

Regulatory Reduction Guide

*A Guide for Achieving the 25% Regulatory Requirement Reduction
under Executive Order 19*



Office of Regulatory Management
April 2023

Overview

[Executive Order 19](#) requires that Virginia agencies achieve a 25% reduction in regulatory requirements. This Guide is intended to help agencies achieve that 25% reduction. It answers questions such as:

- Which entities are required to reduce regulatory requirements by 25%?
- Which requirements are subject to the 25% reduction goal?
- What counts as a regulatory requirement?
- What types of actions count towards the 25% reduction goal?
- When does a reduction count towards the 25% goal?
- How does the 25% reduction goal apply to guidance documents?
- What information should be provided to show a 25% reduction?

Question 1: Which entities are required to reduce regulatory requirements by 25%?

The 25% reduction applies to all executive branch agencies, which include all agencies, boards, and other instrumentalities of state government in the Executive Department that are listed in the Appropriation Act. Non-executive-branch agencies are not required to comply, though they are encouraged to look for ways to reduce regulatory requirements.

Each entity that has the statutory authority to issue regulations and has issued one or more regulations in the past should strive to reduce its regulatory requirements by 25%. Each entity that has issued one or more guidance documents should also strive to reduce the number of requirements in and length of the guidance documents by 25%, as explained more fully below.

Entities that issue regulations or guidance documents can include both agencies and boards. Agencies that work with one or more boards should coordinate with each of their boards to ensure that it meets the 25% reduction. And Secretariats should work with all of the agencies and boards that they oversee to ensure attainment of the 25% target.¹

Question 2: Which requirements are subject to the 25% reduction goal?

The 25% reduction goal applies to *discretionary* regulatory requirements that agencies enact. It does not apply to regulations that are mandated by state statutes, federal statutes or regulations, or orders issued by state or federal courts.

Any regulatory requirement for which the agency has some flexibility in determining its content qualifies as *discretionary*. For example, if a statute authorizes an agency to act and the agency

¹ For the remainder of this document, the term “agency” is used to refer to any entity that has authority to issue regulations, whether it is classified as an “agency” or a “board.”

then decides to do so, any regulatory requirements it issues are discretionary. Similarly, if a statute requires the agency to act (e.g., mandates that it impose a fee), but the agency has discretion in terms of how it will act (e.g., deciding how high the fee will be), the requirements it issues are also discretionary.

If, however, a state or federal statute, federal regulation, or state or federal court order both requires the agency to act and dictates precisely what it must do, then the resulting regulatory requirement is *mandatory* and is not subject to the 25% reduction target.²

Though agencies do not have to count existing regulatory requirements mandated by statute towards their total number of requirements or new requirements mandated by statute as increases, they can claim credit for regulatory *reductions* that are mandated by statute.³

Similarly, the 25% reduction target applies only to regulations that bind *parties other than the state agency promulgating the regulation* (e.g., private citizens, companies, non-profit organizations, local governments, other state agencies).⁴ Consider, for example, a regulation requiring an agency adjudicator to decide all appeals within 30 days. If the agency changed the 30-day requirement to something less prescriptive (e.g., “decide all appeals in a timely manner”), it would be alleviating a burden on itself but potentially increasing the burden on private litigants. Agencies should, however, consider ways to eliminate requirements that impose unnecessary burdens on their own officials and provide no associated benefit for the general public, even if they do not receive credit towards the 25% reduction for doing so.

Question 3: What counts as a regulatory requirement?

In order to achieve a 25% reduction in requirements, agencies must first determine what counts as a regulatory requirement. And they need to calculate both the total number of existing requirements, which is referred to as the *baseline*, and the number of requirements that are added or eliminated by their regulatory changes. Ultimately, agencies will need to ensure that the baseline number is reduced by 25% by December 31, 2025. For instance, if an agency starts with 1000 requirements, adds 100 new requirements in the next 3 years, and deletes 400 other requirements over the same period, for a net reduction of 30%, then it has met its 25% reduction goal.⁵

² Agencies should still count and report the number of mandatory requirements alongside the number of discretionary requirements, as they did as part of the 2018–21 program described below, but only discretionary requirements are subject to the 25% requirement reduction target.

³ As explained more fully below, agencies can receive credit towards the 25% reduction for any change taking place on or after January 15, 2022. Agencies therefore should only count statutorily mandated reductions occurring on or after that date.

⁴ An agency should, however, still tabulate requirements that impose burdens on the agency itself.

⁵ Here’s the math: $1000 + 100 - 400 = 700$. That involves a net reduction of 300 requirements ($1000 - 700$), which is a 30% reduction ($300/1000$).

The remainder of Question 3 addresses some of the questions agencies are likely to encounter when counting requirements. This brief Guide cannot, however, address every situation that agencies might confront, so please consult with the Office of Regulatory Management (ORM) if you come across a situation that is not covered here. ORM will both provide an answer and supplement this document over time as it identifies new scenarios that are not otherwise covered.

As explained in more detail below, agencies will need to calculate a new baseline in addition to tabulating any changes to regulatory requirements. Chapters [444](#) and [445](#) of the 2018 Acts of the Assembly required all agencies to identify and count all statutorily mandated and discretionary provisions of existing regulations by July 1, 2020. Agencies completed that process and reported their [results](#) on the Virginia Regulatory Town Hall website. This number serves as a good starting point, but agencies will need to recalculate the baseline in order to account for changes in the last few years and to ensure that they consistently count requirements using the approach set forth below.

Defining a Regulatory Requirement

A *regulatory requirement* is any provision of law (which, as a matter of law, should be contained in the Virginia Administrative Code but might sometimes be included in a guidance document) that requires another party to do (or not do) something. Often, regulatory requirements will include words like “shall,” “must,” “will,” or “shall not.” But that need not be the case.

When identifying requirements, the key question should be “does this provision impose a binding obligation on another party by requiring it to act or refrain from acting?”. If so, it is a requirement, even if it otherwise uses discretionary language such as “may,” “can,” or “should.” If not, it is not a requirement.⁶

Multi-Element Subsections

Agencies should count each element that requires a party to take a discrete action as a separate requirement, even if there are multiple elements embedded in a single section or subsection. Consider, for instance, the following:

22 VAC 40-131-50. Office Settings and Conditions.

A. The licensee shall maintain an office within the Commonwealth of Virginia from which the child-placing activities are conducted. (+1)

B. The licensee shall ensure that the office from where child-placing activities are conducted has equipment, supplies, and adequate space for:

⁶ Agencies should keep track of *all* requirements, including those that are statutory as well as mandatory and those that are binding on state agencies themselves. As explained above, only discretionary requirements that bind parties other than the agency itself count towards the baseline. It is nevertheless useful to keep track of other requirements, as doing so allows the General Assembly to identify opportunities for reducing regulatory burdens and agencies to eliminate requirements that needlessly tie up the work of state government.

1. *The safekeeping of records; (+1)*
2. *Protection of confidential information; (+1)*
3. *Affording privacy during interviews and conferences; and (+1)*
4. *Allowing families and children the use of rooms for visitation. (+1)*

In part B, each item in the list is a distinct requirement. Therefore, each item should be counted.

If, however, a section or subsection includes a variety of different options but only imposes one discrete requirement, the different options do not need to be counted separately. Here's an example:

2 VAC 10-10-50. Seed testing.

Analyses and test of seed samples shall be conducted by the Division of Product and Industry Regulation of the Department of Agriculture and Consumer Services or by commercial seed laboratories approved by the State Certified Seed Board. (+1)

Here, either VDACS's Division of Product and Industry Regulation or approved commercial seed laboratories will be conducting the required analysis and tests. In no case would both entities be involved. The provision therefore imposes only one discrete requirement.

Similarly, if a regulation lists multiple different ways to violate a requirement but a regulated party would generally only do one of the things listed, then the entire provision should only be counted as one requirement. Consider this example:

18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.

The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder; suspend or revoke or refuse to renew or reinstate any license, certificate, or permit; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if it finds that the licensee, certificate holder, permit holder, or applicant:

3. *Attempts to obtain, obtained, renewed or reinstated a license, certificate, or temporary license by false or fraudulent representation (+1)*

A permission holder or applicant can violate the requirement in a dozen different ways: obtaining a license via false representation, attempting to renew a certificate via false representation, etc. But the individual would only ever be penalized for having engaged in one of those actions. The entire provision should therefore count only as one requirement.

Language that Elaborates on a Requirement

Agencies do not need to count language that elaborates on a requirement as itself being a discrete requirement. An example appears below:

12 VAC 5-408-80. Renewal application.

A. Every MCHIP licensee shall request renewal of its certificate of quality assurance biennially with the department. (+1) The purpose of the renewal examination shall be to determine if the MCHIP has maintained compliance with applicable laws and regulations since the last certificate of quality assurance was issued or renewed, and whether the MCHIP is using its best efforts to meet its quality assurance goals as set forth in its quality assurance plan. (0)

The second sentence does not count as a separate requirement because it is merely elaborating on the purpose of the renewal examination associated with the first sentence.

Language That Is Ambiguous as to Whether Action is Required

As noted above, regulatory requirements will not always involve language stating that a party “shall” or “must” take some action. In some cases, the regulation will use language such as “should” or “may,” but it still imposes a binding obligation. Consider the following example:

20 VAC 5-301-80. Contract negotiations.

Any contract negotiations between the utility and a potential supplier of electricity should be in strict accordance with what is stated in the company’s RFP. (+1) In fairness to all bidding participants, contract negotiations should not be extensive. (0) Fundamental changes in the nature of the project or capacity and purchase payments must not be negotiated. (+1) Any contract signed must include provisions that assure a facility’s performance and continued availability under the agreement. (+1)

The first two sentences both use the verb “should” in describing how contract negotiations are to be conducted. The first sentence, however, imposes a binding obligation: any contract negotiations must be conducted in strict accordance with the company’s RFP. It should be counted as a regulatory requirement.

The second sentence also appears to create an expectation that the parties will act, rather than merely encouraging them to do something, but it is purely aspirational. Whether or not the negotiations are “extensive” involves a judgment call and does not set an enforceable standard. The language therefore does not create a binding obligation and should not be counted as a requirement.

Programs Involving Optional Participation

In some cases, regulations provide regulated parties with an option as to whether or not they will comply but impose requirements on all parties who elect to comply. In these cases, the mere fact that participation is optional does not mean that the requirements do not count. Agencies should still tabulate any language that imposes a mandatory obligation on a party that chooses to participate as a regulatory requirement.

6 VAC 15-81-570. Interior security walls, interior partitions.

B. Interior partitions.

- 1. Interior partitions may be provided between support services such as but not limited to multipurpose rooms without adjacent toilets and staff dining. (0)*
- 2. Interior partitions shall not be substituted for required interior security walls. (+1)*
- 3. Interior partitions shall be constructed in accordance with 6 VAC 15-81-930. (+1)*

The decision to install interior participations is optional. If, however, the builder decides to do so, then the partitions are subject to mandatory requirements: they cannot be substituted for interior security walls, and they must be constructed in accordance with the cited section of the Virginia Administrative Code. Both requirements should therefore be counted, even though the builder enjoys discretion in whether it will install interior partitions.

There may, however, be cases in which an agency changes a regulation in a way that technically adds requirements but reduces the regulatory burden by authorizing a new method for achieving compliance. For instance, imagine a program in which the agency authorizes an employer to pay a reduced wage to employees enrolled in a temporary training program. The regulation adds new requirements associated with the training program (e.g., it must be temporary, the employee must be hired at full salary following training), but the overall regulatory change provides additional options to employers. If an agency is implementing such a change, it should contact ORM, which will ensure that the agency gets credit for reducing the regulatory burden.

Regulatory Text That Restates a Statutory Requirement

Some regulatory text merely restates requirements contained in a statute and adopts no additional restrictions. In these cases, the provision should be counted as a statutory requirement rather than a discretionary one.

When this is the case, the agency should consider whether the requirement should even be included in the regulation. Restating statutory requirements can be valuable if regulated parties are more likely to look to regulatory text than to the Virginia Code to identify regulatory requirements. But it can also create confusion as to the source of the requirement. And if the statute is later changed, the agency must then ensure that it updates the regulation. In this light, the agency may decide simply to eliminate these requirements from the regulatory text.

For example, **VA Code § 32.1-214** states that:

“No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any new animal hair, new feathers or new down unless such new animal hair, new feathers or new down shall have been sterilized by a reasonable process approved by the Commissioner.”

The associated regulatory provision, **12 VAC 5-125-110**, is nearly identical, stating that:

“No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any new animal hair, new feathers, or new down unless such new animal hair, new feathers, or new down shall have been sterilized by a reasonable process approved by the commissioner.”

This regulatory section could be amended as follows:

~~“No person shall use in the making, remaking, reupholstering or renovating of any bedding or upholstered furniture any new animal hair, new feathers, or new down unless such new animal hair, new feathers, or new down shall have been sterilized by a reasonable process approved by the commissioner. Sterilization of new animal hair, feathers, and down shall be in accordance with Virginia Code § 32.1-214.”~~

Prohibited Actions

From a regulated party’s perspective, a requirement *not* to do something is equivalent to a requirement to take some action. In either case, it has to adopt measures to ensure compliance. Any discrete prohibition on taking some action should therefore count as a regulatory requirement. Consider this example (involving a provision seen previously):

20 VAC 5-301-80. Contract negotiations.

Any contract negotiations between the utility and a potential supplier of electricity should be in strict accordance with what is stated in the company’s RFP. (+1) In fairness to all bidding participants, contract negotiations should not be extensive. (0) Fundamental changes in the nature of the project or capacity and purchase payments must not be negotiated. (+1) Any contract signed must include provisions that assure a facility’s performance and continued availability under the agreement. (+1)

The third sentence imposes a requirement on regulated parties by mandating that they not do something: any fundamental changes that alter the nature of the project or capacity and purchase payments “must not be negotiated.” This sentence imposes a binding obligation and should count as a requirement.

Requirements in Documents Incorporated by Reference

Virginia law allows agencies to impose binding obligations by referring to a document outside of the Virginia Administrative Code (VA Code § 2.2-4103). An example of *documents incorporated by reference* (often called *DIBRs*) appears below:

DOCUMENTS INCORPORATED BY REFERENCE. 9 VAC 5-91-50(E).

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference:

(1) 40 CFR Part 51 - Requirements for Preparation, Adoption and Submittal of Implementation Plans, specifically Subpart S (Inspection and Maintenance Program Requirements).

(2) 40 CFR Part 85 - Control of Air Pollution from Mobile Sources, specifically Subpart W (Emission Control System Performance Warranty Short Tests).

b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

2. Environmental Protection Agency, Motor Vehicle Emissions Laboratory.

a. The following document is incorporated herein by reference: Environmental Protection Agency technical report, "EPA Recommended Practice for Naming I/M Calibration Gas," EPA-AA-TSS-83-8-B, September 1983.

b. The following document is incorporated herein by reference: Environmental Protection Agency technical guidance, Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA420-B-04-011, July 2004.

c. Copies may be obtained from: Environmental Protection Agency, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105.

3. Building Officials & Code Administrators International, Inc.

a. The following document is incorporated herein by reference: The BOCA National Mechanical Code/1993, Eighth Edition.

b. Copies may be obtained from: Building Officials & Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

In this case, the agency is requiring regulated parties to comply with all the requirements included in each of the documents being referenced.⁷ The agency should therefore go through the entirety of each of these three documents and count every single requirement they contain, using the methodology described above.

In many cases, an agency will not necessarily intend that regulated parties comply with every single requirement in each DIBR. If that is the case, the regulation should explicitly identify the portions of the DIBR that the agency intends to be binding on regulated parties. As part of the process of reviewing their regulations, agencies should go through each of their DIBRs and decide whether they intend all of their requirements to be binding. If not, agencies should modify their regulations to identify with greater specificity which portions of the documents they reference are intended to be binding.⁸

Agencies should also periodically review their DIBRs to ensure that they reflect the most up-to-date versions. In the example provided above, for instance, the DIBRs include documents between 20 and 40 years old. As agencies review their regulations, they should update their DIBRs to reflect any newer versions of incorporated documents (see 1 VAC 7-10-140).

Question 4: What types of actions count towards the 25% reduction goal?

Regulatory reduction is not a “one-size-fits-all” process. There are many different ways that an agency can go about reducing regulatory burdens, and ORM wants to make sure that agencies consider all of them and get credit for any reduction they undertake.

Eliminating Discrete Requirements

The most straightforward way of reducing the burden is simply by eliminating mandatory requirements. As agencies revisit their regulations and guidance documents, they should carefully review each provision and decide if certain requirements should be eliminated. In so doing, agencies should be mindful of the important role of regulations in promoting public

⁷ In some cases, agencies provide a list of DIBRs at the end of the chapter at issue but do not include text in the regulation explicitly incorporating the relevant documents by reference. When this is the case, an agency should determine if it indeed intends regulated parties to comply with those documents as if they were regulatory requirements. If so, the agency should amend the regulation to add an explicit reference to incorporating the listed documents by reference, as seen in the example above. If not, the agency should amend the regulation to remove any such documents.

⁸ Revising DIBRs presents a great opportunity for agencies to eliminate unnecessary requirements. For example, if an agency currently incorporates a document that includes 40 requirements in its entirety, but it only intends for regulated parties to comply with a part of the document that includes 10 requirements, it can eliminate 30 requirements simply by updating the regulatory text incorporating the document to reflect the portions of the document that are intended to be binding.

health, safety, and welfare and should not eliminate any requirements that are critical to protecting the public.

There are, however, often numerous requirements that are not necessary to protect the public welfare and simply impose an unnecessary burden on businesses, the public, and often the agencies themselves. For example, many regulations require regulated parties to file periodic reports. Some reporting may be necessary to ensure that regulated parties are in compliance, but other reports may involve nothing more than a box-checking exercise, forcing companies or individuals to provide information that is of little to no use to the agency.

Over the next three years, agencies should carefully consider all of the discrete requirements in each of their regulations and guidance documents and decide what is truly necessary to protect the public welfare and what is not. As part of this process, agencies should undertake active outreach to the regulated community. Businesses and individuals who have to fill out forms, file reports, undergo required trainings, and undertake a variety of other government-mandated tasks have the best sense of the burden they impose.

In addition to eliminating unnecessary requirements, agencies should consider other ways to modify existing requirements to reduce burdens. The rest of Question 4 considers a variety of different approaches to achieving that goal.

Reducing Regulatory Burdens

Though eliminating unnecessary regulatory requirements is important, there are many other ways to reduce regulatory burdens. Consider, for instance, a requirement that an applicant for a professional license complete 1000 hours of training before he or she can be certified. Some training is necessary, so the requirement should not be eliminated completely, but 1000 hours may be excessive. Requiring 500 hours of training, for instance, may be sufficient. By making this change, the agency is reducing the regulatory burden by 50% (1000 -> 500 hours).⁹

There are many ways that agencies can *reduce* regulatory burdens rather than eliminating them completely. Here are just a few examples:

- Reducing required training hours (example cited above)
- Reducing the number of forms regulated parties must fill out or shortening the forms
- Reducing a license fee, fine, or other monetary expense imposed by regulation¹⁰
- Reducing the coverage of a regulation
- Creating a waiver or exemption or extending it to additional regulated parties

⁹ Question 7 discusses how agencies receive credit towards the 25% goal for reducing regulatory burdens without eliminating them entirely.

¹⁰ Agencies that fund some or all of their operations through the collection of fees may not have the flexibility to reduce their fees. Since those agencies are generally required by statute to collect fees that are adequate to cover their expenses (see, e.g., VA Code §§ 54.1-201, 54.1-2400(5)), they should only count fees that go beyond the statutory minimum as discretionary.

Each of these involves a reduction in regulatory burden, but they are reducing different aspects of regulatory burdens (hours, paperwork, cost, scope). That can make it difficult to determine *how much* the regulatory burden is being reduced.

To simplify this process, agencies should try to express any reduced burden that does not involve eliminating a discrete regulatory requirement in dollar terms. The [ORM Regulatory Economic Analysis Manual](#) includes extensive guidance on *monetizing* regulatory costs and benefits, and agencies should refer to it when performing these calculations. The chart below illustrates how this process might work for the examples provided above.

Type of Burden Reduction	Reduction Expressed in Dollar Terms
Reducing Training Hours	<ul style="list-style-type: none"> ➤ Number of required hours is reduced from 10 to 5 ➤ 10,000 employees must complete the training every year ➤ Average employer cost for employees is \$50/hour <p>Total reduction is \$2,500,000 (5 hours saved * 10,000 employees * \$50/hour)</p>
Shortening Forms	<ul style="list-style-type: none"> ➤ New form takes 1 hour to complete, whereas old form took 3 ➤ 10,000 employees must complete form every year ➤ Average employer cost for employees is \$50/hour <p>Total reduction is \$1,000,000 (2 hours saved * 10,000 employees * \$50/hour)</p>
Reducing Discretionary Licensing Fee	<ul style="list-style-type: none"> ➤ Fee is reduced from \$200 to \$100 ➤ 5000 contractors pay the fee annually <p>Total reduction is \$500,000 (\$100 saved/contractor * 5000 contractors)</p>
Reducing Coverage of Regulation	<ul style="list-style-type: none"> ➤ Regulation that previously applied to 20 counties now applies only to 10 ➤ Average annual cost of compliance for each county was \$100,000 <p>Total reduction is \$1,000,000 (10 newly exempt counties * \$100,000/county)</p>
Creating Waiver or Exemption	<ul style="list-style-type: none"> ➤ Regulation exempts all small businesses as defined under APA, of which there are 100 ➤ Average annual compliance cost for a small business is \$10,000 <p>Total reduction is \$1,000,000 (100 newly exempt businesses * \$10,000/business)</p>

If a regulatory reduction involves reducing the stringency of a regulatory requirement, the agency should calculate both the original cost of the requirement and the new cost following the change. Putting this information in monetary terms will ensure that the burden reduction calculation is “comparing apples to apples” and accounting for the full range of possible regulatory reduction options. And it will allow ORM to ensure that each agency gets proper credit for reducing regulatory burdens.

Other Deregulatory Actions

There may be a handful of cases in which an agency is modifying a regulatory requirement but is not eliminating it completely and cannot easily calculate the monetary value of reducing the associated burden. For instance, as noted above, there may be instances in which an agency creates a new approach to achieving compliance that adds new regulatory provisions but actually decreases the overall burden on regulated parties.

Agencies may also sometimes replace so-called “design standards,” which tell regulated parties exactly what they must do, with “performance standards,” which set a goal and leave it up to the regulated parties to decide how to achieve it. In this case, it may not be possible to determine the associated cost savings until the agency calculates the cost of whatever new compliance approaches regulated parties come up with.

If your agency is considering changing a regulatory requirement in a way that promotes market competition or makes it easier to achieve regulatory compliance but that does not reduce the overall number of regulatory requirements or produce savings that can be monetized, please contact ORM. ORM will ensure that your agency gets proper credit for its regulatory reduction efforts and that its actions count towards the 25% burden reduction target.

Actions That Do Not Count Towards the 25% Reduction Goal

Temporary changes in regulatory requirements do not count towards the 25% reduction target. For instance, consider a regulation that increases the quota on deer that a hunter can kill from 5 to 10 for the hunting season. Though this reduces an existing regulatory requirement, the quota might be adjusted upward or downward in later years. The agency therefore should not count an increased limit as a regulatory reduction or a decreased limit as a new regulatory burden. This will often arise in the context of *expedited regulations* that deal with regularly updated requirements on matters such as wildlife or fishing quotas.

Merely *delaying* a regulation also does not count towards the 25% reduction target. Consider, for instance, a regulation requiring online schools to be certified by an accrediting authority. The agency may agree to delay the certification requirement by 6 months in order to allow the schools to finish the current semester, but the regulation will eventually take effect. Though agencies should always consider delaying regulations as a way to facilitate compliance (see

ORM Regulatory Economic Analysis Manual), delays should not be considered in determining if the 25% reduction goal has been met.

Question 5: When does a reduction count towards the 25% goal?

Executive Order 19 seeks to achieve a 25% reduction in regulatory requirements by December 31, 2025. Any reduction in regulatory requirements that has occurred since January 15, 2022, including those that predate issuance of this Guide, counts towards an agency's regulatory reduction target.

A reduction in requirements does not officially count towards the 25% goal until it is completely final. That is to say, the change must have gone through the entire regulatory process (including approval by the Governor) and, where applicable, have gone through the 30-day final adoption period following publication in the *Virginia Register* (APA §§ 2.2-4013(D), 4015(A)).

Agencies should, however, feel free to discuss their regulatory reduction efforts before they become final both within and outside the government. For instance, the Unified Regulatory Plan and the Economic Review Form issued by ORM also both request that agencies identify their efforts to reduce regulatory requirements. Agencies should, as appropriate, report any regulatory reduction efforts they are considering, even if the contemplated action has not been finalized or has not even been formally announced via a Notice of Intended Regulatory Action (NOIRA).

Similarly, agencies should feel free to communicate with the public regarding regulatory reduction efforts. For instance, as part of the 4-year periodic review of each regulation required by the APA (§ 2.2-4007.1), agencies should ask for public comment on whether their regulations and guidance documents should be streamlined or eliminated as they update and modernize their regulations.

Question 6: How does the 25% reduction goal apply to guidance documents?

Guidance documents provide information of general applicability to agency staff or the public to interpret or implement statutes or regulations (APA § 2.2-4002.1, VA Code § 2.2-4101). Though guidance documents are intended to explain requirements contained in statutes or regulations or to provide background information, they sometimes contain unique requirements governing regulated parties that are not otherwise reflected in statute or regulation.¹¹

Agencies should strive to reduce those unique requirements by 25%. Agencies should also update their guidance documents to ensure that they reflect any requirements that have been

¹¹ If an agency identifies unique regulatory requirements contained in guidance documents as part of its efforts to review existing materials, it should consider undertaking an action to move those requirements into regulations.

eliminated from statutes or regulations, though they should not double count any eliminations of regulatory requirements towards the 25% reduction goal.¹²

Agencies should also strive to keep guidance documents as short and simple as possible and ensure that they are accurate and up-to-date. Allowing guidance documents to become stale or failing to rescind inaccurate or irrelevant guidance can create significant confusion for the regulated community and the general public. And guidance documents that are overly long and complicated can be difficult for regulated parties (especially small businesses) and members of the public to review and comprehend. In that light, agencies should also strive to reduce the *length* of their guidance documents by at least 25%.

In many cases, agencies have issued new guidance documents without necessarily rescinding older versions. Rescinding out-of-date guidance documents or consolidating different versions counts towards the 25% reduction.

Of course, agencies should not cut language that is valuable to understanding regulatory requirements. For example, cutting illustrative examples or making specific language vaguer may shorten a guidance document's overall length but would make it less useful to the public. But guidance documents often contain extraneous or redundant information that can be eliminated. In addition, agencies often issue multiple guidance documents on the same subject, and consolidating those documents will both eliminate confusion and reduce the amount of text that the public must read.

Question 7: What information should be provided to show a 25% reduction?

Agencies will need to do two things in order to ensure that they receive credit for their regulatory reduction and streamlining efforts. First, they need to calculate the total number of regulatory requirements in all of the Virginia Administrative Code sections and guidance documents they issue and the total length of all of their guidance documents.

A good starting point for identifying the number of regulatory requirements is the baseline reported in 2018–21. But, in the majority of cases, things will have changed in the last 3–5 years, and agencies will need to update that number. Using the counting methodology described above, agencies should come up with a new number for regulatory requirements and a separate number for length of guidance documents and report it to ORM by July 31, 2023.¹³

¹² That is to say, an agency should get credit towards the 25% reduction goal if it eliminates a requirement from a regulation, but it should not count the elimination a second time when it removes references to that requirement from its guidance documents. By the same logic, if an agency adds a new requirement and then describes that requirement in a guidance document, it does not have to count the addition twice.

¹³ In so doing, agencies can use the spreadsheets that they submitted during the 2018–21 program, but they will need to update those spreadsheets to reflect new requirements, include requirements contained in guidance documents, and otherwise make any other changes needed to comply with this Guide.

Second, agencies will need to track any regulatory action that involves adding or eliminating regulatory requirements or shortening or lengthening guidance documents. This can easily be done using the final chart on the [ORM Economic Review Form](#) that agencies must complete for all regulatory actions they undertake. Depending on the type of change the agency is undertaking, it should report the following pieces of information:

Type of Change	What to Report	Example
Eliminating (or Adding) Regulatory Requirements	Agency should report the original number of requirements and the new number in the Virginia Administrative Code section(s) and/or guidance document(s) at issue	Agency eliminates a requirement that forms be notarized
Decreasing (or Increasing) Regulatory Costs	Agency should report the original total cost and the new total cost associated with the requirement(s) it is amending	Agency reduces a fee from \$200 to \$100
Reducing (or Increasing) Regulatory Burdens in a Non-Monetizable Way	Agency should describe the change and how it will reduce (or increase) burdens, and ORM will ensure that agency gets proper credit	Agency replaces a design standard with a performance standard
Reducing (or Increasing) Length of Guidance Documents	Agency should report length of both the original and amended guidance documents	Agency shortens a previously 20,000 word guidance document to 4000 words

Over the course of the next three years, agencies will be updating their regulations and guidance documents both in furtherance of the 25% requirement reduction goal and as part of ongoing periodic review efforts (APA § 2.2-4007.1).

In determining whether or not an agency has met its 25% goal, ORM will provide “full credit” for any requirement an agency eliminates completely. For regulatory burdens an agency reduces, ORM will provide “partial credit” using the cost data or other information the agency provides. For example, if an agency reduces a fee from \$200 to \$100, the regulatory stringency has been reduced by half, and it will thereafter be counted as “0.5 requirements” rather than “1 requirement.” When an agency reduces the burden of a requirement in a non-monetizable way, ORM will work with the agency to ensure it gets proper credit towards the 25% requirement reduction.

In addition, for those regulations that are not eliminated entirely but that are modified to reduce overall stringency, ORM will monitor agencies’ cost reduction efforts and look for opportunities to highlight those agencies’ good work. Among other things, this could include flagging major successes for the Governor; providing government-wide recognition for agencies that achieve the

most significant cost reductions; and featuring major actions in press releases, op-eds, or other promotional materials. ORM will also monitor the overall reduction in regulatory costs for all regulations at specific agencies and government-wide.

Similarly, agencies should keep track of length reductions for guidance documents. They should calculate the total length of all existing guidance documents and compare it to the length of all guidance documents following the changes they undertake. They should strive to reduce the aggregate length of all guidance documents by at least 25%.

Going forward, ORM will ask for an aggregate accounting of all regulatory changes on a periodic basis. As noted above, agencies should report their updated baseline to ORM by July 31, 2023. Then, by August 31, 2023, they should report all regulatory changes that have been undertaken between January 15, 2022 and that date.

Conclusion

As agencies work through their regulations, they should keep in mind that regulatory cost savings represent money in the pockets of Virginia citizens and that regulatory restrictions have real-world impacts for everyone in the Commonwealth. The overall regulatory burden can mean the difference between whether a small business succeeds or shuts down, a recent high-school graduate can find a well-paying job as a contractor, or a teacher can focus most of her time on teaching students rather than filling out forms. And eliminating unnecessary red tape will also save agency officials themselves a significant amount of time and hassle. Reducing regulatory requirements by 25% will help the Commonwealth achieve a best-in-class regulatory system that promotes public safety and welfare while minimizing burdens on every Virginia citizen.