

THE REGULATORY REVIEW PROCESS

and

BUSINESS IMPACT ANALYSIS

Designing a Model Program for Kansas Inc.

prepared by

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*The rising tide of regulation has become a major barrier to productive economic activity. The costs arising from government regulation are basic: (1) the cost to the taxpayer for supporting a galaxy of government regulators, (2) the cost to the consumer in the form of higher prices to cover the added expense of producing goods and services under government regulations, (3) the cost to the worker in the form of jobs eliminated by government regulation, (4) the cost to the economy resulting from the loss of smaller enterprises which cannot afford to meet the onerous burdens of government regulations, and (5) the cost to society as a whole as a result of a reduced flow of new and better products and a less rapid rise in the standard of living.*

Murry L. Weidenbaum  
*The Future of Business Regulation, 1979*

*The impact of regulations on state economic development should be added to the criteria that regulatory bodies must use in carrying out their regulatory responsibilities, and, where they exist, be given greater emphasis. Existing and proposed regulations should be reviewed by Kansas Inc. to insure that they are not unnecessarily impeding economic development.*

Recommendation No. 50  
*Kansas Economic Development Study, 1986*

## EXECUTIVE SUMMARY

This report presents information on three topics which can contribute to the development of a model state program for regulatory review: (1) the purpose, structure, and philosophical orientation of the federal review process; (2) the basic design of regulatory oversight mechanisms implemented by various states; and (3) summaries of the program innovations of three states: Arizona, Kentucky, and Maine.

Few of the references consulted for this report specifically addressed the impact of the regulatory process on the business climate, or what might be called *business impact analysis*. Instead, a more general concern was expressed for reestablishing a freer market economy, improving regulatory management, and, especially in the state of Maine, improving communication between the business community and governmental policy makers (including regulators).

Of particular interest to architects of a regulatory review program who wish to foster a positive business climate are: (1) the concept of a neutralized review process, as promoted by OMB at the federal level (p.6); (2) the Governor's Regulatory Review Council of Arizona, an executive oversight committee to which at least one member is appointed from the state's business community (p.9); and (3) the education and workshop programs developed by the Maine Development Foundation to facilitate cooperation among the state's legislators, regulators, and business leaders (p.14).

Of the several approaches to regulatory review which are discussed in this report, that of Arizona most closely approximates what has been proposed for implementation in the state of Kansas. In Kansas,

Recommendation No. 50 of the *Kansas Economic Development Study* calls for state regulatory agencies to conduct analyses of the impact of regulations on economic development. It is suggested here that this responsibility be expanded to include business impact analysis.

Recommendation No. 50 also proposes that Kansas Inc. be assigned the regulatory review function for the state of Kansas. A similar form of commission review has been implemented in Arizona. In that state, the Governor's Regulatory Review Council (GRRC) is authorized by statute to approve, reject, or suggest changes in a proposed rule or regulation. The Arizona GRRC could well provide a model program for the design of regulatory oversight mechanism for Kansas Inc.

The Appendices to this report document the structure and procedures of the Arizona GRRC as well as its enabling legislation (Appendices III-VI). Also of interest are the executive orders regarding regulatory review at the federal level (Appendices I-II), pertinent statutes from the state of Kentucky (Appendices VII-VIII), and the Maine educational workshop format (Appendices IX-XIII).

## INTRODUCTION

A restrictive regulatory environment can erect significant barriers to economic growth and development. Faced with competitive pressures from other states and nations, policy leaders in the states are directing various reform efforts toward removal of those barriers, particularly those which are either unnecessary or inconsistent with the law.

U.S. industry must contend with many types of regulatory barriers: Conflicting regulations may be issued by different agencies. Other rules may misinterpret legislation and thereby unnecessarily restrict business operations. Inadequate communication often exists between industry and agency, which can result in rules that are formulated without the benefit of industry expertise. And some regulations are designed with such ambiguity that business may be confused about appropriate compliance requirements.

Throughout the nation, at both the state and national level, regulations are often formulated without explicit regard to their impact on business and industry. And it is frequently the case that business and industry are granted inadequate opportunity to comment on and contribute to proposed regulations before they are issued. It appears that the regulatory system largely ignores industrial expertise (regarding regulations which are currently in effect as well as the industry itself) and neglects the productive potential of cooperative effort.

Since receiving national attention during the Carter administration, the regulatory review process has assumed an increasingly prominent role on the agendas of policy makers throughout the states. As mandated by Congress, and several state legislatures, the regulatory review process requires that each proposed regulation undergo the scrutiny of cost-benefit analysis to

determine whether the benefits resulting from agency action outweigh the costs imposed on economic activity. Hence the term "economic impact analysis," which is used by the Office of Management and Budget (OMB) and by various state oversight authorities.

Published literature and internal government memoranda on the regulatory review process are replete with discussions of several key and controversial issues: appropriate measures for cost benefit analysis; constitutional authority for oversight activities; the choice of effective oversight processes and procedures; and other philosophical debates concerning regulatory review and the protection of the public interest. These discussions have prompted contributions from various experts: scholars of economic and administrative law, regulatory agency directors, and prominent consumer advocates, to name a few.

In general, the debate emphasizes the impact of regulatory activity on the economy in an aggregate sense, and also stresses the difficulties associated with quantification of the degree of that impact. Among the sources consulted for this report, however, little emphasis was devoted specifically to analysis of the impact of economic and social regulation on *business or the business climate*.

Such a review focus might be called "business impact analysis." As noted in this study, a small but growing number of states incorporate some measure of business impact analysis into the design of their regulatory review programs. Three such states are Arizona, Kentucky, and Maine, and their contributions to the review process are a primary focus of this report. The Arizona model is of special interest here because it



approximates what has been recommended in the *Kansas Economic Development Study* for implementation in the state of Kansas.

In this report, discussion of the Arizona model will emphasize the mission and procedures of the Governor's Regulatory Review Council (GRRC), a six-member commission which is authorized by Arizona statute to review all proposed regulations and their accompanying economic impact statements and cost-benefit analyses. Of interest in Kentucky is the statutory formula for tiering regulatory requirements to the size of individual businesses. And Maine provides an exemplary model of cooperation among the state's legislators, regulators, and business leaders.

In Kansas, the expediency of regulatory review has been promoted explicitly by the Institute for Public Policy and Business Research at the University of Kansas in its *Kansas Economic Development Study*. In that study, recommendation No. 50 to the Kansas Economic Development Commission states,

*"The impact of regulations on state economic development should be added to the criteria that regulatory bodies must use in carrying out their regulatory responsibilities, and, where they exist, be given greater emphasis. Existing and proposed regulations should be reviewed by Kansas Inc. to insure that they are not unnecessarily impeding economic development."*

The express purpose of Recommendation No. 50 is to insure that regulatory agencies in Kansas explicitly weigh the impact of proposed regulations on economic development against other priorities. Furthermore, it is proposed here that business impact analysis be formally incorporated into the Kansas regulatory review process, with oversight authority also assigned to Kansas Inc. From this dual perspective, both the state's economy

and its business interests can be viewed comprehensively within the context of the state's regulatory environment.

What is recommended for Kansas has already been institutionalized at the federal level, and implemented in various forms by several states. Therefore, the design of Kansas's specific program of regulatory review can benefit from consideration of those oversight mechanisms already in place elsewhere in the United States.

The following pages provide information about regulatory review at the federal level, the design of oversight mechanisms in effect at the state level, and the program innovations implemented by Arizona, Kentucky, and Maine.

I.  
FEDERAL REGULATORY REVIEW EFFORTS

Historically, the development of the regulatory review process at the federal level has been a bipartisan effort.

Relieving the escalating burden of regulatory activities was a stated policy interest of the Ford administration. Later, President Carter institutionalized regulatory reform through deregulation of specific industries and other efforts to improve effective management of the regulatory process. President Reagan refined that process in 1981 by requiring cost-benefit analysis, and expanded regulatory review in 1985 by directing the Office of Management and Budget to review all proposed programs for consistency with administration policy priorities.

*The Carter Program.* The two goals of President Carter's Regulatory Reform Program were to eliminate unneeded regulations and to reduce the burden imposed by necessary regulations. Two broad types of reform were implemented to achieve those goals: economic deregulation and improvement of regulatory management.

During the Carter administration, deregulation of three markets occurred: airlines, oil and gas pricing, and financial institutions. And to improve regulatory management, President Carter issued Executive Order 12044 which established design criteria for rule formulation and authorized OMB to ensure compliance with those criteria. The order called for plain language, efficient and effective design of regulations, and the elimination of unnecessary burdens on the economy, organizations, individuals, and governments. In 1978, President Carter established the United States Regulatory Review Council and directed it to monitor regulatory activity for

overlapping, conflicting, or duplicative regulations, and to publish the agendas of regulatory actions under development in The Calendar of Federal Regulations.

Under President Carter, agency directors were charged with the responsibility to direct the formulation of new regulations and the periodic review of existing regulations. The President also encouraged agency directors to use innovative, market-oriented techniques, such as economic incentives and voluntary standard setting, to develop more progressive long-term solutions to regulatory problems.

*Overview of the Reagan Program.* President Reagan introduced regulatory review as a primary policy goal on February 17, 1981 with Executive Order No. 12291 (Appendix I). That order established mechanisms within the Executive branch to improve Federal regulatory activities. The Executive Order is designed to control the growth of Federal regulation and to ensure that individual regulations are "well reasoned, economically sound, and coordinated with the policies of other agencies." To the extent permitted by law, the Order requires that all new regulations adhere to the following principles:

- o Agencies must base regulations upon adequate information concerning the need for and the consequences of the proposed action.
- o Agencies must not issue regulations unless the potential benefits to society outweigh the potential costs to society.
- o Of the alternative approaches to a given regulatory objective, an agency must select the alternative involving the least net cost to society.

Before publication, all proposed and final regulations are to be submitted to the Office of Management and Budget (OMB) to verify compliance

with these principles. Within OMB, the Office of Information and Regulatory Affairs (OIRA) oversees agency compliance with the executive order. The objective of OIRA is to insure, on a daily basis, that agency regulatory activity reflects the President's regulatory policies (OMB, Regulatory Program: 1986, pp. 551-552).

On January 8, 1985, the President expanded his regulatory review program with the issuance of Executive Order No. 12498 (Appendix II). This Order is designed to improve the systematic management of regulatory activities started under Executive Order No. 12291 and enhanced by the Paperwork Reduction Act. Furthermore, the Order mandates the development and publication of an Administration Regulatory Program, the purposes of which are:

- o To establish Administration regulatory priorities.
- o To increase the accountability of agency heads.
- o To provide Presidential oversight of the regulatory process.
- o To reduce burdens of existing and future regulations.
- o To minimize duplication and conflict of regulations.
- o To enhance public and congressional understanding of the Administration's regulatory objectives.

To satisfy this mandate, agencies are required to submit an annual statement of regulatory policies and objectives for the coming year to OMB, including information concerning all significant regulatory actions underway or planned. OMB review of these statements establishes consistency with the regulatory policy principles stated in Executive Order No. 12291 and elaborated in the guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief. Each spring, the result of

this review process are published in the Administration's Regulatory Program (OMB, Regulatory Program : 1986, p. 552).

The Regulatory Program of the United States Government: April 1, 1985-March 31, 1986, reported the President's guidelines for rulemaking agencies, as established by the Presidential Task Force on Regulatory Relief.

1. Regulations should be issued only on evidence that their potential benefits exceed their potential costs. Regulatory objectives, and the methods for achieving those objectives, should be chosen to maximize the net benefits to society.
2. Regulation of prices and production in competitive markets should be avoided. Entry into private markets should be regulated only where necessary to protect health or safety or to manage public resources efficiently.
3. Federal regulations should not prescribe uniform quality standards for private goods or services, except where these products are needlessly unsafe or product variations are wasteful, and voluntary private standards have failed to correct the problem.
4. Regulations that seek to reduce health or safety risks should be based upon scientific risk-assessment procedures, and should address risks that are real and significant rather than hypothetical or remote.
5. Health, safety, and environmental regulations should address ends rather than means.
6. Licensing and permitting decisions and reviews of new products should be made swiftly and should be based on standards that are clearly defined in advance.
7. Qualifications for receiving government licenses should be the minimum necessary. Where there are more qualified applicants than available licenses, the licenses should be allocated by auction or random lottery rather than by administrative procedures.
8. Where regulations create private rights or obligations, unrestricted exchange of these rights or obligations should be encouraged.

9. Federal regulations should not preempt State laws or regulations, except to guarantee rights or national citizenship or to avoid significant burdens on interstate commerce.
10. Regulations establishing terms or conditions of Federal grants, contracts, or financial assistance should be limited to the minimum necessary to achieving the purposes for which the funds were authorized and appropriated.

These guidelines are intended to set priorities for developing and implementing Federal regulations which embody the basic goals of the statutes enacted by Congress and signed by the President. As such, they execute, through centralized, coordinated management the purpose of the Reagan Administration's regulatory reform program: "...to achieve a freer, less regimented, and more competitive economy." (OMB, The Regulatory Reform Act of 1983)

Regarding the regulation of markets and economic relationships, the Administration seeks to "remove regulatory obstacles to the efficient working of competitive markets where there is no market failure." In the event of market failure and its corresponding need for economic regulation, rules should be designed in such a way as to compensate for the market failure while maximizing the benefit to be realized from competitive forces. In particular, the Administration's eighth regulatory guideline calls for an unrestricted exchange of any private rights or obligations that may be created by regulation. (Regulatory Program: 1985, p. xviii).

The Regulatory Program of 1985 sanctioned the regulation of economic relationships when "unregulated competition does not produce satisfactory results and regulation can improve the results achieved by the market." To do otherwise would only increase barriers to competition, and would deny consumers the full benefits of competition. (Ibid., p. xviii)

*Philosophical Orientation of the Federal Regulatory Review Process.* As stated by Mr. Jeff Hill of the Office of Management and Budget during a telephone interview, "regulations are actually an administrative form of legislation that cuts deals." Because many regulations restrict entry into specified industries and occupations, thereby allocating scarce economic resources, Mr. Hill staunchly advocates a regulatory review process that is independent of the political process.

The ultimate role of a review agency, states Mr. Hill, is that of an "information shop, insulated from the political process, whose purpose it is to educate those with political power." Sanctioned as an "official issue spotter," the review agency should be in a position to think through all possible ramifications of a proposed or an existing regulation, and should have the insulation necessary to render a neutral assessment of political "sacred cows." The analyses resulting from this creative and independent think-tank process should then be passed on to the political arena for an informed allocation of economic resources.

It is Mr. Hill's opinion, then, that it is not appropriate to conduct cost-benefit analyses of agency regulations in the service of any particular constituency, be that business or the public interest. Instead, reasoned decision making in the political process should be based upon the most objective, independent, and neutral economic analysis possible, incorporating any and all constituent perspectives into the scope of that analysis. In other words, the political balancing of economic interests should occur once the regulatory review process is completed, not during its execution.



Mr. Hill emphasized that there is incredible power in the review process, and that the neutral executive expertise of a nonpolitical staff is better suited to objective analysis than are the inputs of politicians and political appointees. He also stressed that the review process should "have enough teeth to get (the) attention (of decision makers), but not enough to (actually) abolish the regulation."

## II. REGULATORY REVIEW EFFORTS OF THE STATES

State regulatory review in general, and Arizona's regulatory reform efforts in particular, were the subjects of a Special Project of the *Arizona State Law Journal (ASLJ)*, to which an entire issue was devoted in 1985. As stated in the introduction to that issue, "In recent years scholars have devoted considerable attention to the use of review techniques to control the function of federal regulatory agencies. They have, however, largely overlooked problems concerning the nature of regulatory reform at the state level. This is a serious gap in the academic literature, because state regulation easily rivals that of the federal government when measured in terms of its impact on business operations and daily life." (Rose, Editor's Forward, 1985; p. 250)

*Regulatory Oversight Mechanisms.* At the state level, regulatory reform is conducted through two primary vehicles: deregulation of specific industries, and various review formats called oversight mechanisms.

The principle regulatory oversight mechanisms implemented by the states are either under the authority of the legislature or are directed by the executive branch. Legislative mechanisms include *sunset laws*, which are designed to insure the realization of legislative objectives, and *legislative review*, which determines whether the agency has exceeded the scope of the delegated authority and also that its decisions conform to legislative intent (Falk, p. 286).

Executive oversight of the regulatory process is less common, less well defined, but more innovative in its design features. Within state executive branches, several models of oversight have evolved which are loosely

characterized by their relationship to the chief executive and to the power vested in that office. These models are labeled: *appointed commission* which can have varying degrees of authority; *governor signature*, which directly authorizes ant new regulation; *governor veto power*, which applies to any proposed rule; *governor participation in legislature review*, which directly links the two branches in a single process; *independent reviewing agency*, which is subject to governor veto, and *reviewing committee with members appointed from the executive branch*. In addition, *state attorneys general*, as attorneys for state agencies, may review proposed rules and assist in the drafting process in order to insure conformance with any statute as it evolves. (Falk, p. 301)

*Regulatory Review in Arizona*. The former Governor of Arizona, Bruce Babbitt, was a very active proponent of state regulatory reform, both as Governor and as Attorney General. In his administration, he emphasized three fundamental political objectives: (1) to insure the appropriate role of state government in our federal system, (2) to rely on competition and the free market rather than governmental regulation to direct economic activity, and (3) to increase the quality of state government performance. (Babbitt, pp. 253-254)

Regarding regulatory reform, Governor Babbitt commented that states are ideal laboratories for innovation in the service of designing "a better governmental mousetrap." The regulatory process, he said, often fails to produce social benefits which outweigh the costs it imposes. Regulatory reform is necessary in order to increase efficiency, effectiveness and political accountability within state government and its agencies. (Ibid., pp. 254-255)

Regarding the role of the private sector in state regulatory reform, Governor Babbitt maintained that "private support is an important--even essential--element in the political coalition necessary to achieve state regulatory reform. Most of the Arizona reform efforts...were successful only because private industry and private groups supported the reform efforts... Equally important is the fact that industry opposition has frustrated other regulatory reform efforts in Arizona. We have suffered frequent disappointments in our efforts to eliminate or mitigate the restrictiveness of the numerous regulatory schemes governing the various occupations and professions...Although economic theory and scholarly studies play an important role in developing state regulatory reform, effective implementation requires a broad political consensus. Ultimately and appropriately, state regulatory reform is a political issue." (Ibid., pp. 259-260)

In Arizona, political feuding between the legislature and the executive branch sometimes characterized the regulatory reform movement, particularly regarding the question of constitutional authority for the oversight function. As one response to that feuding, Governor Babbitt expanded the scope of regulatory reform in 1981, establishing a review committee--the *Governor's Regulatory Review Council (GRRC)*--by executive order and under executive control. The GRRC was officially recognized by Arizona statute in 1986 (Appendix III).

The result in Arizona is a comprehensive system of oversight mechanisms: *sunset legislation* which is applied to existing agencies; limited *legislative review* of existing rules; mandatory *attorney general review* of proposed rules for format, agency authority and legislative

standards; and the *Governor's Regulatory Review Council*, a six-member commission which is authorized to review all proposed regulations and accompanying economic impact and cost-benefit analyses. The Council, which is jointly appointed by the Governor and state legislature and which includes at least one representative of the business community, is directed to review agency analyses of the impact of proposed rules on businesses in the state and the approximate dollar value of any costs or benefits associated with the proposed regulation.

Appendices III, IV, V, and VI present several Arizona documents which may be of interest to states contemplating a regulatory review committee similar to the Governor's Regulatory Review Council: the legislation which outlines the GRRC mission and procedures (Appendix III); a recommendation form by the Executive Budget Office which verifies an agency's compliance with procedural requirements for GRRC review (Appendix IV); the GRRC Guidelines for presentation of a proposed rule by an agency before the GRRC (Appendix V); and the procedural requirements for the GRRC (Appendix VI).

*GRRC Membership.* As specified in the Arizona statutes (Appendix III), the Council consists of six members who are appointed by the Governor and who serve at the Governor's pleasure. The Director of the Department of Administration chairs the Council and is an ex officio member. At least one member must represent the business community. In addition, the President of the Senate and the Speaker of the House each submit to the Governor a list of three persons who are not legislators, from each of which the Governor appoints a third and fourth member to the Council.

*GRRC Procedures.* The Council schedules a monthly meeting to review all proposed regulations and agency analyses of economic impact, costs, and

benefits (Appendix V). Council review takes place prior to the required notice and comment period, but after they have been reviewed by the Executive Budget Office (EBO). For each proposed regulation, the Council will determine whether benefits outweigh the costs, if the language is clear and understandably presented, and if the public interest is served. It is within the Council's authority to approve, reject, or suggest changes in a rule or regulation. (Falk, pp. 316-317).

*GRRC Guidelines.* The GRRC Guidelines (Appendix V) specifically require the submitting agency to identify the costs and benefits of both direct and indirect consequences of the proposed rule in terms of private entities, which are defined as "large businesses, small businesses, and nonprofit organizations." (Sections IIc and IIIc) For these direct consequences, an agency is required to estimate the approximate dollar value of the costs and benefits for all constituencies, including the business sector. Indirect consequence require "good faith" estimations of dollar effects.

These guidelines also specify that proposed rules be related to their impact on small businesses, as required by Arizona statute. In particular, Section IVb calls for an identification of the...methods which are proposed to reduce the impact of the newly formulated rule on small businesses.

*Evaluation of the GRRC and Regulatory Review.* In his reviews of the success of the first three years of the GRRC, Professor Rose stated that "Ideally, a high quality rulemaking process would result from well designed internal agency rulemaking procedures, coupled with early, effective assistance from agencies such as the Attorney General and EBO (Executive Budget Office). Thus, improving the rulemaking process...would not only increase the effectiveness of oversight by the GRRC, it would also diminish

the need for any oversight mechanism. Unfortunately, the ideal does not always conform with the real. Thus, a centralized monitor is probably necessary as a final check to insure a high quality rulemaking process. The GRRC is an oversight mechanism that fulfills this need." (Rose, Executive Oversight, 1985; pp.468).

Elsewhere, in his interviews with agency personnel, Rose discovered that most favored the GRRC oversight mechanism. The GRRC process seemed to motivate a more cautious attitude toward rulemaking and improved the general quality of the rules promulgated by the agencies. The resulting rules were more beneficial and understandable because of the requirement to produce economic impact analyses. Personnel also felt that an oversight mechanism was highly desirable, and that an outside committee, such as the GRRC, was preferable to either legislative or internal oversight. Interviewees feared that "legislative involvement could make oversight 'too political'," and that "internalizing the function might make oversight too much a part of the system." (Rose, The GRRC, 1984; pp. 426)

**Regulatory Review in Kentucky.** The state of Kentucky has developed two mechanisms for its regulatory review program: (1) "tiering" administrative regulations according to size of regulated entities, and (2) regulatory impact analysis (Appendices VII and VIII). The former requirement applies when either promulgating new administrative regulations or reviewing existing ones, while the latter applies only to newly proposed administrative regulations.

**Tiering Regulations.** The Kentucky Revised Statutes direct administrative agencies to tier regulations whenever possible in an effort "to reduce disproportionate impacts on certain classes of regulated entities

and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address" (Appendix VII). The tiers define criteria which must be reasonable and applied uniformly to an entire class of entities. The statute describes possible tiering methods (Section 2), tiering variables (Section 3), modifications of tiers (Section 4), and tiering regulations for small businesses (Section 5).

*Regulatory Impact Analysis.* Regarding state regulatory review procedures (Appendix VIII), the Kentucky Revised Statutes provide for a legislative search commission which is authorized to review all regulations and regulatory impact analyses. Agencies are directed to consider several factors when promulgating a new rule, including (a) the type and number of individuals, businesses, organizations and state and local governments affected by the regulation; (b) the direct and indirect costs or savings associated with compliance; and (c) the reporting and paperwork requirements of the regulation. All costs and savings are considered for the first two years following implementation, and are to include any factors which may have a positive or negative impact on the cost. Agencies must also assess the impact of a proposed rule on competition.

To date, monitoring compliance with these laws in Kentucky has been lax, reports Mr. Michael Greer of the state's Legislative Research Commission. "Agencies either ignore the laws, or don't know what they are supposed to do to comply." At the present time, a Small Business Task Force is considering a proposal to train agency personnel to properly comply with the laws' requirements. Others in the state are advocating that the laws be strengthened to insure more thorough compliance.



*Regulatory Review in Maine.* The regulatory review program of Maine has an educational focus and a special mission to break down the communication barriers which exist between the business and government sectors. The program is conducted by the Maine Development Foundation, and is an outgrowth of an innovative education process that is designed to teach both policy makers (including legislators and regulators) and the business community about economic development and the Maine economy.

*The Institute on the Maine Economy.* The Maine Development Foundation is a non-profit corporation formed in 1977 by a coalition of business leaders and the state government. The Foundation is designed to promote and foster economic growth throughout the state, and offers a number of programs which attempt to improve the state's business climate.

A particularly innovative program of the Foundation is the Institute on the Maine Economy, which is the only school in the nation for state legislators. The Institute's objective is to enlarge the political and economic perspective of the individual legislator beyond that of his or her home district. The legislators tour different regions of the state and receive classroom instruction on the Maine economy.

On the regional tours, legislators personally interact with local business people and university personnel, and witness the operations of many types of small businesses that dominate the economy of Maine. Legislators thereby learn the problems and the challenges of the business world. As a byproduct of this program, residual animosity between the state's business community and its legislators which results from their continuing interaction in the political process, is diminished.

Within a two year period, the Foundation hopes to expand the Institute with two more components: a training program for business people on the state legislature, and one for the staff of regulatory agencies on the Maine economy and the impact of their regulatory decisions on business investment.

In a telephone interview, Ms. Meredith Jones, the Institute's director, expanded on the Institute's intentions for business and regulator training programs. Basically, said Ms. Jones, "Neither (group) feels comfortable with one another...they are unable to put themselves in the minds of the other. At the core of the problem is a breakdown of communication, with each group operating on a different set of assumptions (about the nature of the political and regulatory processes)."

*The Maine Workshop on Business Regulations.* A recent effort to foster this communication was a workshop on Maine's business regulations, sponsored by the Foundation in November, 1985 (Appendices IX-XIII). The workshop idea resulted from interaction between the Maine Business Advisory Council, the State Development Office (SDO), and the Foundation regarding the regulatory process and its management by state agencies.

For the workshop, which assembled business owners, regulatory, and legislators each constituency presented a "white paper" outline of its perspective on several key issues: expediting the decision-making process; regulatory accountability; and new models which facilitate the regulatory process (Appendix XI). These papers served as the focal point for discussion among workshop participants. An additional contribution to the process was provided by the SDO, which collected information on other state programs which facilitate the regulatory process (Appendix XIII).

As defined by Foundation Director Henry Bourgeois, the goals of the workshop were: (1) problem solving by consensus; (2) improved communication; and (3) the exploration of new approaches to the regulatory process (Appendix X). Appendix XII summarizes the results of the conference's "white paper" discussions, listing each group's identification of relevant problems, solutions, and action steps.

Overall, there were seven major action steps for immediate implementation of workshop results in 1986:

1. Codify state regulations;
2. Improve management flexibility in state regulatory agencies;
3. Establish executive/legislative oversight;
4. Determine/establish legislative intent;
5. Test use of negotiation in pilot projects;
6. Conduct non-adversarial conferences; and
7. Establish overall coordination/management of proposed actions within the Governor's office.

The success rate for implementing these action steps was not ascertained for this report. However, Ms. Jones of the Institute on the Maine Economy stated that, at the workshops planned for 1987, the Institute will focus on the major issues of the regulatory process in the hope of providing a framework for future cooperation among the state's legislators, regulators, and business community.

## CONCLUSION

Two pervasive themes characterized the sources consulted for this report: the burdensome nature of an uncontrolled and uncoordinated regulatory process, and the adversarial nature of interaction both between policy makers and the business community, and between the legislative and executive branches of government as they struggle to establish constitutional authority over the regulatory oversight process. Architects of a model state program for this process might well consider the example of governmental leadership provided by the former governor of Arizona, the cooperative focus of the Maine consortium of state leaders, and the value of an independent review process, as espoused by the Office of Management and Budget.

Design of the Kansas program of regulatory review could well follow the commission format implemented by the state of Arizona. The philosophy and structure of the Arizona program are timely, innovative, and responsive to the interests of business as well as the public. These same qualities can be reflected through the efforts of Kansas Inc. as it executes the responsibilities proposed for it in Recommendation No. 50 and in this report.

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Appendix I

Executive Order No. 12291

# Executive Order No. 12291

EXECUTIVE ORDER NO. 12291 OF FEBRUARY 17, 1981

## Federal Regulation

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. *Definitions.* For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;

(2) Regulations issued with respect to a military or foreign affairs function of the United States; or

(3) Regulations related to agency organization, management, or personnel.

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Sec. 2. *General Requirements.* In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. *Regulatory Impact Analysis and Review.*

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, *provided that*, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.



(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e)(1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f)(1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

*Sec. 4. Regulatory Review.* Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the *Federal Register* at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

#### Sec. 5. *Regulatory Agendas.*

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

#### Sec. 6. *The Task Force and Office of Management and Budget.*

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Section 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping, and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies un-

derlying statutes governing agencies other than the issuing agency or with the purposes of this Order and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

#### Sec. 7. *Pending Regulations.*

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in

final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that*, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order, and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "postponement of Pending Regulations," which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

#### Sec. 8. *Exemptions.*

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *provided that*, any such regulation shall be reported to the Director as soon as it is practicable, the agency shall publish in the *Federal Register* a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statutes or by judicial order, *provided that*, any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the *Federal Register* a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category regulations from any or all requirements of this Order.

Sec. 9. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determination made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. *Revocations.* Executive Orders No. 12044, as amended, and No. 12174 are revoked.

RONALD REAGAN

THE WHITE HOUSE  
February 17, 1981

Appendix II

Executive Order No. 12498

and

Presidential Memorandum

# Executive Order No. 12498 and Presidential Memorandum

EXECUTIVE ORDER NO. 12498 OF JANUARY 4, 1985

## Regulatory Planning Process

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and Congressional understanding of the Administration's regulatory objectives, it is hereby ordered as follows:

Section 1. *General Requirements.* (a) There is hereby established a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year. To implement this process, each Executive agency subject to Executive Order No. 12291 shall submit to the Director of the Office of Management and Budget (OMB) each year, starting in 1985, a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions under way or planned; however, the Director may exempt from this order such agencies or activities as the Director may deem appropriate in order to achieve the effective implementation of this order.

(b) The head of each Executive agency subject to this Order shall ensure that all regulatory actions are consistent with the goals of the agency and of the Administration, and will be appropriately implemented.

(c) This program is intended to complement the existing regulatory planning and review procedures of agencies and the Executive branch, including the procedures established by Executive Order No. 12291.

(d) To assure consistency with the goals of the Administration, the head of each agency subject to this Order shall adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, including

those elaborated by the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements."

Sec. 2. *Agency Submission of Draft Regulatory Program.* (a) The head of each agency shall submit to the Director an overview of the agency's regulatory policies, goals, and objectives for the program year and such information concerning all significant regulatory actions of the agency, planned or under way, including actions taken to consider whether to initiate rulemaking; requests for public comment; and the development of documents that may influence, anticipate, or lead to the commencement of rulemaking proceedings at a later date, as the Director deems necessary to develop the Administration's Regulatory Program. This submission shall constitute the agency's draft regulatory program. The draft regulatory program shall be submitted to the Director each year, on a date to be specified by the Director, and shall cover the period from April 1 through March 31 of the following year.

(b) The overview portion of the agency's submission should discuss the agency's broad regulatory purposes, explain how they are consistent with the Administration's regulatory principles, and include a discussion of the significant regulatory actions, as defined by the Director, that it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules.

(c) Each agency head shall categorize and describe the regulatory actions described in subsection (a) in such format as the Director shall specify and provide such additional information as the Director may request; however, the Director shall, by Bulletin or Circular, exempt from the requirements of this order any class or category of regulatory action that the Director determines is not necessary to review in order to achieve the effective implementation of the program.

*Sec. 3. Review, Compilation, and Publication of the Administration's Regulatory Program.* (a) In reviewing each agency's draft regulatory program, the Director shall (i) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (ii) identify such further regulatory or deregulatory actions as may, in his view, be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, the agency head or the Director may raise issues for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

(b) Following the conclusion of the review process established by subsection (a), each agency head shall submit to the Director, by a date to be specified by the Director, the agency's final regulatory plan for compilation and publication as the Administration's Regulatory Program for that year. The Director shall circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration, if necessary, before publication.

(c) After development of the Administration's Regulatory Program for the year, if the agency head proposes to take a regulatory action subject to the provisions of Section 2 and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final regulatory program, the agency head shall immediately advise the Director and submit the action to the Director for review in such format as the Director may specify. Except in the case of emergency situations, as defined by the Director, or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action until the review of

this submission by the Director is completed. As to those regulatory actions not also subject to Executive Order No. 12291, the Director shall be deemed to have concluded that the proposal is consistent with the purposes of this Order, unless he notifies the agency head to the contrary within 10 days of its submission. As to those regulatory actions subject to Executive Order No. 12291, the Director's review shall be governed by the provisions of Section 3(e) of the Order.

(d) Absent unusual circumstances, such as new statutory or judicial requirements or unanticipated emergency situations, the Director may, to the extent permitted by law, return for reconsideration any rule submitted for review under Executive Order No. 12291 that would be subject to Section 2 but was not included in the agency's final Regulatory Program for that year, or any other significant regulatory action that is materially different from those described in the Administration's Regulatory Program for that year.

*Sec. 4. Office of Management and Budget.* The Director of the Office of Management and Budget is authorized, to the extent permitted by law, to take such actions as may be necessary to carry out the provisions of this Order.

*Sec. 5. Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

THE WHITE HOUSE  
January 4, 1985

RONALD REAGAN

THE WHITE HOUSE  
OFFICE OF THE PRESS SECRETARY

January 4, 1985

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Development of Administration's Regulatory Program.

With your help and active support, this Administration has substantially reduced the burden and intrusiveness of Federal regulatory programs. In the past three years, we have eliminated many needless rules, revised ill-conceived ones, and held the number of new rules to the minimum necessary. The policies and procedures of Executive Order No. 12291 have imposed long needed discipline on the rulemaking process. As a result, Federal paperwork and the size of the *Federal Register* have declined for four consecutive years—for the first time ever. Our accomplishments so far have been substantial, and we can take pride in them.

Much more can and should be done, however. Regulation has become one of the most important and costly activities of government, yet it is managed far less systematically than direct government spending. Several statutes and Executive Order No. 12291 establish procedures for agency rulemaking, but this is only the final stage of the regulatory process. Developing a government rule often involves years of studies, hearings, and intermediate decisions before even a proposed rule is issued for public comment. Frequently, senior agency officials are involved only after these earlier activities have greatly narrowed the options for final action and precluded effective Administration policy review.

Today, I have signed an Executive Order to establish a regulatory planning process by which we will develop and publish the Administration's Regulatory Program for each year. Under this process, it will be the personal responsibility of the head of each agency to determine—at the beginning of the regulatory process, not at the end—whether a given regulatory venture is consistent with the goals of the Administration and whether agency resources should be committed to it. Each agency head will thus be accountable for the management of the regulatory process, to ensure that policy options are not narrowed prematurely and that each significant regulatory proposal will be considered in relation to others.

To do this, I am requesting each regulatory agency to draft its proposed regulatory policies at the beginning of each year and to set forth a statement of priority regulatory activities, including prerulemaking actions, that constitute the agency's regulatory program for the year. This document should explain how

each new activity will carry out the regulatory policies of this Administration and specify the agency's plan for reviewing and revising existing regulatory programs to bring them into accord with Administration policies.

After approval by the head of the agency, the agency's draft regulatory program should be submitted for review by the Office of Management and Budget. This review should focus on consistency with general Administration policy, and with the draft regulatory programs submitted by other agencies. The Office of Management and Budget will circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration if necessary before the document is put in final form for publication. Issues may be raised for further review by a Cabinet Council or by me or by such other groups as I may designate. This review will not interfere with the exercise of authority committed by statute to heads of agencies.

The final regulatory programs for all agencies will be published by the Office of Management and Budget in May as the Administration's Regulatory Program for the twelve-month period beginning April 1, 1985. During the year, this document will be used as a basis for reviews of individual rules under Executive Order No. 12291. At the end of the year, it should be used to assess the agency's performance and to prepare the next year's program.

I am directing the Director of the Office of Management and Budget to implement this regulatory review process immediately and to establish the procedures under which these documents will be submitted to the Director and reviewed. For their first submission, agencies shall submit their draft regulatory program to the Director on the date specified by him. The Director will prepare for my consideration the goals and priorities for all agencies in a manner similar to the identification of significant issues in the fiscal budgetary process.

I am convinced that this process will result in substantial improvements in Federal regulatory policy. It will help ensure that each major step in the process of rule development is consistent with Administration policy. It will enable agency heads to manage agency regulatory actions more effectively, at the same time that it enables the President to hold agency heads

more closely accountable for implementing Administration policy.

While ambitious, this program will build on our earlier efforts that have proven successful—the Executive Order No. 12291 review process, the reviews of inherited rules by the Task Force on Regulatory Relief, and the annual “paperwork budget” process.

I am confident that your wholehearted support will make this next stage in our regulatory reform program equally successful.

RONALD REAGAN



Appendix III

Arizona Legislation

Establishing the Governor's Regulatory Review Council

August 1986

1 D. IF THE ATTORNEY GENERAL DETERMINES THAT THE RULE DOES NOT COMPLY  
 2 WITH SUBSECTION A OF THIS SECTION OR IF THE RULE IS ADOPTED AS AN EMERGENCY  
 3 MEASURE AND DOES NOT COMPLY WITH SUBSECTIONS A AND B OF THIS SECTION, HE  
 4 SHALL ENDORSE HIS REJECTION OF CERTIFICATION ON EACH COPY OF THE RULE,  
 5 STATE THE REASONS FOR REJECTION OF CERTIFICATION AND RETURN THE COPIES OF  
 6 THE RULE AND THE STATEMENT OF REASONS FOR REJECTION TO THE AGENCY THAT  
 7 PROPOSED THE RULE WITHIN NINETY DAYS AFTER HIS RECEIPT OF THE PROPOSED  
 8 RULE.

9 E. AN AGENCY MAY WITHDRAW A PROPOSED RULE AT ANY TIME BEFORE ITS  
 10 ADOPTION. NOTICE OF THE WITHDRAWAL SHALL BE PUBLISHED IN THE REGISTER. TO  
 11 ADOPT A PROPOSED RULE AFTER IT IS WITHDRAWN AND THE WITHDRAWAL IS PUBLISHED  
 12 IN THE REGISTER, THE AGENCY MUST FILE A NOTICE WITH THE SECRETARY OF STATE  
 13 AS PROVIDED IN SECTION 41-1022.

14 ARTICLE 5. GOVERNOR'S REGULATORY REVIEW COUNCIL

15 41-1051. Governor's regulatory review council; membership;  
 16 terms; compensation; powers

17 A. A GOVERNOR'S REGULATORY REVIEW COUNCIL IS ESTABLISHED WHICH  
 18 CONSISTS OF SIX MEMBERS APPOINTED BY THE GOVERNOR WHO SERVE AT THE PLEASURE  
 19 OF THE GOVERNOR, AND THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION IS AN  
 20 EX OFFICIO MEMBER AND CHAIRMAN OF THE COUNCIL. THE GOVERNOR SHALL APPOINT  
 21 AT LEAST ONE MEMBER WHO REPRESENTS PUBLIC INTEREST, AT LEAST ONE MEMBER WHO  
 22 REPRESENTS THE BUSINESS COMMUNITY, ONE MEMBER FROM A LIST OF THREE PERSONS  
 23 WHO ARE NOT LEGISLATORS SUBMITTED BY THE PRESIDENT OF THE SENATE AND ONE  
 24 MEMBER FROM A LIST OF THREE PERSONS WHO ARE NOT LEGISLATORS SUBMITTED BY  
 25 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES. THE GOVERNOR SHALL APPOINT  
 26 THE MEMBERS OF THE COUNCIL FOR STAGGERED TERMS OF THREE YEARS. A VACANCY  
 27 OCCURRING DURING THE TERM OF OFFICE OF ANY MEMBER SHALL BE FILLED BY  
 28 APPOINTMENT BY THE GOVERNOR FOR THE UNEXPIRED PORTION OF THE TERM IN THE  
 29 SAME MANNER AS PROVIDED IN THIS SECTION.

30 B. MEMBERS OF THE COUNCIL ARE ELIGIBLE TO RECEIVE COMPENSATION IN  
 31 AN AMOUNT OF ONE HUNDRED DOLLARS A DAY AND REIMBURSEMENT OF EXPENSES  
 32 PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.

33 C. THE COUNCIL MAY PROMULGATE RULES PURSUANT TO THIS CHAPTER TO  
 34 CARRY OUT THE PURPOSES OF THIS CHAPTER.

35 41-1052. Council review and approval

36 A. BEFORE FILING A PROPOSED RULE WITH THE SECRETARY OF STATE, AN  
 37 AGENCY SHALL PREPARE, TRANSMIT TO THE COUNCIL AND OBTAIN THE COUNCIL'S  
 38 APPROVAL OF THE PROPOSED RULE, AN ECONOMIC IMPACT STATEMENT WHICH MEETS THE  
 39 REQUIREMENTS OF SECTION 41-1053 AND A STATEMENT OF THE EFFECT OF THE RULE  
 40 ON SMALL BUSINESS WHICH MEETS THE REQUIREMENTS OF SECTION 41-1053.

41 B. THE COUNCIL SHALL REVIEW AND APPROVE OR RETURN, IN WHOLE OR IN  
 42 PART, THE PROPOSED RULE, THE ECONOMIC IMPACT STATEMENT AND THE STATEMENT OF  
 43 THE EFFECT OF THE RULE ON SMALL BUSINESS. AN AGENCY MAY RESUBMIT A RULE,  
 44 AN ECONOMIC IMPACT STATEMENT OR A STATEMENT OF THE EFFECT OF THE RULE ON  
 45 SMALL BUSINESS IF THE COUNCIL RETURNS THE RULE, THE ECONOMIC IMPACT  
 46 STATEMENT OR THE STATEMENT OF THE EFFECT OF THE RULE ON SMALL BUSINESS, IN  
 47 WHOLE OR IN PART, TO THE AGENCY.

48 C. THE COUNCIL SHALL NOT APPROVE THE PROPOSED RULE UNLESS:

- 1           1. THE ECONOMIC IMPACT STATEMENT AND THE STATEMENT OF THE EFFECT OF  
2 THE RULE ON SMALL BUSINESS CONTAINS THE INFORMATION, DATA AND ANALYSIS  
3 PRESCRIBED BY THIS ARTICLE.
- 4           2. THE ECONOMIC IMPACT STATEMENT AND THE STATEMENT OF THE EFFECT OF  
5 THE RULE ON SMALL BUSINESS ARE GENERALLY ACCURATE.
- 6           3. THE PROBABLE BENEFITS OF THE RULE OUTWEIGH THE PROBABLE COSTS OF  
7 THE RULE.
- 8           4. THE RULE IS CLEAR, CONCISE AND UNDERSTANDABLE.
- 9           D. THE COUNCIL MAY REQUIRE A REPRESENTATIVE OF AN AGENCY WHOSE  
10 PROPOSED RULE IS UNDER EXAMINATION TO ATTEND A COUNCIL MEETING AND ANSWER  
11 QUESTIONS. THE COUNCIL MAY ALSO COMMUNICATE TO THE AGENCY ITS COMMENTS ON  
12 ANY PROPOSED RULE, ECONOMIC IMPACT STATEMENT OR STATEMENT OF THE EFFECT OF  
13 A RULE ON SMALL BUSINESS AND REQUIRE THE AGENCY TO RESPOND TO ITS COMMENTS  
14 IN WRITING.
- 15           E. A PERSON MAY SUBMIT WRITTEN COMMENTS TO THE COUNCIL RELATING TO A  
16 RULE WHICH IS RELEVANT TO THE COUNCIL'S POWER TO REVIEW THAT RULE. THE  
17 COUNCIL MAY PERMIT ORAL COMMENTS AT A COUNCIL MEETING RELATING TO A RULE  
18 UNDER REVIEW WHICH ARE RELEVANT TO THE COUNCIL'S POWER TO REVIEW THAT  
19 RULE.
- 20           F. IF THE AGENCY MAKES A GOOD FAITH EFFORT TO COMPLY WITH THE  
21 REQUIREMENTS PRESCRIBED IN THIS ARTICLE, THE RULE MAY NOT BE INVALIDATED  
22 SUBSEQUENT TO ITS ADOPTION ON THE GROUND THAT THE CONTENTS OF THE ECONOMIC  
23 IMPACT STATEMENT OR THE STATEMENT OF THE EFFECT OF THE RULE ON SMALL  
24 BUSINESS ARE INSUFFICIENT OR INACCURATE OR ON THE GROUND THAT THE COUNCIL  
25 ERRONEOUSLY APPROVED THE RULE.
- 26           41-1053. Economic impact statement; small business statement
- 27           A. THE ECONOMIC IMPACT STATEMENT SHALL CONTAIN:
- 28           1. A BRIEF DESCRIPTION OF THE PROPOSED RULE AND ITS PURPOSES.
- 29           2. A BRIEF EXPLANATION OF THE NEED FOR THE RULE AND WHAT THE RULE  
30 WILL LIKELY ACCOMPLISH.
- 31           3. A DESCRIPTION OF THE CLASSES OF PERSONS WHO WILL BE AFFECTED BY  
32 THE PROPOSED RULE, INCLUDING CLASSES THAT WILL DIRECTLY OR INDIRECTLY BEAR  
33 THE COSTS OF THE PROPOSED RULE AND CLASSES THAT WILL DIRECTLY OR INDIRECTLY  
34 BENEFIT FROM THE PROPOSED RULE.
- 35           4. A DESCRIPTION OF THE PROBABLE QUANTITATIVE AND QUALITATIVE  
36 IMPACT OF THE PROPOSED RULE, ECONOMIC OR OTHERWISE, ON AFFECTED CLASSES OF  
37 PERSONS.
- 38           5. THE PROBABLE COSTS AND BENEFITS, DIRECT AND INDIRECT, TO THE  
39 AGENCY AND TO ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE  
40 PROPOSED RULE AND ANY ANTICIPATED EFFECT ON STATE REVENUES.
- 41           6. THE PROBABLE COSTS AND BENEFITS, DIRECT AND INDIRECT, TO A  
42 POLITICAL SUBDIVISION OF THIS STATE OF THE IMPLEMENTATION AND ENFORCEMENT  
43 OF THE PROPOSED RULE AND ANY ANTICIPATED EFFECT ON THE REVENUES OF THE  
44 POLITICAL SUBDIVISION.
- 45           7. THE PROBABLE COSTS AND BENEFITS, DIRECT AND INDIRECT, TO PRIVATE  
46 PERSONS OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULE.
- 47           8. THE PROBABLE COSTS AND BENEFITS, DIRECT AND INDIRECT, TO  
48 CONSUMERS OR USERS OF ANY PRODUCT OR SERVICE OF THE IMPLEMENTATION AND  
49 ENFORCEMENT OF THE PROPOSED RULE.

11. D. 2280

1 9. A DETERMINATION OF WHETHER THERE ARE LESS COSTLY METHODS OR LESS  
2 INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULE.  
3 10. A DESCRIPTION OF ANY ALTERNATIVE METHODS FOR ACHIEVING THE  
4 PURPOSE OF THE PROPOSED RULE THAT WERE SERIOUSLY CONSIDERED BY THE AGENCY  
5 AND THE REASONS WHY THEY WERE REJECTED IN FAVOR OF THE PROPOSED RULE.  
6 11. SUCH OTHER INFORMATION AS THE COUNCIL MAY REQUIRE.  
7 B. THE STATEMENT OF THE EFFECT OF A RULE ON SMALL BUSINESS SHALL  
8 CONTAIN:  
9 1. A DESCRIPTION OF SMALL BUSINESSES SUBJECT TO THE PROPOSED RULE.  
10 2. THE PROPOSED PROFESSIONAL SKILLS AND REPORTING, BOOKKEEPING AND  
11 OTHER PROCEDURES REQUIRED FOR COMPLIANCE WITH THE PROPOSED RULE.  
12 3. A DESCRIPTION OF METHODS THAT THE AGENCY WILL USE TO REDUCE THE  
13 IMPACT OF THE PROPOSED RULE ON SMALL BUSINESSES, INCLUDING THE FOLLOWING  
14 METHODS:  
15 (a) ESTABLISH LESS STRINGENT COMPLIANCE OR REPORTING REQUIREMENTS  
16 IN THE RULE FOR SMALL BUSINESSES.  
17 (b) ESTABLISH LESS STRINGENT SCHEDULES OR DEADLINES IN THE RULE FOR  
18 COMPLIANCE OR REPORTING REQUIREMENTS FOR SMALL BUSINESSES.  
19 (c) CONSOLIDATE OR SIMPLIFY THE RULE'S COMPLIANCE OR REPORTING  
20 REQUIREMENTS FOR SMALL BUSINESSES.  
21 (d) ESTABLISH PERFORMANCE STANDARDS FOR SMALL BUSINESSES TO REPLACE  
22 DESIGN OR OPERATIONAL STANDARDS IN THE RULE.  
23 (e) EXEMPT SMALL BUSINESSES FROM ANY OR ALL REQUIREMENTS OF THE  
24 RULE.  
25 4. A STATEMENT THAT NONE OF THE METHODS SPECIFIED IN PARAGRAPH 3 OF  
26 THIS SUBSECTION IS FEASIBLE OR LEGAL, IF THAT IS THE CASE.  
27 41-1054. Review by agency  
28 A. AT LEAST ONCE EVERY FIVE YEARS, EACH AGENCY SHALL REVIEW ALL OF  
29 ITS RULES TO DETERMINE WHETHER ANY RULE SHOULD BE AMENDED OR REPEALED. THE  
30 AGENCY SHALL PREPARE A WRITTEN REPORT TO THE COUNCIL SUMMARIZING ITS  
31 FINDINGS, ITS SUPPORTING REASONS AND ANY PROPOSED COURSE OF ACTION. FOR  
32 EACH RULE, THE REPORT SHALL INCLUDE A CONCISE ANALYSIS OF ALL OF THE  
33 FOLLOWING:  
34 1. THE RULE'S EFFECTIVENESS IN ACHIEVING ITS OBJECTIVES, INCLUDING  
35 A SUMMARY OF ANY AVAILABLE DATA SUPPORTING THE CONCLUSIONS REACHED.  
36 2. WRITTEN CRITICISMS OF THE RULE RECEIVED DURING THE PREVIOUS FIVE  
37 YEARS.  
38 3. AUTHORIZATION OF THE RULE BY EXISTING STATUTES.  
39 4. WHETHER THE RULE IS CONSISTENT WITH OTHER RULES PROMULGATED BY  
40 THE AGENCY, CURRENT AGENCY ENFORCEMENT POLICY AND CURRENT AGENCY VIEWS  
41 REGARDING THE WISDOM OF THE RULE.  
42 5. THE CLARITY, CONCISENESS AND UNDERSTANDABILITY OF THE RULE.  
43 B. THE COUNCIL SHALL SCHEDULE THE PERIODIC REVIEW OF EACH AGENCY'S  
44 RULES AND CONDUCT THE REVIEW IN COOPERATION WITH THE AGENCY.  
45 41-1055. Exemptions  
46 IN ADDITION TO THE EXEMPTIONS STATED IN SECTION 41-1005, THIS  
47 ARTICLE DOES NOT APPLY TO:

1 1. AN AGENCY WHICH IS A UNIT OF STATE GOVERNMENT HEADED BY A SINGLE  
2 ELECTED OFFICIAL.

3 2. THE CORPORATION COMMISSION, WHICH SHALL ADOPT SUBSTANTIALLY  
4 SIMILAR RULE REVIEW PROCEDURES, INCLUDING THE PREPARATION OF AN ECONOMIC  
5 IMPACT STATEMENT AND A STATEMENT OF THE EFFECT OF THE RULE ON SMALL  
6 BUSINESS.

7 3. THE STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES.

8 4. THE STATE BOARD OF EDUCATION.

9 ARTICLE 6. ADJUDICATIVE PROCEEDINGS

10 Sec. 6. Section 3-148, Arizona Revised Statutes, is amended to  
11 read:

12 3-148. Grounds for denial, suspension or revocation  
13 of a certificate

14 The commission may refuse to grant or renew a certificate or MAY  
15 suspend or revoke a certificate if the commission has reasonable grounds to  
16 believe that the applicant or registrant is not in compliance with rules  
17 and ~~regulations~~ promulgated by the commission relating to the  
18 certification of laboratories pursuant to this article. The commission  
19 shall notify an applicant of the reasons for its action. An applicant is  
20 entitled to a hearing pursuant to title 41, chapter 6, ~~article 1~~ on the  
21 commission action in refusing to grant or renew a certificate or in  
22 suspending or revoking a certificate.

23 Sec. 7. Section 3-386, Arizona Revised Statutes, is amended to  
24 read:

25 3-386. Complaints; investigations; hearings;  
26 hearing officers

27 A. The board on its own motion may investigate any evidence of  
28 negligent or wilfully negligent use of pesticides or any evidence which may  
29 show the existence of any cause for disciplinary action.

30 B. The board shall investigate the written complaint of any person  
31 aggrieved by an application of pesticides or which may show the existence  
32 of any cause for disciplinary action.

33 C. If after the board completes its investigation it holds the  
34 opinion that negligent or wilfully negligent use of pesticides occurred or  
35 that any cause for disciplinary action exists it shall initiate formal  
36 proceedings pursuant to title 41, chapter 6, ~~article 1~~.

37 D. The board may employ hearing officers who shall conduct hearings  
38 on matters requested to be heard by the board and shall make  
39 recommendations to the board.

40 Sec. 8. Section 3-667, Arizona Revised Statutes, is amended to  
41 read:

42 3-667. Rules and orders; delegation of duties;  
43 regulation of interstate products

44 A. The dairy commissioner shall make and enforce all rules,  
45 ~~regulations~~ and orders that are necessary to carry out the purposes of this  
46 article, and that he determines are necessary to protect the public health  
47 and welfare, and to prevent deception or confusion among consumers. For  
48 labeling purposes only, the commissioner may divide into categories the  
49 various trade and real milk products as being fluid milk, manufactured milk  
50 or food-predominantly-milk products. Any duties vested in the

Appendix IV

Recommendation Form of the Arizona Executive Budget Office  
for Agency Economic Impact Statements

GOVERNOR'S REGULATORY REVIEW COUNCIL  
EXECUTIVE BUDGET OFFICE ANALYSIS

FILE NO. \_\_\_\_\_

AGENCY NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

PROPOSAL: \_\_\_\_\_

ORIGINAL SUBMISSION  RESUBMISSION

1. HAS THE AGENCY COMPLIED WITH THE REQUIREMENT OF A.R.S. §41-1053?

Yes  No

2. ARE THERE ADDITIONAL ECONOMIC IMPACTS NOT IDENTIFIED BY THE AGENCY?

IF YES, WHAT ARE THEY?

Yes  No

3. HAS THE COUNCIL PREVIOUSLY RETURNED THESE PROPOSED RULES/REGULATIONS TO THE AGENCY FOR ADDITIONAL WORK?

Yes  No

IF YES:

ISSUE

AGENCY ACTION

RESOLVED  
Yes  No

IF YES, PLEASE ATTACH COPY OF MINUTES FOR MEETING WHEN RULE PACKAGE WAS ORIGINALLY SUBMITTED.

4. ON THE BASIS OF THE INFORMATION PROVIDED BY THE AGENCY, DOES THE EBO RECOMMEND THAT THE PROPOSED RULE/REGULATION BE

(a) CONSIDERED BY THE REGULATORY REVIEW COUNCIL.

(b) RETURNED TO THE AGENCY FOR ADDITIONAL WORK.

IF "b":

ISSUE

AGENCY ACTION

5. IN THE OPINION OF THE AGENCY, IS THIS RULE LIKELY TO BE CONTROVERSIAL?

Yes  No

6. ANY OTHER COMMENTS?

\_\_\_\_\_

Appendix V

Arizona GRRC Guidelines for Preparation of Economic Impact Statements



GOVERNOR'S REGULATORY REVIEW COUNCIL

GUIDELINES

INSTRUCTIONS:

The information outlined below should be submitted in letter form and addressed to the Chairman of the Regulatory Review Council. This information must be clearly labeled (e.g., Section I.a., Section II.b., etc.) and furnished for each proposed rule change or new rule.

I. BRIEFLY DESCRIBE THE PURPOSE OF THE PROPOSED RULE:  
(PLEASE COMPLETE BOTH "a" AND "b")

- a. Briefly explain why the proposed rule is needed. In particular, identify problem. If a new rule is being proposed because a new law was passed or an old law was changed, reference each applicable section of each applicable state or federal law.
- b. Summarize what the proposed rule would accomplish. What alternatives were considered? Why is this the most effective solution?

II. IDENTIFY THE COSTS AND BENEFITS OF THE DIRECT CONSEQUENCES OF THE PROPOSED RULE AND ESTIMATE APPROXIMATE DOLLAR VALUE OF THE COSTS AND BENEFITS FOR:\*

- a. Your agency (be sure to list changes in internal operating procedures which would be required by the proposed rule).
- b. Other public agencies; e.g., state, county, city or town, community college district, or school district agencies.
- c. Private entities (include large businesses, small businesses, and nonprofit organizations).
- d. Consumer of the product or service.

\*NOTE: Direct consequences must involve increased costs, decreased costs, increased revenues or decreased revenues. When completing II.a., b., c., and d., please use the following format:

<u>Description of Consequences</u>	<u>Dollar Value of Increased Cost/ Decreased Revenue</u>	<u>Dollar Value of Decreased Cost/ Increased Revenue</u>
------------------------------------	--	--

III. IDENTIFY THE COSTS AND BENEFITS OF INDIRECT CONSEQUENCES OF THE PROPOSED RULE:

- a. List the consequences for your agency. (Be sure to list changes in internal operation procedures which would be required by the proposed rule.)
- b. List the consequences for other public agencies; e.g., state, county, city or town, community college district, or school district agencies.
- c. List the consequences for private agencies (include both profit and nonprofit organizations).
- d. List the consequences for the public.

NOTE: When developing a list of indirect consequences, the agency should ask itself the following questions:

1. Will the rule increase or decrease cost of the product or service?
2. Will it change availability to consumer?
3. Who ultimately pays the increased cost of the rule?
4. Who ultimately benefits from the rule?
5. What incentives/disincentives are created by the rule?

The Council recognizes that these questions can be difficult to answer precisely. However, the agency should make a good faith effort to identify if increased costs will be absorbed by the regulated entity, or passed on to customers in Arizona, or passed on to customers outside of Arizona. In addition, the agency should identify whether dollar effect should be minimal or substantial.

Further, the Council recognizes that it is equally difficult to precisely identify the ultimate beneficiaries of a rule. Agencies should, however, attempt to analyze the impact of a proposed rule in those terms. For example, improved water quality may cause more people to boat and fish, which may cause more boats and fishing equipment to be manufactured, which may increase the demand for steel, and so forth. In addition, a rule which increases the price of one product may cause increased sales of substitute products which, in turn, may increase employment in those industries.

Finally, rules may create incentives to resort to disreputable/illegal practices. For example, if a product is taxed heavily, bootlegging and barter may result. The Council does not expect agencies to quantify the consequences of illegal practices unless it is very confident that such practices will result and will

have significant impacts in terms of increased costs, decreased revenues, decreased costs, or increased revenues.

IV. IDENTIFY THE IMPACT OF THE PROPOSED RULE ON SMALL BUSINESS:

The following information is required per A.R.S. §41-1001, 41-002, and 41-1002.02 relating to the impact of proposed rules on small businesses. For the purpose of this section, a small business is defined as a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

- a. Describe the types of small businesses subject to the proposed rule. Briefly describe the proposed reporting, bookkeeping, and other procedures required for compliance with the proposed rule and describe the types of professional skills necessary for compliance.
- b. Identify which of the following methods will be utilized to reduce the impact of the proposed rule on small businesses.
  1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
  2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
  3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
  4. Establish performance standards for small businesses to replace design or operational standards in the rule.
  5. Exempt small businesses from any or all requirements of the rule.

If none of the above methods are legal or feasible in meeting the statutory objectives which are the basis of the proposed rule, the agency should so state.

V. FILING OF RULES.

1. Rules shall be in such form as necessary for filing with the Secretary of State.

2. An original and ten (10) copies of the proposed rules and related material must be filed at least twenty (20) days prior to the Council's meeting.
3. Rules must be accompanied by a statement of approval from the agency head, date approved and a name and phone number of a person to contact for questions or to establish a time for appearance before the council. No rule proposed will be approved by the Council which does not satisfy the above requirements of filing.
4. Rules are to be filed with the Chairman of the Governor's Regulatory Review Council, Executive Budget Office, Department of Administration, Capitol Executive Tower, Room #602, Phoenix, Arizona 85007. (255-5381)

10/6/86

Appendix VI

Arizona GRRC Procedures

## GOVERNOR'S REGULATORY REVIEW COUNCIL PROCEDURES

- I. *Purpose.* The Governor's Regulatory Review Council (Council) was established by the Governor's Executive Order 81-3, dated May 3, 1981. The Council has the responsibility to receive and review all proposed administrative rules and regulations of executive agencies.
- II. *Composition.* The Council is composed of five (5) members, appointed by the Governor and serving at his pleasure. The Director of the Department of Administration serves as a member and chairman of the Council. Three (3) members present shall constitute a quorum and the majority vote of those present is necessary for approval of an action.
- III. *Meetings.* The Council will meet the first Wednesday of each month in Room 805 of the Capitol Executive Tower, beginning at 9:00 a.m., and at other times as designated by the chairman for the purpose of performing its required duties.
- IV. *Filing of Rules.* The following procedures shall be followed in submitting rules for review:
  1. Rules shall be in such form as necessary for filing with the Secretary of State;
  2. An original and five (5) copies of the proposed rules must be filed at least ten (10) days prior to the Council's meeting;
  3. Rules are to be filed with the Governor's Regulatory Review Council, Director's Office, Capitol Executive Tower, Room 804, Phoenix, Arizona 85007.
  4. In addition to the proposed rules, five (5) copies of a summary of each rule shall accompany a rule(s) filed, such summary to include:
    - a. An explanation of the reasons for the rule or for a rule change;
    - b. An indication of likely areas of public comment or controversy, with a statement of opposing viewpoints;
    - c. A statement of the economic impact of the rule which affects any state, county, city or town agency, community college district or school district;
    - d. A statement of the costs and benefits of each rule to the agency, other government entities and the public; and
    - e. The section(s) of the Arizona Revised Statutes being implemented by the rule.

5. The rules must be accompanied by a statement of approval from the agency head, date approved and a name and phone number of a person to contact for questions or to establish a time for appearance before the Council. No rule proposed will be approved by the Council which does not satisfy the above requirements in filing.

V. *Review.* The Council will review rules to ensure they are:

1. Clearly and understandably written;
2. Not duplicative of existing or proposed rules;
3. Serving the public interest;
4. In compliance with state law;
5. Of greater benefit than the costs imposed; and
6. Not excessive or unnecessary.

Rules which do not meet with the approval of the Council for any of the above reasons must be withdrawn or redrafted and resubmitted and obtain approval prior to promulgation.

VI. *Definitions.* The following definitions shall apply in carrying-out the functions of the Council:

1. "Executive Agency" means those organizations whose chief executive officer, director, commissioner or head is appointed by the Governor.
2. "Rule" includes regulation and means any Executive Agency action which requires publication as provided in A.R.S. Sec. 41-127.
3. "Economic Impact" means causing any direct additional cost.
4. "Emergency Rule" means any rule adopted pursuant to A.R.S. Sec. 41-1003 and valid for not more than ninety (90) days.

Appendix VII

Kentucky Revised Statutes: Tiering of Administrative Regulations

13A.210. Tiering of administrative regulations — Methods of tiering — Variables. — (1) When promulgating administrative regulations and reviewing existing ones, administrative bodies shall, whenever possible, tier their administrative regulations to reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. The tiers, however, must be based upon reasonable criteria and uniformly applied to an entire class. Administrative bodies may use any number of tiers they feel will solve most effectively the problem the administrative regulation addresses. If the administrative body does not tier its administrative regulations, a written statement must be submitted to the legislative research commission explaining why tiering was not used.

(2) Administrative bodies may use, but shall not be limited to, the following methods of tiering administrative regulations:

- (a) Reduce or modify substantive regulatory requirements;
- (b) Eliminate some requirements entirely;
- (c) Simplify and reduce reporting and recordkeeping requirements;
- (d) Provide exemptions from reporting and recordkeeping requirements;
- (e) Reduce the frequency of inspections;
- (f) Provide exemptions from inspections and other compliance activities;
- (g) Delay compliance timetables; and
- (h) Reduce or modify fine schedules for noncompliance.

(3) When tiering regulatory requirements, administrative bodies may use, but shall not be limited to, size and non-size variables. Size variables include number of citizens, number of employees, level of operating revenues, level of assets and market shares. Non-size variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations and level of federal funding.

(4) When modifying tiers, administrative bodies shall monitor, but shall not be limited to, the following variables:

- (a) Changing demographic characteristics;
- (b) Changes in the composition of the work force;
- (c) Changes in the inflation rate requiring revisions of dollar-denominated tiers;
- (d) Changes in market concentration and segmentation;
- (e) Advances in technology; and
- (f) Changes in legislation.

(5) When tiering administrative regulations for small business concerns, administrative bodies shall use the small business size standards as defined in Section 632 of the federal Small Business Act and Part 121 of Title Thirteen of the Code of Federal Regulations. (Enact. Acts 1984, ch. 417, § 21, effective April 13, 1984.)



Appendix VIII

Kentucky Revised Statutes: Regulatory Impact Analysis

**13A.240. Regulatory impact analysis.** — (1) Every administrative body shall prepare and submit to the legislative research commission an original and five (5) duplicate copies of a regulatory impact analysis for every proposed administrative regulation. The regulatory impact analysis shall include, but not be limited to, the following information:

(a) The type and number of individuals, businesses, organizations and state and local governments affected by the administrative regulation; and

(b) The direct and indirect costs or savings, as well as the compliance, reporting and paperwork requirements of the administrative regulation on those affected for the first year following the implementation of the administrative regulation, and the continuing costs or savings for the second year with any factors which might increase or decrease the cost of the administrative regulation, including the effect on competition being noted; and

(c) The direct and indirect costs or savings and paperwork requirements to the promulgating administrative body for the administration and enforcement of the administrative regulation for the first year following the implementation of the administrative regulation, and the continuing costs or savings for the second year with any factors which might increase or decrease the cost of the administrative regulation being noted; and

(d) An assessment of any anticipated effect on state and local revenues; and

(e) An assessment of alternative methods for accomplishing the purpose of the administrative regulation and the reasons why they were rejected in favor of the proposed administrative regulation; and

(f) A written statement identifying any statute, rule, regulation or governmental policy which the proposed administrative regulation may be in conflict with, overlap or duplicate; and a written statement for the necessity to promulgate the administrative regulation if conflict, overlapping or duplication is found to exist. The administrative body shall also indicate whether or not any effort has been made to harmonize the proposed administrative regulation with any statute, rule, regulation or governmental policy with which it has been found to be in conflict.

(2) The legislative research commission shall review all regulatory impact analyses submitted by all administrative bodies, and prepare a written analysis thereof and of the proposed administrative regulation. The legislative research commission may require any administrative body to submit background data upon which subsections (1)(a) through (1)(f) are based and an explanation of how the data was gathered. (Enact. Acts 1984, ch. 417, § 24, effective April 13, 1984.)

Appendix IX

News Report about the Workshop on Maine's Business Regulations

# Views aired to ease regulations on businesses

Ideas developed at conference to be presented to the Governor's Business Council

By Emmet Meara  
Midcoast Bureau

ROCKPORT — A variety of remedies to heavy regulation of business in Maine were developed at a two-day session of the Maine Development Foundation at the Samoset Resort Inn. The suggestions will be presented to the Governor's Business Council meeting on Dec. 19.

The convention of business, legislative and regulatory officials broke off into small groups for two days to discuss the problems of excessive regulation, then developed suggestions for improvement.

Alex Pattakos, director of the Bureau of Public Administration at the University of Maine, led the discussion on the need for accountability in business regulation matters. He suggested the formation of a blue ribbon commit-

tee composed of legislators and regulators to study alternative agency management systems, which would report back to the Legislature.

Pattakos suggested that legislative committees require agencies to explain the need and scope of regulation. This must be done while retaining needed flexibility and without "tying down" the agency, he said.

Also, procedures must be developed to established legislative oversight. Legislative committees should have the right to audit and review regulations, without establishing an entire new bureaucracy, Pattakos said. Public participation in the regulatory process must be increased, he said.

Regulations negotiated between government and business and the "swapping" of business and regulatory personnel were endorsed by the study

group led by Richard Silkman, an associate professor of public policy and management at the University of Southern Maine.

Silkman called for an executive order to form a committee to investigate the body of state regulations. While the idea of swapping business and regulatory staff, "seemed attractive, we couldn't get very far" on implementation, Silkman said.

He suggested that pilot projects, either binding or non-binding, be established for negotiated regulations. The pilot projects could share experience with other state agencies.

An "economic impact statement" should be required through an executive order to accompany all new regulations that affect businesses, according to the study group led by Jon Oxman, an attorney at the Auburn law firm of Linnell, Choate and Webber.

The first order of business should be to assemble all state regulations in a clear, simple package, according to Oxman. Regulations should be cataloged and codified with obsolete and redundant legislation removed, he said. An executive order is needed to start an evaluation process of state regulations by business and legislative officials, according to the Oxman group.

To combat a "lack of direction" in state regulations, Oxman said efforts were needed to make state regulations more clear. A statement of intent should accompany regulations, he said.

To reduce the adversarial nature of business regulation, the Oxman group suggested regular, informal sessions between business people, the regulators and the Legislature.

Appendix X

Proposal for the Workshop on Maine's Business Regulations



WORKSHOP ON MAINE'S BUSINESS REGULATIONS

Problem Solving Session for Maine's  
Business Leaders, State Legislators, and State Regulators

Background.

At its May, 1985 meeting, several of Governor Brennan's Business Council members expressed concern about the way State government regulates Maine businesses. Several important questions were raised:

- Does the State's regulatory process place an unnecessarily severe burden on Maine businesses?
- Is the State's business climate adversely affected by the State's regulatory process?
- Is the relationship clear between legislators who make the laws and State administrators who administer regulations and implement the laws?
- Should State lawmakers assume greater monitoring and oversight responsibility regarding their laws?
- Are State regulatory agencies administering regulations in the most fair and efficient manner, to both seek business input and expedite decisionmaking?
- To what extent do Federal laws influence the State's business regulation process?
- Can the regulatory process itself be streamlined to expedite decisionmaking?
- Can new approaches be initiated which are less confrontational and more cooperative in terms of business and regulator interaction?

Outlined below is a recommended follow-up to the Business Council's discussion of this issue. The recommendation is based upon the Foundation's experience with the Institute on the Maine Economy and its experience with regulatory agencies through the Environmental Regulatory Advisory Committee. The workshop recommended below is the first step in a process which could take several months.

Prepared for Governor Joseph Brennan  
Business Advisory Council  
by: Henry Bourgeois, President  
June, 1985

Purpose of the Workshop.

A. Problem Solving.

- To begin to answer the above questions, and identify the most serious problems affecting Maine's businesses in the regulatory process.
- To reach consensus on the most feasible solutions to these problems.
- To agree on immediate action steps to implement these strategies.

B. Communication.

- To improve communication between the principals involved in the regulatory process: businesspersons, State legislators, and regulators.

C. New Approaches.

- To identify new and innovative approaches for carrying out the regulatory process, possibly based on experiences of other states or countries.

Participants at the Workshop.

- A. Fifteen business leaders, representing a variety of industry types and sizes.
- B. Fifteen legislators, representing key committees.
- C. Fifteen State agency staff from the appropriate agencies; ideally both the Commissioner and his/her immediate assistants.

Workshop Steering Committee.

- A. An eleven-person steering committee will be formed immediately, as a subcommittee of the Business Council. Committee members will include:
  - Seven members of the Business Council.
  - A State legislator, and a State agency deputy commissioner.
  - SDO and MDF staff.
- B. The steering committee's goal will be to oversee the planning and conduct of the workshop, and to recommend follow-up actions to the Business Council.

Research and Material Preparation.

A. Prior to the workshop, research will be undertaken to support the work of the participants. The research work will be directed at the three major components of the workshop, and will result in three papers. The three papers will address the problems and discuss possible solutions:

- Ken*
- (1) The first paper will document the weaknesses and problems in the present regulatory system which unnecessarily place severe burdens on Maine businesses, and adversely affect the State's business climate. This paper will also suggest remedies to the problems, including options for streamlining the process to expedite decisionmaking. This will be developed by a regulatory agency - Department of Environmental Protection - Ken Young, Deputy Commissioner.
- Tom*
- (2) A second paper will examine the broader issue of "Maine's Wednesday government" and the relationship between State lawmakers and State regulators in rulemaking under Maine's Administrative Procedures Act (APA). Confusion over rules and responsibilities will be documented, and suggestions will be offered to clarify the roles and insure adequate review and oversight. This will be developed by State Senator Tom Andrews.
- Ken*
- (3) The third paper will describe other approaches to development and administration of regulations, used by other states and countries. These approaches will include alternatives to the confrontation effort which we currently employ and will also identify successful approaches other states have used to streamline the process. This paper will be presented by a business representative, David Flanagan of Central Maine Power Company.

Agenda and Format for the Workshop.

- A. The workshop will be held away from Augusta, in a setting conducive to cooperation and creative problem solving.
- B. The focus of the workshop will be on solving problems and identifying specific action steps to take immediately after the workshop. Outside persons will be brought in to address specific issues, and to give participants a fresh view of the problem. Participants will work in small groups in a highly structured "delphi" format to immediately focus attention on the most serious problems, the most feasible solutions, and immediate action steps.



Appendix XI

Agenda for the Workshop on Maine's Business Regulations

STATE REGULATIONS AFFECTING MAINE'S BUSINESSES

A Special Problem Solving Workshop for Business Leaders,  
Legislators, Regulators and Interveners

Sponsored by Governor Brennan's Business Advisory Council

Thursday-Friday  
November 21-22, 1985

Samoset  
Rockland

AGENDA

THURSDAY

- 8:00 a.m. REGISTRATION AND COFFEE
- 9:00 a.m. OPENING SESSION (Rockland Room)
- Presiding: Roland Sutton, President  
Maine Machine Products Company, South Paris;  
Chair, Governor's Business Advisory Council
- 9:15 a.m. KEYNOTE ADDRESS
- Speaker: Dr. George Eads, Dean, School of Public Affairs  
University of Maryland  
  
Former Member, President Carter's Council on  
Economic Advisors
- 10:00 a.m. PROBLEMS AND OPPORTUNITIES CONFRONTING THE BUSINESS REGULATION  
PROCESS IN MAINE
- Panelists:  
  
Alternative Approaches: Kenneth C. Young, Jr.  
Deputy Commissioner  
Department of Environmental Protection  
  
Expediting Decision-Making: David Flanagan, Vice President  
Central Maine Power Company  
  
Accountability: Tom Andrews, State Senator
- 10:45 a.m. WORKING GROUPS MEET: STEP ONE - MOST SERIOUS PROBLEMS
- Three concurrent working groups will meet to discuss one of the  
three topics: new approaches, decision-making, and  
accountability.

A. Alternative Approaches (Penobscot Bay Room)

- Moderator: Richard Silkman, Associate Professor, USM

B. Decision-Making (Ebb Tide Room)

- Moderator: Jon Oxman, Esq. - Linnell, Choate & Webber

C. Accountability (Windjammer Room)

- Moderator: Alex Pattakos, Director, UMO

- Each group's task will be divided into three components:

- (1) First, to discuss the problems raised by the white paper and agree on the two most serious problems.
- (2) Second, to discuss solutions and reach consensus on the most feasible approaches to solve each problem.
- (3) Finally, to agree on specific action steps and assignment of responsibilities for implementing each solution.

12:30 p.m. LUNCH (Rockport Room)

1:30 FEEDBACK SESSION ON PROBLEMS (Rockland Room)

- Group moderators present summary of findings to entire workshop.

2:30 WORKING GROUPS MEET: STEP TWO - MOST FEASIBLE SOLUTIONS

5:00 BREAK

6:30 RECEPTION (Cash Bar) (Rockland Room)

7:15 DINNER (Rockland Room)

FRIDAY

7:00 a.m. BREAKFAST (Dining Room)

8:00 FEEDBACK SESSION ON SOLUTIONS (Rockport Room)

9:00 WORKING GROUPS MEET: STEP THREE - ACTION STEPS

11:30 FEEDBACK SESSION ON ACTION STEPS (Rockport Room)

12:30 p.m. LUNCH (Camden Room)

- Feedback session on Action Steps

2:00 ADJOURN

(Business Advisory Council Meets) (Ebb Tide Room)

Appendix XII

Results of the Workshop on Maine's Business Regulations

## STATE REGULATIONS AFFECTING MAINE'S BUSINESSES

### Results of a Special Problem Solving Workshop for Business Leaders, Legislators, Regulators and Interveners

The Governor's Business Advisory Council sponsored the special workshop on November 21-22, 1985. Eighteen regulators, twelve legislators, eleven interveners, and twenty-one business leaders--a total of sixty-two participants--attended the program. Participants were assigned to work in one of the three groups focusing on a specific aspect of the issue:

- Group A: Alternative Approaches to Rulemaking
- Group B: Enhancing Decision-Making
- Group C: Accountability

The highly structured group discussions were organized to have each group reach consensus on priority problems (2), solutions and action steps. A moderator chaired the discussion; a resource person, who had prepared a background paper, was available for the entire meeting; and a scribe took careful notes and summarized the major points.

Following the workshop, the moderators, scribes and resource persons met to agree on specific action steps to recommend to the Business Advisory Council for immediate implementation in 1986.

Attached are:

1. Immediate action steps to implement workshop recommendations.
2. Summaries of the results of each group's discussions.
3. List of moderators, resource persons, and scribes.

STATE REGULATIONS AFFECTING MAINE'S BUSINESSES

Immediate Action Steps to Implement Workshop Results in 1986  
(As Synthesized by Moderators, Resource Persons and Scribes)

<u>Recommendation</u>	<u>Action Required</u>	<u>Responsible Agency/Organization</u>
<u>A. Codify State Regulations</u>		
(1) Mandate state agencies to inventory regulations - Arrange by MRSA - Title/summary of content	Executive Order	SDO
(2) State agencies publish semi-annual regulatory agenda of proposed rules/regulations	Executive Order	Agencies
<u>B. Improve Management Flexibility</u>		
(1) Joint public-private study to recommend ways in which to improve management flexibility in state regulatory agencies - Goal of attracting and maintaining the highest quality managers	Executive Order	
<u>C. Establish Executive/Legislative Oversight</u>		
(1) Send a letter to chairs of joint legislative committees reminding them of their statutory authority to review agency rules, hold public hearings and make recommendations to the agency under the legislative oversight provision.	Request from BAC	Legislative Leadership
(2) The instructional handbook for legislators should be expanded to include more information relative to the available legislative oversight process while encouraging increased public notice and opportunity for comment in any review of agency operations.	Request from BAC	Legislative Leadership
(3) Executive monitoring of the regulatory development process to assure adequate examination of alternative regulatory mechanisms to accomplish cost effective results.	Executive Order	Executive and/or SDO

<u>Recommendation</u>	<u>Action Required</u>	<u>Responsible Agency/Organization</u>
(4) Conduct informal oversight meetings with agency heads, no less than every three years with the purpose of reviewing regulation statutory intent, clarity, consistency, coordination, and economic impact.	Executive Order	
<u>D. Determine/Establish Legislative Intent</u>		
(1) Amend joint rules to require joint committees to include a brief statement of regulatory intent in all legislation resulting in regulation	Request from BAC	Legislative Leadership
a. Committee may seek and include agency input and interpretation of intent		
b. Statement may include scope and limitations of intent as well		
<u>E. Test Use of Negotiation</u>		
(1) Undertake two "models" or pilot projects using negotiation in both the rulemaking process and the adjudicatory decision-making process.	Executive Order	SDO/MDF
- Prepare case studies to evaluate applicability and share results		
<u>F. Conduct Non-Adversarial Conferences</u>		
(1) Conduct regular informal non-adversarial conferences on agency or issue-specific topics for all parties	Executive Order	SDO/MDF
<u>G. Establish Overall Coordination/Management</u>		
(1) Assign responsibility for monitoring, coordinating and managing implementation of above actions in 1986 to staff person in Governor's office	Executive Order	Executive

STATE REGULATIONS AFFECTING MAINE'S BUSINESSES  
 GROUP A ALTERNATIVE APPROACHES TO RULEMAKING

SUMMARY OF RESULTS

PROBLEMS	SOLUTIONS	ACTION STEPS
A. Inadequacy of agency resources	IA. Loan of industry staff to regulatory agencies.	MDF determine guidelines to be followed in arranging exchanges or loans of staff between business community and regulators.
B. Confusion about agency goals and task	IB. Get legislature to state its intents in passing laws.	Ask legislative committees to attach a "statement of regulatory intent" bills plus a written committee report.
C. Difficulty in getting meaningful input into the rulemaking process	2B. Periodically review the need for existing regulations.	Establish informal committees to review existing rules every three years.
D. Appearance that the outcomes of rulemaking procedures are pre-determined.	IC. Make rulemaking process more predictable and accessible.	Establish a central location and/or document where all state regulations can be found.
D. Appearance that the outcomes of rulemaking procedures are pre-determined.	ID. Use negotiations where appropriate in the rulemaking process.	Have state agencies publish at least yearly an agenda of anticipated agency rulemaking.
D. Appearance that the outcomes of rulemaking procedures are pre-determined.	ID. Use negotiations where appropriate in the rulemaking process.	MDF and state agencies conduct case studies to evaluate applicability of negotiation to rulemaking process.



STATE REGULATIONS AFFECTING MAINE'S BUSINESSES  
 GROUP B ENHANCING DECISION-MAKING

SUMMARY OF RESULTS

PROBLEMS	SOLUTIONS	ACTION STEPS
<p>A. System Capability</p> <ul style="list-style-type: none"> <li>a. Quality of Regulators</li> <li>b. Lack of Legislative Direction</li> <li>c. Lack of Resources</li> </ul>	<p>1A. Commissioners have greater flexibility in making job assignments.</p> <p>Management appraisals by peers, subordinates, superiors, and elected officials or regulators.</p>	<p>Declassify key regulatory positions from the Personnel System. (Managerial responsiveness vs. Political responsiveness).</p>
<p>1B.</p>	<p>Clarify Legislative intent when drafting legislation.</p>	<p>Executive Order to develop career path program, high quality training.</p> <p>Governor designates test agency for evaluation system of regulatory officials.</p>
<p>1C.</p>	<p>Draft regulations submitted before a law is enacted.</p> <p>Inventory, prioritize, and delete agency regulations through the Legislature while maintaining staff capability.</p>	<p>Legislative Committee report on inter of each bill, part of record.</p> <p>Mandatory attendance of regulatory agency at Legislative Hearings.</p> <p>Each bill passed must include a statement of Legislative intent.</p> <p>Establish a Code of Regulations.</p>
		<p>Agency inventory and codify regulations for obsolescence and redundancy.</p> <p>Legislative review of programs for elimination.</p>
		<p>Audit and Review incorporates review of regulations.</p>

GROUP B ENHANCING DECISION-MAKING

SUMMARY OF RESULTS (cont.)

PROBLEMS	SOLUTIONS	ACTION STEPS
B. Failure to Consider Economic Impact	1B. California Plan: Executive oversight for consistency, clarity, and impact on regulations. (Governor's Office or State Development Office)	Executive Order requiring Executive monitoring of defined State policy goals in regulations including clarity, coordination, consistency, and economic impact. Review is to be selective.
C. Adversarial Relationships	1C. Routine, informal meetings at rotating sites between regulators and regulatees.	Executive Order within the confines of the APA to have routine, informal meetings between regulators and regulatees at the middle and top management level.
		Executive Order directing regulatory agencies to incorporate negotiation the regulatory process and specific procedures for negotiating decision-making actions.

STATE REGULATIONS AFFECTING MAINE'S BUSINESSES  
GROUP C ACCOUNTABILITY

SUMMARY OF RESULTS

PROBLEMS	SOLUTIONS	ACTION STEPS
<p>A. Regulation does not necessarily reflect legislative intent because of frequent lack of clarity or available reference as to what the original intent was</p> <p>a. Legislation may be too specific thus hampering agency flexibility or too vague providing little direction and opportunity for abuse</p> <p>b. Legislative histories are frequently non-existent</p> <p>c Little communication between parties</p>	<p>1A. Establish a more formalized method of stating legislative intent</p> <p>a. Clearly establish objectives or standards within legislation</p> <p>b. Formalize legislative intent in record of proceedings.</p> <p>2A. Increase legislative oversight of regulatory process</p>	<p>1A. Amend joint rules to require joint committees to include a brief statement of regulatory intent in all legislation resulting in regulation</p> <p>a. Committee may seek and include agency input and</p> <p>b. Statement may include scope and limitations of intent a well</p> <p>2A. Send a letter to chairs of joint committees reminding them of their statutory authority to review agency rules, hold public hearings and make recommendations to the agency under the legislative oversight provision in Title 5, Sec. 11111.</p>
		<p>3A. The instructional handbook for legislators should be expanded to include more information relative to the available legislative oversight process while encouraging increased public notice and opportunity for comment in any review of agency operations.</p>

GROUP C ACCOUNTABILITY

SUMMARY OF RESULTS (cont.)

PROBLEMS	SOLUTIONS	ACTION STEPS
<p>B. There are inadequate resources within state government and the legislature to ensure effective regulation</p> <p>a. The level and quality of resources are limited</p> <p>b. There are no effective measures of performance</p> <p>c. There is no independent review or auditing of the regulatory process</p>	<p>1B. Agency management needs increased flexibility in allocating and managing existing resources</p> <p>a. Ability to reward and encourage performance</p> <p>2B. Improve the efficiency of scheduling and processing legislation to provide for increased and more efficient interaction among parties</p>	<p>1B. Encourage joint public and private sector study (endorsed by Governor and legislature) to improve management flexibility and utilization of existing resources</p>

STATE REGULATIONS AFFECTING MAINE'S BUSINESSES

Group Moderators, Resource Persons, Scribes

Group A: Alternative Approaches to Rulemaking

Moderator: Richard Silkman, Associate Professor,  
University of Maine School of Public Policy &  
Management

Resource Person: Kenneth C. Young, Jr., Deputy Commissioner  
Department of Environmental Protection

Scribe: Frank Fiore  
Department of Environmental Protection

Group B: Expediting Decision-Making

Moderator: Jon Oxman, Esq., Linnell, Choate & Webber

Resource Person: David Flanagan, Vice President  
Central Maine Power

Scribe: Jim Gove, Business Manager  
State Development Office

Group C: Accountability

Moderator: Alex Pattakos, Director, Bureau of Public  
Administration, University of Maine at Orono

Resource Person: Thomas Andrews, State Senator

Scribe: Annette Anderson, Director of Legislative Affairs  
Central Maine Power Company

Workshop Organizers:

- Scott Howard, Regulatory Subcommittee Chair  
Governor's Business Advisory Council
- Henry Bourgeois, Meredith Jones  
Maine Development Foundation
- Virginia Manual  
State Development Office

Appendix XIII

Compilation of Regulatory Reform Efforts by Other States

Prepared by the State Development Office of Maine

## REGULATORY REFORM EFFORTS BY OTHER STATES

### Regulatory Monitoring and Assistance Offices

1. Business Assistance and Information Center  
Serves as a central clearinghouse for information and licenses.
2. Small Business Advocacy Office  
Serves as the small business advocate with state government departments and agencies, reports on legislation impact, provides information on licenses, permits, taxes, and acts as a contact clearinghouse for capital, finance and procurement opportunities.
3. Small Business Action Center  
Provides information on financial and technical assistance programs, acts as a small business advocate, and provides one-stop permit and licensing forms and instructions.
4. Small Business Ombudsman  
Responds to problems and grievances small business owners have with government red tape or with specific agencies.
5. Office of Business Permits  
Informs business what licenses and permits are required and helps secure them. Also reviews licensing process in order to streamline procedures.
6. Regulation and Licensing Office  
Informs business which regulations apply and assists them in securing licenses.
7. Small Business Assistance Office  
Counsels small firms on how to deal with Federal, state and local government agencies in such areas as procurement procedures and regulatory compliance. Seeks ways to alleviate unnecessary burdens placed on small firms by government regulations and policies. Provides toll-free answer line.
8. Governor's Office of Business Assistance  
Promotes agency responsiveness to business, seeks interagency cooperation on business issues, coordinates policy formulation, serves as business ombudsman with goal of injecting reason into business regulations and permitting procedures enacted by the state.

9. Office of Regulatory Reform  
Provides one-stop business permit and licensing information, recommends the elimination of unnecessary, burdensome and/or duplicative regulations. Administers a regulatory flexibility act. Disseminates information on all Federal, state and local permit and licensing requirements for starting a new business.
10. Office of Small Business Development and Assistance  
Promotes small business, provides information on procedures, regulations and licensing necessary, serves as a small business ombudsman, gives technical assistance, administers loan programs, and conducts workshops.

### Regulatory Relief Legislation

1. Regulatory Flexibility Act  
All state agencies required to review their regulations for the impact on small business. Some require the agency to document its compliance along with its budget request. Some require specific measures be considered to reduce the impact on small business.
2. Equal Access to Justice Act  
Requires the state to pay reasonable attorney's fees to persons who have been involved in litigation with a state agency where there is no reasonable basis for the state agency's position.
3. Paperwork Reduction Act  
Requires the executive department to coordinate the reduction of paperwork burdens on small businesses and to mediate disputes between small businesses and state agencies.

### Regulatory Research Committees, Task Forces, Commissions

Produces an inventory of state regulations affecting business, studies Federal and state government overlap and other policy issues relating to these regulations. Also creates an information system for public access to state rules, Federal rules, and paperwork requirements. Studies conducted on paperwork burdens and costs associated with them.