal (RFP) to provide training to State employees on how to conduct a small business economic impact analysis in the spring of 2020. This timeframe for preparing a training RFP was selected to allow for the implementation of the other changes to the State's regulatory process required by Chapter 212.

Advisory Council staff worked with the Governor’s Office to notify all Executive Branch agencies of the changes made to the APA and the new requirements for promulgating regulations affecting small businesses. The notification to Executive Branch agencies included information to assist agencies with complying with the new promulgation requirements. A copy of the memorandum sent to Executive Branch agencies is provided in Appendix 1. The information provided included *Guidelines for Developing Small Business Regulatory Compliance Guides* developed by the Advisory Council’s staff, which is provided in Appendix 2.

The Advisory Council’s staff further assisted Executive Branch agencies with implementing the requirements of Chapter 212 by responding to eighteen requests for assistance from eight agencies.

**Exhibit 1** provides a summary of the adoption and implementation status of the Advisory Council’s primary recommendations. As a result of Chapter 212, all but one of the Advisory Council’s primary recommendations have been adopted and are being implemented.

**Exhibit 1 – Adoption and Implementation Status  
of the Advisory Council’s Primary Recommendations**

| <b>PRIMARY RECOMMENDATIONS</b>  |               |   |
|---|---------------|---|
| <i>Recommendation</i>   | <i>Status</i> | <i>Implementation Status</i>  |
| 1. Require agencies to use the Advisory Council’s small business economic impact guidelines.  | Adopted       | Guidelines are available on the State’s electronic filing system for regulations.   |
| 2. Require training for State employees on how to conduct a small business economic impact analysis.  | Adopted       | An RFP for training will be developed in late spring of 2020.   |
| 3. Require agencies to provide a compliance guide for regulations that affect small businesses.   | Adopted       | Guidelines to assist agencies with developing small business compliance guides have been prepared.  |
| 4a. Require agencies to post proposed regulations to their websites for at least 15 days prior to their submission to the General Assembly for review.  | Adopted       | The Department of Information & Technology (DoIT) created a centralized webpage for agencies to post proposed regulations affecting small businesses.                 |
| 4b. Require agencies to create an electronic registry for small businesses and their trade associations to register to receive an electronic notification when new regulations are posted to their website. | Adopted       | The centralized webpage created by DoIT, which is maintained by Executive Branch agencies, allows small businesses to register to receive an electronic notification. |
| 5. Require the Department of Legislative Services to audit small business economic impact analyses prepared by agencies.  | Not Adopted   | N/A   |



None of the Advisory Council’s secondary recommendations have been adopted. However, three of the secondary recommendations were referred to a working group of Senators that requested suggestions on how the State can assist small businesses with regulatory matters. **Exhibit 2** identifies the Advisory Council’s secondary recommendations that potentially may be acted upon.

**Exhibit 2 – Potential Action Status  
of the Advisory Council’s Secondary Recommendations**

| <b>SECONDARY RECOMMENDATIONS</b>   |   |
|--|---|
| <i>Recommendation</i>  | <i>Potential Action for Adoption</i>                                      |
| 6. Increase the amount of time the General Assembly’s Joint Committee on Administrative, Executive and Legislative Review has to review proposed regulations.                  | Currently, there is no potential action for this recommendation.          |
| 7. Offer potential relief for small businesses from regulatory fines and penalties.  | This recommendation is being considered by the working group of Senators. |
| 8. Allow agencies to exempt small businesses from a State regulation if they are subject to a local regulation that is at least as stringent as the proposed State regulation. | This recommendation is being considered by the working group of Senators. |
| 9. Revise statutory requirements for economic impact analyses.   | Currently, there is no potential action for this recommendation.          |
| 10. Study barriers to State agencies sharing data in order to improve the quality of small business economic impact analyses.  | Currently, there is no potential for action for this recommendation.      |
| 11. Study the feasibility of requiring the electronic submission of any payments, reports, or documentation required for regulatory compliance.                                | This recommendation is being considered by the working group of Senators. |

**SUMMARY**

Since 2017, the Advisory Council has worked to address the reason for its creation, which was that not enough consideration is given to the economic impact of regulations on small businesses. While not all of the Advisory Council’s recommendations have been adopted, the recommendations that were adopted and are being implemented will greatly improve the consideration of the economic impact of proposed regulations on small businesses.

Although agencies have been required to conduct a small business economic impact analysis for proposed regulations since the mid-1990s, the State has never provided training on how to conduct this analysis. Providing training on how to conduct an economic impact analysis will help to improve the quality of these analyses, which will allow agencies to better identify the true economic impact of proposed regulations on small businesses.

Requiring that interested small businesses, trade associations, and non-profits be notified when a

regulation with a small business impact is being proposed will make it easier for them to be aware of proposed regulatory changes that may affect them. Allowing small businesses the opportunity to comment on proposed regulations at the beginning of the promulgation process, rather than only at the end of the promulgation process, increases the opportunity to address the concerns of small businesses by making Executive Branch agencies aware of how proposed regulations will affect small businesses at the beginning of the promulgation process.

Making it easier for small business to comply with regulations by providing plain-language compliance guides will help to mitigate the impact of regulations on small businesses. Providing clear direction on how to comply with regulations will reduce the amount of time, energy, and potentially the costs, small businesses spend on regulatory compliance.

The adoption of the Advisory Council's secondary recommendations being considered by a working group of Senators will further reduce regulatory burdens on small businesses.

Allowing Executive Branch agencies the ability to reduce or waive regulatory fines and penalties will shift regulatory enforcement from penalizing small businesses for non-compliance to assisting small business with regulatory compliance. Increasing regulatory compliance for small businesses will help to achieve the policy goals of regulations. As recommended by the Advisory Council, the policy goals of regulations are further supported by not allowing regulatory fines or penalties to be reduced or waived for repeat offenders, or for violations that threaten the public's safety, health, or welfare.

Studying the feasibility of allowing for the electronic submission of all payments, reports, or documentation required by a regulation will further provide a focus on making regulatory compliance easier for small businesses. Allowing for electronic submission will save time and money for small businesses.

Finally, allowing Executive Branch agencies to exempt small businesses subject to a local regulation that is at least as stringent as a proposed State regulation will reduce regulatory complexities and reduce duplicative compliance activity by small businesses.

The Advisory Council is pleased with the adoption and implementation of its primary recommendations, and encourages further consideration of its secondary recommendations that offer the most benefit to small businesses.

**Appendix 1**  
**Chapter 212 Memorandum to Executive Branch Agencies**

**TO:** Executive Branch Agencies

**FROM:** Matthew Clark, Chief of Staff

**DATE:** July 2, 2019

**RE:** New Statutory Requirements for Small Business Regulations

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Chapter 212 – State Government – Regulations Impacting Small Businesses was signed into law by Governor Larry Hogan on April 30, 2019. This law establishes several new requirements for Executive Branch agencies when promulgating regulations determined to impact small businesses. Beginning July 1, 2019, Executive Branch agencies will need to:

- Post a proposed regulation, or proposed scope of a regulation, determined to impact small businesses on an agency’s website for at least 15 days prior to its submission to the General Assembly’s Joint Committee on Administrative, Executive and Legislative Review (AELR), and the Department of Legislative Services (DLS);
- Create an electronic registry that allows a small business, nonprofit, or other interested party to register to receive an electronic notification when an agency posts a proposed regulation, or proposed scope of regulation to its website;
- Provide an electronic notification to parties that have registered with the electronic registry when a proposed regulation, or proposed scope of regulation, is posted to an agency’s website; and
- Provide a compliance guide for regulations determined to impact small businesses. In addition to the new requirements for agencies, Chapter 212 requires training be provided to State employees on how to conduct a small business economic impact analysis at least every two years.

In addition to the new requirements for agencies, Chapter 212 requires training be provided to State employees on how to conduct a small business economic impact analysis at least every two years. Information regarding training will be provided when training services are procured.

**Identifying Electronic Registries**

The intent of Chapter 212 is to allow small businesses, nonprofits, or other interested parties to register to receive notification when regulations are being proposed that may affect them, or in which they may have an interest. Subsequently, agencies should work to create electronic registries for regulatory areas and not just for regulatory units.

For example, the Division of Fisheries and Wildlife is a regulatory unit within the Department of Natural Resources that regulates several different areas such as crabbing, tidal (saltwater) and non-tidal (freshwater) fishing. While some individuals or small businesses may have an interest in all of these regulatory areas, many only have an interest in only one of the regulatory areas. A small business catering to or dependent on freshwater fishing is typically not interested in regulations affecting saltwater fishing. In creating three separate electronic registries for crabbing, salt water fishing, and fresh water fishing, the Division of Fisheries and Wildlife made it easier for small businesses and interested parties to be notified about proposed regulations in which they have an interest.

Making it easier for parties interested in a regulatory area to be aware of proposed regulatory changes will benefit agencies by reducing the number of regulations that have to be corrected or fixed because of feedback or information learned after a regulation is implemented. It allows agencies to be aware of concerns or potential problems early in the regulatory process.

Agencies should consider existing structures or processes when identifying regulatory areas for which an electronic registry needs to be created. Commissions, councils, or boards that provide oversight, advice, or guidance on specific subject matter provide a natural structure for creating an electronic registry. For example, the Maryland Department of Health has a number of professional boards and commissions that provide a logical structure for creating an electronic registry. It makes sense to create an electronic registry for the Board of Pharmacy and another electronic registry for the Board of Physicians. While both boards relate to health care, they govern different subject matter that is of interest to different parties.

The Annotated Code of Maryland may also be useful in identifying regulatory areas that need an electronic registry. For some agencies that may mean creating an electronic registry for the Titles of the Article that governs the agency. However, it is much more likely that the Subtitles of an agency's governing Article will be useful for identifying electronic registries that need to be created.

For example, not all of the regulations promulgated under Title 8 of the Transportation Article – Highways will affect small businesses. However, regulations issued under Subtitle 7 – Regulation of Outdoor Advertising could affect small businesses. Using Subtitles is useful because they generally relate a single subject matter, and are a way to identify regulatory areas that may affect small businesses.

### **Creating an Electronic Registry**

For the purposes of this memorandum, an electronic registry includes: (1) the webpage where a proposed regulation, or proposed scope of a regulation, is posted; (2) the electronic registry where interested parties can register to receive an email notification when proposed regulations are posted to the webpage; and (3) the automated notice sent to registered parties when a proposed regulation is posted to the webpage.

The electronic registry required by Chapter 212 can be created using the Page Watch application that is available through a statewide contract with Granicus. There is no cost for enterprise

agencies; however, non-enterprise agencies will have to purchase an annual license to utilize Page Watch at a cost of \$500 per year.

The Page Watch software necessary to create an electronic registry is already available to enterprise agencies. The Information Technology (IT) staff of each agency is responsible for 2 creating all necessary electronic registries. Any questions regarding the use of Page Watch may be directed to Anthony Burrows, Assistant Director of Web Development, with the Department of Information Technology (DoIT) at [Anthony.burrows@maryland.gov](mailto:Anthony.burrows@maryland.gov).

Creating a single electronic registry for one regulatory unit or area takes approximately 4 hours. The creation of electronic registries should be prioritized for regulatory units or areas that are planning to promulgate regulations affecting small businesses soon after these new requirements go into effect on July 1, 2019.

### **Compliance Guide**

Agencies will also need to post a plain-language Compliance Guide to their websites for regulations determined to affect small businesses. To assist State agencies with developing compliance guides, a draft of Guidelines for Drafting a Compliance Guide will be available to agencies through the ELF system by July 1, 2019.

**Appendix 2**

**Guidelines for Drafting  
Regulatory Compliance Guides for  
Small Businesses**

**2019**

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## **Purpose**

Chapter 212 of the Maryland Laws of 2019 requires Executive Branch agencies to: “Prepare a compliance guide written in clear, plain English to assist small businesses in complying with a proposed regulation, update the guide as needed until a regulation is final, and post the guide on the unit’s website,” for regulations determined to have a significant economic impact on small businesses.

The purpose of a compliance guide is to provide clear direction to small businesses on how to comply with a regulation, and to inform small businesses of their obligations and responsibilities under the regulation.

A compliance guide is not intended to be used instead of a regulation, but rather to provide additional information to be used with a regulation. A compliance guide should provide suggestions to small businesses on the type of actions necessary to comply with a regulation, with a clear description or explanation of suggested actions. Ideally, a compliance guide provides a clear and complete roadmap for complying with a regulation.

If there is more than one way to determine regulatory compliance, then the compliance guide should clearly explain how compliance will be measured. Providing examples of common compliance mistakes, or what not to do, is also often helpful to small businesses. If a complete compliance roadmap cannot be provided, identifying caution signs for small businesses should be done.

Finally, a compliance guide does not add any additional requirements to the regulation it explains. A compliance guide explains what a small business needs to do to comply with a regulation or provides suggestions on how to comply with a regulation. A compliance guide does not create any requirements for small businesses that are not in the related regulation.

## **Plain Language**

A compliance guide should be written in clear, plain language and easily understood without special knowledge by the small businesses governed by a regulation. The use of jargon, acronyms, and technical terms should be limited. In some instances, technical terms or jargon may be commonly used in an industry or field, and their use cannot be avoided. If acronyms, technical terms or jargon are used in a compliance guide, then they need to be clearly defined.

General techniques for using plain language include:

- Knowing the audience for which the compliance guide is written;
- Identifying what that audience needs to know;
- Using the active voice, and avoiding the passive voice;
- Writing in short, concise sentences; and
- Using common, everyday language.

Additional information for using plain language is available at: [www.plainlanguage.gov](http://www.plainlanguage.gov).



## Five Fundamental Questions

At a minimum, a compliance guide should answer five fundamental questions: why, who, what, how, and when of a new or amended regulation that has a significant economic impact on small businesses.

**Why** – Explain why a regulation has been adopted or amended. In essence, this is an explanation of the policy or programmatic goal of the regulation.

Stating the policy or programmatic goal may be as simple as identifying the issue or problem a regulation was adopted to address. For example, a regulation aimed at improving the safety of workers digging and working in trenches was adopted in response to an increase in trench collapses.

**Who** – Identify the types of businesses or business activities that are subject to the regulation. If there are criteria for determining if a small business is subject to a regulation, then clearly state the criteria. Stated criteria need to be consistent with the text of the regulation.

**What** – Describe any new requirements, or changes to existing requirements, of the new or amended regulation. Examples may include: practices; record keeping; reporting; equipment; training; or fees.

For example, what are the new requirements established by a regulation adopted to improve the safety of workers working in trenches? Identify and describe things such as: changes to safety and work practices; requirements for new equipment; or new standards for securing trenches.

**How** – Explain how a small business can comply with all of the requirements identified when answering the “what” question.

For example, how can a small business comply with the new requirements for trench safety? Identify any new specifications for equipment or for securing a trench such as the types of bracing material that must be used.

**When** – Identify when new requirements of the regulation go into effect. If a regulation establishes any new reporting or inspection requirements, then explain when and how reports and inspections are completed. Provide information on how to schedule an inspection, and where and how to submit reports. Include how forms, applications, or reports can be obtained, and a point of contact within the agency.

When answering these questions, agencies are encouraged to refer to any questions, comments, or concerns they received from small businesses or their trade associations during the promulgation process for a regulation. Understanding the questions and concerns of small businesses will make it easier to answer these five questions. Agencies are encouraged to solicit

feedback from affected small businesses and their trade associations if they are uncertain as to what types of questions small businesses may have regarding a new or amended regulation.

## **Elements of a Compliance Guide**

The content of a compliance guide will depend upon the complexity of the regulation being explained. These guidelines provide a general template, and not a specific format, for compliance guides. State agencies or regulatory units within an agency are encouraged to adopt a standard format for compliance guides using the general template provided here.

All compliance guides should provide: the regulation's Code of Maryland Regulations (COMAR) citation; a summary of the regulation; definitions for any technical terms, jargon, or acronyms used in the guide, and; include a table of contents if the guide is more than five pages. As the subject matter experts, State agencies and regulatory units have discretion over how to write a compliance guide beyond these elements.

### **I. Table of Contents**

Any compliance guide that is more than five pages of written text should include a table of contents.

### **II. Summary**

All compliance guides must contain a summary that explains the regulation and provides the regulation's COMAR citation. The summary should provide a plain language description of any new requirements or changes to existing requirements and who is subject to the regulation. If a regulation eliminates or supersedes an existing requirement, then the summary should identify the regulatory requirement being eliminated or superseded. For less complex regulations, it may be possible to answer all of the five fundamental questions (why, who, what, how, when) in the summary.

For example, a fishing regulation that increases the minimum catch limit size of striped bass from 35 to 36 inches can be explained in a summary by stating: the increased limit; when the increased limit goes into effect; and describing or listing small businesses affected by the regulation (e.g. watermen).

While the regulation's COMAR citation should be included, the actual regulation should not be included in the summary.

### **III. Definitions**

If the use of technical language, jargon, or acronyms cannot be avoided, then all of those terms used in the compliance guide must be defined. Agencies are also encouraged to provide definitions of key terms. Defined terms should be listed after the summary and before any explanation or discussion of the regulation.

#### **IV. Explanation or Discussion**

The summary may provide enough information to assist small businesses with compliance for less complicated regulations. However, for more complex regulations it may be necessary to answer some, or all, of the five fundamental questions (why, who, what, how, when) for different parts of the regulation. A compliance guide for more complex regulations should have a section which explains or discusses each of the provisions of the regulation that affect small businesses. In this case, the summary provides a general overview of the regulation, and the explanation or discussion section provides information about specific provisions of the regulation.

For example, new licensing regulations for assisted living facilities could include requirements for: staffing levels; staff education or training; facilities and equipment; and operational practices. The complexity of these issues requires each issue to be explained separately.

Executive Branch agencies regulate a wide range of issues and State regulations differ greatly in complexity. This means that how information is presented in a compliance guide will vary. Possible examples include: a summary of each provision of a regulation followed by a discussion of what the provision means and recommendations for compliance; or creating a chart that identifies a regulation's provisions, who is subject to those provisions, and how to comply with each provision. If an agency has carved out an exemption or set more flexible standards for small businesses, then those provisions need to be clearly identified. Executive Branch agencies have great flexibility in how information is provided, but the information provided should make it easy for small businesses to understand how a regulation will affect them.

Federal agencies are required to post small business or small entity compliance guides on their websites. Reviewing compliance guides of federal agencies that regulate the same subject matter may help the Executive Branch agency when drafting compliance guides. Entering the subject of a regulation or the name of federal agency, along with "federal small business compliance guide," into a search engine will likely provide a link to a federal small business compliance guide. For example, the search for "United States Coast Guard (USCG) Small Business Compliance Guide" produces the following link to all USCG compliance guides.

<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Small-Entity-Compliance-Guides/>

However information is provided, agencies should ensure information, suggestions, or recommendations for compliance is provided for every new requirement established by a regulation. When writing a compliance guide, agencies should write from the perspective of a small business trying to understand the regulation.

#### **V. Frequently Asked Questions (FAQs)**

FAQs can be an effective way to convey information by breaking each new requirement of a regulation into a question, and then providing an answer or explanation. FAQs may: (1) serve as a compliance guide; (2) provide a strategy for structuring a compliance guide; or (3) be a

supplement to a compliance guide. Agencies are encouraged to use FAQs when appropriate. FAQs may include:

- What does the new regulation do?
- When does the regulation go into effect?
- What is a small business required to do under the regulation?
- Who is covered by the regulation?
- Are there new reporting requirements? What kind of records need to be kept?
- How often must the small business report to the agency?
- Is a new license or permit required?
- What kind of training does a small business have to provide?
- Is technical assistance available?
- What type of equipment needs to be purchased?
- What are the inspection requirements?
- What costs are associated with complying with the regulation, and what is an estimate of those costs?

FAQs may also be used to give small businesses an idea of what to expect from a new regulation if it is not practical to provide a detailed explanation of each provision of the regulation. A new twenty page regulation that requires a forty page compliance guide may not necessarily make it easier for small businesses to understand a new regulation. In such an instance, identify key FAQs that offer a better understanding of the new regulation for small businesses that is more detailed than the information provided in the summary of the regulation. When using FAQs instead of an explanation for each provision of a complex regulation, provide a point of contact to answer technical questions about the regulation.

## **VI. Illustrations and Maps**

Agencies should consider the population that will be affected when developing a compliance guide. Using illustrations (i.e. pictures, drawings, posters) to demonstrate compliance is an effective means of communication, particularly for populations with low literacy rates or who predominantly speak a foreign language.

Illustrations may include:

- a map that clearly identifies the area of the State affected by a regulation if the regulation is geographically related;
- a flow chart that makes it easy to understand a new process established by a regulation; or
- a series of pictures that illustrate how to, or how not to, comply with a regulation

## **VII. Additional Resources**

Additional resources should include any additional information that may be helpful to a small business in complying with or understanding a regulation. These resources may include:

- The regulation for which the compliance guide is being written;

- The State law that requires the regulation;
- Links to a federal regulation governing a State regulation, or similar federal regulations, and federal compliance guide if available;
- General or background information for the subject matter of the regulation;
- Detailed best practices related to the regulation, if applicable;
- Information on State or government programs that may provide financial assistance; and
- How a small business may get technical assistance, including any relevant contact information.

## **Posting & Updating Compliance Guides**

State agencies are required to post compliance guides on their websites, and are encouraged to send a copy of compliance guides to any trade or industry associations representing small businesses affected by the regulation.

A compliance guide should be updated based upon feedback received from small businesses after the guide is posted. Although input may be solicited from affected small businesses when developing a compliance guide, the need for additional clarification may not be known until the compliance guide is reviewed by a broad number of small businesses.