

REGULATORY OVERSIGHT  
and  
BUSINESS IMPACT ANALYSIS

*Designing an Expanded Program for Kansas*

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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

An enhanced program of regulatory oversight for Kansas is critical to the design of a comprehensive state policy of economic development. Specifically, the introduction of cost-benefit considerations into a more structured analysis of regulatory impact on the Kansas economy and on its resident industries would make a significant contribution toward the achievement of the state's development objectives.

The economic costs of regulation to Kansas business can be substantial. In a state where 99.7 percent of its business fall under the SBA's definition of small business, these costs can be especially detrimental to the long-term growth potential of the Kansas economy. The state of Kansas should systematically gather data about the economic costs of regulations to Kansas business, and link that data to an evaluation process that weighs their impact against other regulatory priorities.

The state's existing oversight activities focus on determinations of correct form, legality, authority, and legislative intent. While Kansas statutes instruct promulgating agencies to prepare statements of fiscal/financial impact for proposed regulations and to attempt to reduce the impact of proposed regulations on small business, statutory authority for regulatory oversight does not specify any decision rules for the consideration of economic or small-business impact by the agency or by a designated board of review. Nor does Kansas legislation direct agencies to implement alternative approaches when the economic effects of proposed regulations are determined to be overly burdensome to Kansas business.

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. In this study we further propose:

- that the existing authority for regulatory oversight in Kansas be expanded to include systematic review of economic and small-business impact;
- that the oversight program include a legislative mandate for cost-benefit accounting as a rule for the implementation decision; and
- that the legislature assign the analysis of regulatory impact to a new review committee whose mandate it is to explicitly consider costs and benefits in terms of the Kansas economy and Kansas industries.

As models for this expanded program of regulatory oversight we examine the review efforts of the federal government and those of four states: Arizona, New York, Kentucky, and Maine. Of particular interest to the architects of a revised program for Kansas are:

- (1) the concept of a neutralized review process, as promoted by OMB at the federal level;
- (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;
- (3) the Office of Business Permits and Regulatory Assistance of New York;
- (4) the legislative mandate for purposeful consideration of economic and small-business impact by Arizona and New York;
- (5) the tiering of regulatory requirements to the size of business in Kentucky; and
- (6) the cooperative arrangements between legislators, regulators, and business leaders in Maine.

The principal objectives of an enhanced oversight program for Kansas are to provide a more hospitable business climate and to promote economic development. By requiring the preparation of cost-benefit analyses and by assigning the review of those analyses to a designated oversight committee,

the state's leadership can better ensure agency accountability and can better direct the attention of Kansas regulators to economic development priorities.

## 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 reform efforts toward removal of those barriers, particularly those that 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 unnecessarily restrict business operations. Inadequate communication may exist 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 managers may be confused about appropriate compliance requirements.

Throughout the nation, at both the state and federal level, regulations are often formulated without clear 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. To a large extent, the regulatory system ignores industrial expertise--regarding the industry itself and regarding existing regulations that affect the industry--and neglects the productive potential of cooperative effort.

Since receiving national attention during the Carter administration, regulatory reform has assumed an increasingly prominent role on the agendas of policymakers throughout the states. Congress and several state legislatures have mandated that each proposed regulation undergo the scrutiny of cost-benefit analysis to determine whether the benefits regulating from agency action outweigh the costs imposed on economic

activity. Hence the term "economic impact analysis," a process of cost-benefit accounting and decision making that is applied to proposed regulations by the Office of Management (OMB) at the federal level and by various state oversight authorities.

Through systematic reform efforts, policymakers in Washington and in some state capitals have recognized that regulatory activity greatly influences an economy and the hospitality of its business climate. And these leaders have linked the determination of regulatory impact to rule implementation and review decisions. The leadership of Kansas is strongly encouraged to do the same by introducing cost-benefit considerations to the state's regulatory oversight process, and by assigning the review of regulatory impact to a committee that monitors regulations in terms of the state's economic development priorities.

## I. LINKING REGULATORY OVERSIGHT TO ECONOMIC DEVELOPMENT POLICY

In Kansas, the expediency of regulatory review has been promoted 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 (an appropriate authority) to insure that they are not unnecessarily impeding economic development."

The objective 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.

Our purpose here is to relate the discussion of regulatory reform to economic development initiatives in Kansas and to the state's current oversight procedures. In so doing, we will focus on the issue of fiscal impact and the use of economic impact analysis as a tool to promote Kansas business and the Kansas business climate. The systematic analysis of economic impact can be of great benefit to the state of Kansas by providing an additional safeguard to avoid unnecessary regulatory restrictions--restrictions that can be very costly to Kansas business and that are very difficult to remove once in place.

### Regulatory Oversight in Kansas and the States

State programs of regulatory reform typically address two major issues: oversight determinations, and oversight authorities. Oversight determinations include analyses of:

- correct form;
- clarity of language;
- statutory authority;
- internal consistency;
- legislative intent;
- service to the public interest; and
- fiscal impact on the economy and/or small business.

Oversight authorities implement the review formats and procedures that produce oversight determinations. The many types of review authorities include:

- legislative review committees;
- attorneys general;
- revisors of statutes;
- secretaries of state; and
- executive-appointed review commissions.

The current oversight legislation of Kansas authorizes the state's Secretary of Administration to determine correct form and instructs the state's Attorney General to determine legality and authority. The Joint Committee on Administrative Rules and Regulations (JCARR) of the Kansas legislature reviews each rule and regulation for conformity to legislative intent. And legislation directs the promulgating agency to prepare a fiscal/financial impact statement and to attempt to reduce the impact of proposed regulations on small businesses throughout the state. Should the fiscal impact statement warrant revision or the inclusion of additional material, the state's Director of the Budget may be asked to prepare a revised or supplemental statement giving more detail about expected changes in state revenues and expenditures and about the probable financial effects on private businesses and the general public.

The statutes governing oversight activities in Kansas, however, do not specify any decision rules for the consideration of economic or small-business impact, nor do they designate a specific review authority to

implement those decisions. Arizona, for example, incorporates cost-benefit accounting into its decisions to implement proposed regulations and suspends or revokes any rule whose benefits do not exceed its costs. Furthermore, Kansas legislation does not direct agencies to "consider utilizing approaches which are designed to avoid undue deleterious economic effects or overly burdensome impacts of the rule upon persons . . . the economy or . . . governmental agencies." This straightforward statement of legislative priority is proclaimed in the statutes of New York.

At this time, the only substantive use of impact statements in Kansas is by business representatives through the public hearing process. The responsibility for systematic consideration of fiscal impact on the economy, the business climate, or on small business is not delegated to the legislature, any of its committees, or any administrative unit of the Kansas executive branch.

#### Proposals for an Expanded Oversight Program for Kansas

We propose that Kansas policymakers delegate new oversight responsibilities for a more rigorous assessment of regulatory impact by means of cost-benefit analysis. This new review function could make a contribution of significant value to economic development objectives by systematically gathering data about the economic costs of regulations to Kansas business, and monitoring the state's regulatory environment in terms of those costs. In a state where 99.7 percent of all businesses fall under the SBA's definition of small business, these costs of regulation can be especially detrimental to the long-term growth potential of the Kansas economy.

This new review function need not contribute to the bureaucratic complexity of state government. The administration of cost-benefit



accounting and economic impact analyses could be handled by a small professional staff that is housed in an existing legislative committee, administrative board, or executive department, or by an appointed board of review whose services are commissioned for little or no compensation.

The authority for impact review, for example, could be vested in a Division of Regulatory Impact and Review that is attached to the Department of Administration--which would be an arrangement analogous to OMB's role in the federal oversight process--or to the Department of Commerce--which would be similar to the role of the Office of Business Permits and Regulatory Assistance in New York State. Alternatively, a small professional staff could be assigned to the joint Committee on Economic Development, the Joint Committee on Administrative Rules and Regulations, or the State Board of Rules and Regulations to review economic and small-business impact analyses. A third option would authorize a commission to be appointed by the state's chief executive and patterned after the Governor's Regulatory Review Council of Arizona. This arrangement, if similar to Arizona's, would expand the allegiance of oversight personnel beyond the executive branch to include direct representation of public, business, and legislative interests.

#### Models for the Kansas Program

We examine here several oversight formats that can be used as models for an expanded program of regulatory review for Kansas. The federal government, Arizona, New York, and Kentucky explicitly mandate consideration of economic and/or small-business impact in their regulatory review procedures. Their oversight mechanisms are highlighted as follows:

- An outline of the purpose, structure, and philosophical orientation of the federal review process introduces important concepts of regulatory oversight.

- Discussion of the Arizona model emphasizes 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.
- New York offers an example of: a review authority that is delegated to an administrative agency; the direct consideration of economic impact by a legislative review commission; and a detailed analysis of small-business impact.
- Kentucky provides a statutory formula for tiering regulatory requirements to the size of individual businesses and is particularly deserving of the attention of Kansas legislators. A tiering arrangement can greatly enhance the regulatory environment for Kansas's many small businesses.

In addition, Appendix XVI discusses the innovative contributions of Maine to the design of a state regulatory oversight program. In particular, Maine provides an exemplary model of cooperation among the state's legislators, regulators, and business leaders.

An important consideration for the design of an expanded program of regulatory review in Kansas is the authority to suspend or revoke a rule for which projected benefits do not exceed expected costs, or for which adverse effects on small businesses have not been reduced. This authority is currently beyond the constitutional scope of the Joint Committee on Administrative Rules and Regulations and the Kansas legislature, and it is not assigned to any other review agent by existing legislation.

State policymakers should determine the need for, and value of, the power of rule suspension and revocation in Kansas. To authorize this oversight power might better ensure agency accountability and might better direct agency attention to other legislative priorities, especially to economic development initiatives. A solid linkage of regulatory impact

analyses to these priorities can enhance and strengthen a comprehensive program of economic development for the state of Kansas.

## II. FEDERAL OVERSIGHT PRIORITIES

Historically, the development of regulatory review processes 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 he 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 II). 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:

- Agencies must base regulations upon adequate information concerning the need for and the consequences of the proposed action.
- Agencies must not issue regulations unless the potential benefits to society outweigh the potential costs to society.
- 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 III). 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:

- To establish Administration regulatory priorities.
- To increase the accountability of agency heads.
- To provide Presidential oversight of the regulatory process.
- To reduce burdens of existing and future regulations.
- To minimize duplication and conflict of regulations.
- 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 results 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 appropriate.

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 regulation 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)

#### The Oversight Philosophy of OMB

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."

## Regulatory Flexibility Analysis and Small Business Considerations

The Regulatory Flexibility Act (RFA) was passed by Congress during the Carter administration in 1980. It requires federal agencies to evaluate each proposed regulation in terms of its impact on small businesses. The Act calls for agencies to ensure that regulations do not unduly inhibit the competitive potential of small business, and to minimize any disproportionate economic burden imposed by compliance requirements on small business. Various methods for implementing the RFA include differential compliance requirements, small business exemptions, and consideration of alternative means to achieve regulatory objectives.

The RFA fundamentally changed how federal agencies construct their regulations: The ACT forces analysis and choice from among alternative means of achieving regulatory objectives. For each proposed regulation the agency must prepare an extensive Regulatory Flexibility Analysis which 1) examines how the rule affects the small business entities within its scope and 2) states the rationale for structuring the regulation as proposed and for eliminating other alternatives. A third goal of the RFA is to encourage the participation of small businesses in agency rulemaking activities. Compliance with the Act's provisions is monitored by the Office of Advocacy of the Small Business Administration under the guidance of congressional oversight.

The RFA requires expanded outreach efforts to affected industries, including publication of notice in trade association journals. To make regulations more pertinent, the Office of Advocacy directly solicits input from trade and business association representatives. Some federal agencies elect to meet with the public before the rulemaking stage by engaging in regulatory negotiation with industry representatives, especially regarding

controversial issues. With this procedure, the agency may even hire a negotiator to reach consensus.

The Office of Advocacy reports that "the RFA has had significant benefits to small business, to agency rulemaking and to the economy . . . . Many federal agencies have improved their regulatory decisions by 1) using better economic data, 2) increasing communication with the small business community and the Office of Advocacy, 3) considering and analyzing alternatives and 4) developing rules more finely attuned to the concerns of small business" (SBA, *Annual Report*, April 1987). A strong emphasis on regulatory flexibility in the Kansas oversight program could have similar positive impact on the state's economy and business climate.

The Office of Advocacy strongly endorses the introduction of a comprehensive regulatory flexibility analysis act at the state level. In a publication entitled "Regulatory Flexibility and the States," advocacy attorney Doris S. Freedman suggests that the design of a model flexibility act include the following considerations (see Appendix IV):

- Size of business to benefit from RFA;
- Agencies and/or rules covered by the RFA;
- Goal of the RFA;
- Group to monitor/enforce compliance with the RFA;
- Consideration of alternatives;
- Availability of data on small business;
- Small business participation in rulemaking;
- Provision of exceptions in the RFA;
- Regulatory agenda;
- Periodic review of rules; and
- Cost or budget impact of act implementation.

Ms. Freedman states that "The quality of rulemaking depends on the quality of analysis." To improve the quality of rules and rulemaking in Kansas, the state's policymakers should consider the merits of strengthening the statutes that pertain to impact analysis and the application of rules

and regulations to small business. Under existing legislation, small business considerations are left to the agency's discretion.

Kansas, however, is a state of small business. The SBA, in fact, defines 99.7 percent of all Kansas firms as small business, having 500 or fewer employees. Without a strong program of regulatory flexibility, the costs of regulation to the state's industry can seriously impede its ability to invent, produce, and compete with businesses in other states and nations.

The state of New York has adopted comprehensive legislation for regulatory flexibility, which is discussed in a subsequent section. The Kansas leadership is strongly encouraged to enact similar legislation for regulatory considerations. In a state of small-business predominance, flexibility analysis could well become the cornerstone for a comprehensive state program of regulatory oversight.

### III. REGULATORY OVERSIGHT IN 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 decision 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 any 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 related statute. (Falk, p. 301)

#### Regulatory Oversight 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 and established 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 VI).

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 VI, VII, VIII, and IX 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 VI); a recommendation form by the Executive Budget Office which verifies an agency's compliance with procedural requirements for GRRC review (Appendix VII); the GRRC Guidelines for presentation of a proposed rule by an agency before the GRRC (Appendix VIII); and the procedural requirements for the GRRC (Appendix IX).

*GRRC Membership.* As specified in the Arizona statutes (Appendix VI), 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 VIII). 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 VIII) 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 consequences require "good faith" estimates 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 Jonathon Rose of Arizona State University 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

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 interviewees 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 Oversight in New York

The Administrative Regulations Review Commission (ARRC) of the New York legislature is authorized to conduct continuous oversight of the state's rulemaking process. The Commission examines rules for their 1) statutory authority; 2) compliance with legislative intent; and 3) impact on the economy, government, and affected parties. While the ARRC does not have the power to suspend or revoke a rule or regulation, it can request an extension of the public comment period and it may recommend changes in a rule or the rulemaking process.

*The Office of Business Permits and Regulatory Assistance.* Additional regulatory review functions are assigned to the New York Office of Business permits and Regulatory Assistance (OBPRA), which reports to the governor's office. Among its other responsibilities, the Office "tests the necessity, clarity, and consistency of rules proposed by state agencies" (New York statutes; see Appendix XIII). The OBPRA's primary purpose is to "improve the delivery of governmental services to businesses locating or expanding in the state;" this assistance "will constitute an economic advantage to the state" (Ibid.).

The principal oversight activity assigned to OBPRA is the review of proposed regulations, regulatory impact statements, and regulatory flexibility analyses. Its review criteria include:

- statutory authority;
- consistency with specific legislative purpose;
- necessity to implement legislative purpose;
- non-duplication of existing federal/state statutes or rules;  
and
- consistency with existing state statutes and rules.

The Office also provides assistance to agencies regarding the formulation of rules, statements, and analyses. Through the management of these activities, the OBPRA seeks to consolidate, simplify, and expedite rules and the rulemaking process.

*Analysis of Economic and Small-Business Impact.* The state of New York has mandated an extensive analysis of regulatory impact and small-business flexibility (Appendices X, XII, and XIII).

Agencies must prepare detailed regulatory impact statements and must consider approaches that avoid "undue deleterious economic effect or overly burdensome impacts on persons, the economy, or government" (Appendix X). Specifically, the impact statement must include consideration of:

- statutory authority;
- needs and benefits;
- costs;
- paperwork;
- duplication; and
- alternative approaches.

The state's regulatory flexibility legislation (Appendix XI) instructs promulgating agencies to minimize any adverse economic impact on small business through differential compliance requirements, performance standards, and compliance exemptions. Each flexibility statement shall contain an analysis of:

- the types and numbers of affected businesses;
- the compliance requirements and professional services needed to comply;
- estimates of initial and ongoing costs; and
- how the rule is designed to minimize any adverse economic impact on small businesses.

New York legislation also specifies that the agency shall assure the participation of small businesses in the rulemaking process through general notice, direct notification, public hearings, and other efforts to reduce the complexity of rulemaking procedures.

*Oversight Authority.* Both regulatory impact statements and regulatory flexibility analyses are subject to the review of the OBPR and the Administrative Regulations Review Commission. While neither the ARRC nor the OBPR has the power to suspend or revoke a rule or regulation, both are authorized to consider any public and legislative objections, and to make recommendations to state agencies based on those objections and on analyses of economic and small-business impact.

According to the SBA's Office of Advocacy, however, a significant contribution of the OBPR and, by implication, the ARRC to the oversight

process is an "ability to hold up a (proposed) regulation until certain (adjustments are made), until (the OBPRA/ARRC) gets its point across." This oversight authority is unique to New York, but its design has considerable merit for other states' programs of regulatory review, especially where legislative suspension and/or revocation of a rule is beyond constitutional authority.

#### Regulatory Oversight in Kentucky

The state of Kentucky has mandated two mechanisms for its regulatory review program: 1) "tiering" administrative regulations according to size of regulated entities, and 2) regulatory impact analysis (Appendices XIV and XV). 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 XIV). 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 XV), the Kentucky Revised Statutes provide for a legislative research commission that is authorized to review all regulations and regulatory impact analyses. Agencies are directed to consider several factors when promulgating a new rule, include (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.

## CONCLUSION

To summarize, we strongly encourage the state's policymakers to consider the merits of an enhanced program of regulatory oversight for Kansas. Its principal objective should be to focus on solid analyses of regulatory impact on the Kansas economy and Kansas businesses, particularly small businesses.

We recommend that these analyses be based upon cost-benefit considerations and that they be linked to decision rules for implementation and review that weigh economic costs to business against the benefits produced by regulatory actions. To ensure agency accountability and to establish a linkage between regulatory and economic development priorities, the responsibility for cost-benefit considerations should be delegated to an existing or newly-established committee for the review of rules and regulations. In addition, the legislature should consider authorizing the power of rule veto or revocation on the basis of cost-benefit analysis and other factors that unnecessarily impede the accomplishment of the state's goals for economic development.

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Appendix I

Kansas Statutes Annotated: Chapter 77, Article 4--  
Rules and Regulations

**77-415. Definitions.** As used in K.S.A. 77-415 to 77-437, inclusive, and amendments thereto, unless the context clearly requires otherwise:

(1) "State agency" means any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state.

(2) "Person" means firm, association, organization, partnership, business trust, corporation or company.

(3) "Board" means the state rules and regulations board established under the provisions of K.S.A. 77-423 and amendments thereto.

(4) "Rule and regulation," "rule," "regulation" and words of like effect mean a standard, statement of policy or general order, including amendments or revocations thereof, of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency. Every rule and regulation adopted by a state agency to govern its enforcement or administration of legislation shall be adopted by the state agency and filed as a rule and regulation as provided in this act. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in a state agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render the same a rule or regulation within the meaning of the foregoing definition, nor shall it constitute specific adoption thereof by the state agency so as to be required to be filed. A rule and regulation as herein defined shall not include any rule and regulation which: (a) Relates to the internal management or organization of the agency and does not affect private rights or interest; (b) is an order directed to specifically named persons or to a group which does not constitute a general class and the order is served on the person or persons to whom it is directed by appropriate means. The fact that the named person serves a group of unnamed persons who will be affected does not make such an order a rule or regulation; (c) relates to the use of highways and is made known to the public by means of signs or signals; (d) relates to the construction and maintenance of highways or bridges or the laying out or relocation of a highway other than bidding procedures or the management and regulation of rest areas; (e) relates to the curriculum of public educational institutions or to the administration, conduct, discipline, or graduation of students from such institutions or relates to parking and traffic regulations of state educational institutions under the control and supervision of the state board of regents; (f) relates to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202 and amendments thereto; (g) relates to the use of facilities by public libraries; (h) relates to military or naval affairs other than the use of armories; (i) relates to the form and content of reports, records or accounts of state, county or municipal officers, institutions, or agencies; (j)

relates to expenditures by state agencies for the purchase of materials, equipment, or supplies by or for state agencies, or for the printing or duplicating of materials for state agencies; (k) establishes personnel standards, job classifications, or job ranges for state employees who are in the classified civil service; (l) fixes or approves rates, prices, or charges, or rates, joint rates, fares, tolls, charges, rules, regulations, classifications or schedules of common carriers or public utilities subject to the jurisdiction of the state corporation commission, except when a statute specifically requires the same to be fixed by a rule or regulation; (m) determines the valuation of securities held by insurance companies; (n) is a statistical plan relating to the administration of rate regulation laws applicable to casualty insurance or to fire and allied lines insurance; (o) is a form, the content or substantive requirements of which are prescribed by regulation or statute; (p) is a pamphlet or other explanatory material not intended or designed as interpretation of legislation enforced or adopted by a state agency but is merely informational in nature; (q) fixes the seasons and establishes bag limits and possession limits for game birds and game animals, if such seasons, bag limits and possession limits are made known to the public by other means; (r) fixes the seasons and establishes creel, size and possession limits for fish, if such seasons and creel, size and possession limits are made known to the public by other means; or (s) fixes the seasons and establishes bag limits and season limits for fur-bearing animals, if such seasons, bag limits and season limits are made known to the public by other means.

**77-416. Filing rules and regulations; statutory citations required; numbering; fiscal or financial impact statements; documents adopted by reference; federally assisted programs; time, place and attendance at public hearings; review of fiscal or financial impact statement by director of the budget.** (a) Every state agency shall file with the revisor of statutes every rule and regulation adopted by it and every amendment and revocation thereof. Every rule and regulation filed in the office of the revisor of statutes shall be filed in duplicate, and each section shall include a citation to the statutory section or sections being implemented or interpreted and a citation of the authority pursuant to which it, or any part thereof, was adopted. Every rule and regulation filed in the office of the revisor of statutes shall be accompanied by a copy of the fiscal or financial impact statement required by subsection (b) of this section and any document which is adopted by reference by the rule or regulation, except that for the purpose of avoiding unwarranted expense the board may authorize and direct the revisor of statutes to file any rule or regulation without the document which is adopted by such rule or regulation whenever the board determines that (1) the document is a technical manual of limited public interest; (2) the cost of providing file copies of such document is excessive in view of its limited public interest; and (3) the document will be available for public inspection during normal business hours in the office of the agency adopting the rule and regulation. A

copy of any document adopted by reference in a rule and regulation shall be available from the state agency which adopted the rule and regulation upon request by any person interested therein. The state agency shall, under the direction of the revisor of statutes, number each section with a distinguishing number and, in making a compilation of the rules and regulations, the sections shall be arranged therein in numeric order. A decimal system of numbering shall be prohibited.

(b) At the time of drafting any proposed rule and regulation or amendment to an existing rule and regulation, the state agency shall prepare a statement of the fiscal or financial effect or impact of such proposed rule and regulation or amendment upon all governmental agencies or units or private businesses which will be subject thereto and upon the general public, and such proposed rule and regulation is mandated by federal law as a requirement for participating in or implementing a federal subsidized or assisted program, the state agency shall so specify as a part of the fiscal or financial impact statement. The state agency shall reevaluate and, when necessary, update the statement at the time giving notice of hearing on a proposed rule and regulation and at the time of filing the rule and regulation with the revisor of statutes. If a public hearing was held prior to the adoption of the rule and regulation, the state agency at the time of filing a rule and regulation with the revisor of statutes shall include as a part of the fiscal or financial impact statement a statement specifying the time and place at which the hearing was held and the attendance at the hearing. A copy of the current fiscal or financial impact statement shall be available from the state agency upon request by any party interested therein.

(c) Upon request of the state rules and regulations board, the joint committee on administrative rules and regulations or the chairperson of either committee or board the director of the budget shall review the fiscal or financial impact statement prepared by any state agency and shall prepare a supplemental or revised statement. If possible, the supplemental or revised statement shall include a reliable estimate in dollars of the anticipated change in revenues and expenditures of the state. It shall include a statement, if determinable and reasonably foreseeable, of the immediate and long-range financial effect of the regulation on private businesses and the general public. If, after careful investigation, it is determined that no dollar estimate is possible, the statement shall set forth the reason why no dollar estimate can be given. Every state agency is directed to cooperate with the division of the budget in the preparation of any statement pursuant to this subsection when, and to the extent, requested by the director of the budget.

**77-417. Duties of revisor of statutes.** The revisor of statutes shall: (1) Endorse on each rule and regulation filed, the time and date of the filing thereof; (2) maintain a file of such rules and regulations for public inspection; (3) keep a complete record of all amendments and revocations of rules and regulations; (4) index the rules and regulations so filed; and (5) publish the rules and regulations as hereinafter provided.

**77-419. Revival or amendment of regulations; filing and publication.** No section of any rule or regulation shall be revived or amended unless the new rule or regulation contains the entire section revived or amended, and any section so amended shall be revoked. For the purpose of filing in the office of the revisor of statutes and for submission to the joint committee on administrative rules and regulations and to the legislature as provided in K.S.A. 77-426, and amendments thereto, a rule and regulation amending an existing regulation shall indicate the new matter contained therein by underlining or printing in italics the new matter, and material to be deleted from such rule and regulation shall be shown in cancelled type. The revisor of statutes in preparing such rules and regulations for publication in the Kansas administrative regulations shall omit all material shown in cancelled type and such rules and regulations shall be printed in Roman style type. The revisor of statutes shall not file any regulation which amends or revives a regulation unless the regulation so amending or reviving conforms to the provisions of this section.

**77-418. Filing rules and regulations, form; revocation of consecutively numbered regulations.** All rules and regulations adopted and filed by every state agency shall be typewritten, mimeographed, multilithed, or printed on standard letter size (8 1/2 by 11 inches) paper, the kind, grade, and durability thereof to be subject to the approval of the revisor of statutes. Whenever any rule and regulation is amended or revoked after the same has been adopted and filed, each rule and regulation amended or revoked shall be filed on a separate sheet or sheets of paper, except this filing requirement may be complied with for consecutively numbered rules and regulations which are being revoked by filing with the revisor of statutes a statement clearly identifying the consecutively numbered rules and regulations. Such statement shall clearly express that the consecutively numbered rules and regulations are being revoked and shall specify the effective date of the revocation of such rules and regulations. If a rule and regulation is filed with the revisor of statutes on more than one page, each page of such rule and regulation, subsequent to the first page, shall be consecutively numbered at the top of each page, and the number of the rule and regulation shall be placed in the upper right hand corner of each page.

**77-420. Approval of rules and regulations by secretary of administration and attorney general; deadline for submission of permanent rules and regulations to secretary of administration; requirements for filing with revisor of statutes.** (a) Every rule and regulation proposed to be adopted by any state agency, before being submitted to the attorney general under this section, shall be submitted to the secretary of administration for approval of its organization, style, orthography and grammar subject to such requirements as to organization, style, orthography and grammar as the secretary may adopt. Every rule and regulation submitted to the secretary of administration under this subsection (a) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the secretary of administration under this subsection (a) shall be stamped as approved and the date of such approval shall be indicated therein. No rule and regulation proposed to be adopted by any state agency as a permanent rule and regulation shall be submitted to the secretary of administration for approval of its organization, style, orthography and grammar after October 15 in any year. The secretary of administration shall not approve any permanent rule or regulation submitted or received after 5:00 p.m. on October 15 in any year.

(b) Every rule and regulation proposed by any state agency which has been approved by the secretary of administration as provided in subsection (a) of this section before being adopted or filed shall be submitted to the attorney general for an opinion as to the legality of the same, and the attorney general shall promptly furnish an opinion as to the legality of the proposed rule and regulation so submitted. Every rule and regulation submitted to the attorney general under this subsection (b) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the attorney general under this subsection (b) shall be stamped as approved and the date of such approval shall be indicated therein.

(c) No rule and regulation shall be filed by the revisor of statutes unless:

(1) The organization, style, orthography and grammar have been approved by the secretary of administration;

(2) the rule and regulation has been approved in writing by the attorney general as to legality;

(3) the attorney general finds that the making of such rule and regulation is within the authority conferred by law on the state agency submitting the same;

(4) the rule and regulation has been formally adopted by the state agency after it has been approved by the secretary of administration and the attorney general and is accompanied by a certified or other formal statement of adoption when adoption is by an executive officer of a state agency, or by a certified copy of the roll call vote required for its adoption by K.S.A. 77-421 and any amendments thereto when adoption is by a board, commission, authority, or other similar body;

(5) the rule and regulation to be filed is accompanied by a copy of the fiscal or financial impact statement as provided by K.S.A. 77-416 and amendments thereto;

(6) the rule and regulation, if a permanent rule and regulation, is submitted received for filing in the office of the revisor of statutes not later than 5:00 p.m. on December 15 of any year; and

(7) the rule and regulation is accompanied by a copy of any document which is adopted by reference by such rule and regulation unless specifically exempt by state rules and regulations board pursuant to subsection (a) of K.S.A. 77-416, and amendments thereto.

**77-421. Notice of hearing; publication of notice; contents of notice; fiscal or financial impact statement; statement of reasons for adoption of rules and regulations; notice and hearing for inmates in custody of secretary of corrections; deadline for holding hearing; rules and regulations to be adopted at open public meeting; majority of membership of boards and similar bodies required for adoption.** (a) Prior to the adoption of any permanent rule and regulation any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 30 days' notice of its intended action in the Kansas register and to the revisor of statutes. The notice shall be mailed to the revisor of statutes and published in the Kansas register and shall contain a summary of the substance of the proposed rules and regulations and the address where a complete copy of the proposed rules and regulations may be obtained. Such notice shall state the time and place of the public hearing to be held thereon and the manner in which interested parties may present their views thereon. The notice shall be accompanied by a copy of the fiscal or financial impact statement provided by K.S.A. 77-416 and amendments thereto which is applicable to all proposed rules and regulations which will be considered at such public hearing, and the notice shall state that a copy of the fiscal or financial impact statement may be obtained from the state agency and shall provide the address of the state agency from which such fiscal or financial impact statement may be obtained. Publication of such notice in the Kansas register shall constitute notice to parties affected by the rules and regulations. Nothing in this section shall be construed to require publication in the Kansas register of the fiscal or financial impact statement.

(b) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. When requested to do so, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto. Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency may, in lieu of following the requirements or statutory procedure set out in such other law, give notice and hold hearings on proposed rules and regulations in the manner prescribed by this act. Notwithstanding t

other provisions of this section, the Kansas adult authority and the secretary of corrections may, but shall not be required to, give notice or an opportunity to be heard to any inmate in the custody of the secretary of corrections with regard to the adoption of any rule and regulation.

(c) No public hearing required by this section shall be scheduled or held by a state agency after December 1 of any calendar year.

(d) No rule and regulation shall be adopted except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

**77-421a. Procedure for adoption of rules and regulations not subject to 77-415 et seq.; exception.** Whenever any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and the legislative branches, is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state, and such rules and regulations are exempt from the requirements of K.S.A. 77-415 et seq., and amendments thereto, by virtue of the definition of "rule or regulation" in subsection (4) of K.S.A. 77-415 and amendments thereto, such rules and regulations shall be adopted in the manner prescribed by K.S.A. 77-421 and amendments thereto after notice has been given and a hearing held in the manner prescribed by K.S.A. 77-421 and amendments thereto. This section shall not apply to orders issued by directors of correctional institutions under K.S.A. 75-5256.

**77-422. Temporary rules and regulations; adoption procedure; effect; publication; distribution.** (a) A rule and regulation may be adopted by a state agency as a temporary rule and regulation if the state agency and the state rules and regulations board finds that: (1) The preservation of the public peace, health, safety or welfare necessitates or makes desirable putting such rule and regulation into effect prior to the time it could be put into effect if the agency were to comply with the notice, hearing and publication requirements of this act or prior to the effective date prescribed by K.S.A. 77-426, and amendments thereto; or (2) it is necessary for such rule and regulation to take effect prior to the effective date prescribed by K.S.A. 77-426, and amendments thereto, in order to comply with the requirements of the statute authorizing the adoption of such rule and regulation or with any federal law with which the state agency is required to comply or with rules and regulations of federal agencies adopted pursuant to any such federal law; or (3) the rule and regulation is adopting, amending or revoking a rule and regulation in response to specific direction contained in a concurrent resolution adopted by the legislature and directed to such agency; or (4) (A) insufficient appropriations are available for a specific fiscal year to meet certain budget requirements for such fiscal year which necessitates putting a rule and regulation into effect prior to the effective date prescribed

by K.S.A. 77-426, and amendments thereto, (B) the temporary rule and regulation applies only to such fiscal year, and (C) the proposed rule and regulation is not contrary to the provisions of an appropriations act or other act of the legislature.

(b) No temporary rule and regulation shall be adopted on the basis that such rule and regulation must be adopted as a temporary rule and regulation for the purpose of complying with the requirements of the statute authorizing the rule and regulation to be adopted or on the basis that such rule and regulation must be adopted as a temporary rule and regulation for the purpose of complying with any federal law with which the state agency is required to comply or with rules and regulations of federal agencies adopted pursuant to any such federal law without notice having been given and a hearing thereon held in the manner prescribed by K.S.A. 77-421, and amendments thereto. Temporary rules and regulations, other than temporary rules and regulations adopted on the basis that such rules and regulations must be adopted as temporary rules and regulations for the purpose of complying with the requirements of the statute authorizing the rules and regulations to be adopted or for the purpose of complying with any federal law with which the state agency is required to comply or with rules and regulations of federal agencies adopted pursuant to any such federal law or those adopted pursuant to paragraph (4) of subsection (a), may be adopted without the giving of notice and the holding of a hearing thereon.

(c) No temporary rule and regulation shall be adopted prior to the effective date of the statute authorizing its adoption, but, prior to the effective date of such statute, the proposed temporary rule and regulation may be submitted to the secretary of administration and to the attorney general for approval as required by K.S.A. 77-420, and amendments thereto and notice of the proposed rule and regulation may be given and a hearing held thereon in the manner prescribed by K.S.A. 77-421, and amendments thereto.

(d) A temporary rule and regulation shall take effect after approval by the secretary of administration and the attorney general as provided by K.S.A. 77-420, and amendments thereto, and after approval by the state rules and regulations board as provided by K.S.A. 77-423, and amendments thereto, upon filing with the revisor of statutes. The effective date of all or specific parts of a temporary rule and regulation may be delayed to a date later than its filing date if the delayed effective date of such rule and regulation, or specific parts thereof, is clearly expressed in the body of such rule and regulation. A temporary rule and regulation filed during any year shall not be effective after April 30 of the year succeeding the year in which the temporary rule and regulation was filed.

(e) A temporary rule and regulation which amends an existing rule and regulation shall have the effect of suspending the force and effect of the existing rule and regulation until such time as the temporary rule and regulation is no longer effective. In such case, at the time the temporary rule and regulation ceases to be effective, the existing permanent rule and regulation which was amended by the temporary rule and regulation shall be in full force and

effect unless such existing rule and regulation is otherwise amended, revoked or suspended as provided by law.

(f) Temporary rules and regulations shall be numbered in accordance with numbering arrangement approved by revisor of statutes and shall otherwise conform to the approval, adoption and filing requirements of this act, insofar as the same can be made applicable.

**77-423. State board; creation; membership; powers and duties.** There is hereby created a state rules and regulations board consisting of the attorney general, the secretary of state, the secretary of administration, the chairperson of the joint committee on administrative rules and regulations and a member of the joint committee designated by the chairperson from the same house of the legislature as the chairperson and a vice-chairperson of the joint committee on administrative rules and regulations or member of the joint committee designated by the vice-chairperson from the same house of the legislature as the vice-chairperson. If a member is designated to serve on the board by the chairperson or vice-chairperson of the joint committee, the designated member shall serve in lieu of the designating officer on a temporary or permanent basis as specified by the designating officer. The attorney general shall be the chairperson of said board. The revisor of statutes shall serve as the secretary of the board. The state rules and regulations board shall determine whether a rule and regulation should be adopted as a temporary rule and regulation, shall determine the rules and regulations to be published in the Kansas administrative regulations and in the annual supplement to such regulations provided for in this act and shall perform such other duties as may be required by this act.

**77-424. State rules and regulations board to determine which rules and regulations published in Kansas administrative regulations or annual supplement; reference to rules and regulations not published; publication of jointly adopted rules and regulations.** The state rules and regulations board shall meet as soon as possible after December 15 each year to determine which rules and regulations are to be published in the Kansas administrative regulations or annual supplement thereto. For the purpose of avoiding unwarranted expense, the board may authorize and direct the revisor of statutes to withhold publication of any technical rule and regulation of any state agency where such rules and regulations are of limited public interest and are or will be available in published form. In every such case where the rules and regulations are not published in the Kansas administrative regulations or annual supplement, reference shall be made by the revisor of statutes to the rules and regulations omitted therefrom and shall state how such rules and regulations may be obtained and that the rules and regulations so omitted are on file in the office of revisor of statutes. Rules and regulations adopted jointly by two or more agencies shall not be published in more than one place in the compilation or supplement thereto.



**77-425. Effective date of permanent rules and regulations; effect of filing and publication; effect of revocation.** Every rule and regulation other than a temporary rule and regulation which is filed by a state agency in the office of the revisor of statutes as provided in this act shall have the force and effect of law on and after the date prescribed in K.S.A. 77-426, and amendments thereto, until amended or revoked as provided by law and such amendment or revocation shall have become effective. Any rule and regulation not filed and published as required by this act shall be of no force or effect, except that any error or irregularity in form or any clerical error or omission of the revisor of statutes in the filing of such regulation not affecting substantial rights shall not invalidate the same. The filing and publication of rules and regulations as required by this act shall not be construed as dispensing with the requirements of any other law necessary to make the rules and regulations effective. The revocation of a rule and regulation by a state agency shall not be construed as reviving a rule and regulation previously revoked by such agency, nor shall such revocation by a state agency be construed as affecting any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced, under or by virtue of the rule and regulation revoked.

**77-426. Existing rules and regulations; filing period for permanent rules and regulations; effective date; submission of rules and regulations to joint legislative committee; legislature may express concern and request amendment or revocation of rules and regulations.** (a) All rules and regulations on file with the revisor of statutes which are in force and effect at the time this act takes effect shall continue in full force and effect and may be amended, revived or revoked as provided by law. All new rules and regulations and all amendments, revivals or revocations of rules and regulations, other than temporary regulations, adopted in any year shall be filed with the revisor of statutes on or before December 15 of such year, and shall become effective on and after May 1 of the succeeding year. No rules and regulations shall be filed by the revisor of statutes after December 15 in any year or prior to the next following May 1, except temporary rules and regulations.

(b) As soon as possible after the filing of any rules and regulations by a state agency, the revisor of statutes shall submit to the joint committee on administrative rules and regulations such number of copies as may be requested by the joint committee on administrative rules and regulations.

(c) At any time prior to adjournment sine die of the regular session of the legislature, the legislature may adopt a concurrent resolution expressing the concern of the legislature with any permanent or temporary rule and regulation which is in force and effect and on file in the office of the revisor of statutes and any permanent rule and regulation filed in the office of revisor of statutes during the preceding year and requesting the revocation of any such rule and regulation or the amendment of any such rule and regulation in the manner specified in such resolution.

**77-428. Annual supplements; publication; contents; authentication.** (a) At the beginning of each calendar year the revisor of statutes shall, as soon as possible, assemble all rules and regulations, except temporary rules and regulations, filed during the preceding year in accordance with the provisions of this act. The state rules and regulations board shall determine which of such rules and regulations are to be published in the Kansas administrative regulations or annual supplement as provided in this act.

(b) Annual supplements shall be cumulative and shall include all rules and regulations published in the annual supplement in the next preceding year which remain in force and effect on the effective date of the current supplement, together with all rules and regulations, other than temporary regulations, which were regularly adopted and filed in the office of the revisor of statutes in the year next preceding the year in which such annual supplement is published and becomes effective, and which were approved for publication by the state rules and regulations board.

(c) The revisor of statutes shall prepare annual supplements to the rules and regulations and material to be published therewith, in one or more paperbound volumes in the form determined by the revisor of statutes. The annual supplement of rules and regulations shall be published and shall include a general index of all rules and regulations contained therein and such notes, cross references and explanatory materials as will facilitate the use of such supplements. All rules and regulations and material published in the annual supplement shall be delivered to and published by the director of printing. Authentication of all supplement volumes shall be in the manner provided in K.S.A. 77-429. The director of printing shall print the number of copies requisitioned by the revisor of statutes.

**77-429. Authentications.** Before any copies of Kansas administrative regulations or the annual supplement thereto shall be printed by the division of printing or sold and delivered by the secretary of state, they shall be examined and compared by the attorney general and the secretary of state, and if they contain all rules and regulations approved for printing by the board, and otherwise comply with the terms of this act, they shall so certify in writing and after such authentication they shall be deemed and held to be "Kansas administrative regulations" and evidence in all courts having jurisdiction in the state; and such authentication shall be printed on each copy of Kansas administrative regulations and annual supplement thereto.

**77-430. Distribution of Kansas Administrative Regulations.** The Kansas administrative regulations shall be printed by the director of printing and delivered to the secretary of state who shall dispose of the same as follows:

*First*, the secretary of state shall deposit in the supreme court law library and the state library such number of copies as the state law librarian and the state librarians respectively, shall request for use in the law library and the state library and for the purpose of exchange. The secretary of state shall distribute to the university of Kansas school of law and to Washburn university school of law the number of copies as the librarians of the schools of law, respectively, certify to the secretary of state necessary for the purpose of exchange. The secretary of state shall retain two copies for use in the secretary of state's office.

*Second*, the secretary of state shall distribute:

1 copy to each member of the legislature serving in each regular session held in each odd-numbered year;

1 copy to each elective or appointive state officer;

1 copy to each justice of the supreme court;

1 copy to the clerk of the supreme court  
1 copy to each judge of the court of appeals;

1 copy to each judge of the district court  
1 copy to the state historical society;

2 copies to the Washburn university school of law, for use in the law library  
2 copies to Wichita state university;

2 copies to Washburn university;  
2 copies to the university of Kansas;

2 copies to the university of Kansas school of law, for use in the law library;

2 copies to Kansas state university;  
2 copies to Emporia state university;

2 copies to Fort Hays state university  
2 copies to Pittsburg state university;

1 copy to the library of congress;  
1 copy to each county law library;

1 copy to each county community college  
1 copy to the city library in each city of the first and second class; and

1 copy to each county library.

*Third*, the secretary of state shall distribute to the several offices of the legislative branch of government, the number of copies necessary to conduct the official business of such offices, as certified to the secretary of state by the legislative coordinating council.

*Fourth*, the balance of the Kansas administrative regulations after such distribution shall be safely kept by the secretary of state for sale at a price per set of \$50. The Kansas administrative regulations may be purchased in complete sets or in single volumes. Single volumes of the Kansas administrative regulations shall be sold by the secretary of state at a price per volume of \$17.50. Copies may be delivered by post paid mail by the secretary of state. All moneys received from such sales shall be paid into the state treasury and the treasury shall credit the same to the general fund of the state to reimburse the state for costs of publication.

**77-430a.** Kansas administrative regulations replacement volumes; distribution and sale; printing additional copies. (a) The revisor of statutes shall edit and prepare for printing and publication volumes of rules and regulations which replace existing volumes of the Kansas administrative regulations when authorized by the legislative coordinating council within the limitations of available appropriations therefor. Replacement volumes shall be published and printed in the same format and in accordance with the same printing specifications used in the volume replaced and shall be authenticated as required by K.S.A. 77-429. Replacement volumes of the Kansas administrative regulations shall be printed by the director of printing and delivered to the secretary of state who shall distribute and sell them in the same manner as provided in K.S.A. 77-430, and amendments thereto, for the distribution and sale of other volumes of the Kansas administrative regulations.

(b) Whenever it shall become necessary to print additional copies of any volume of the Kansas administrative regulations, the revisor of statutes shall requisition the necessary number of copies from the director of printing.

**77-431.** Distribution of annual supplements; sale price. Copies of the annual supplements to the Kansas administrative regulations shall be printed and delivered to the secretary of state who shall distribute them as follows:

*First*, the secretary of state shall transmit the same number of copies of each annual supplement in the same manner as provided in the first, second and third clauses of K.S.A. 77-430, and amendments thereto, for distribution of Kansas administrative regulations.

*Second*, the balance of annual supplement volumes after such distribution shall be kept by the secretary of state for sale at \$15 per supplement volume or set of volumes if more than one volume is published for any annual supplement.

Moneys received from the sale of supplements shall be remitted to the state treasurer and deposited in the state treasury to the credit of the state general fund to reimburse the state for cost of publication.

**77-432a.** Disposition of obsolete volumes and supplements. Whenever the secretary of state and the revisor of statutes determine that any volume of Kansas administrative regulations or any annual supplement to the Kansas administrative regulations has become obsolete by reason of the publication of a later volume or annual supplement, such officers may provide for the disposition of the remaining copies of such obsolete volumes or supplement volumes by whatever means such officers determine, without making a charge therefor.

**77-433.** Duplication and distribution of regulations by agency, when. This act shall not be construed as prohibiting the duplication or distribution of rules and regulations by any agency of its properly adopted rules and regulations, if filed as provided by law, and funds are available for such purpose.

**77-435.** Editing of rules and regulations by the revisor of statutes. In publishing the material in the Kansas administrative regulations and latest supplements thereto, the revisor of statutes shall not alter the sense, meaning or effect of any rule and regulation but may correct manifest orthographical, clerical or typographical errors and may edit the rules and regulations in the following manner:

(a) By inserting the correct references in lieu of any internal cross-references to session laws or other outdated statutory references or outdated references to other rules and regulations sections.

(b) By changing descriptive-subject-word headings of sections, subsections or subparts of a rule and regulation in order to briefly and clearly indicate the subject matter of such sections.

(c) Wherever a board, commission, commissioner, department or other agency or officer of the state government has been abolished by statute and the powers, duties and jurisdiction thereof transferred to some other board, commission, commissioner, department or other agency or officer now in existence, the revisor of statutes may edit the rules and regulations affected thereby by striking out the name of the abolished board, commission, commissioner, department or other agency or officer and inserting in lieu thereof the name of the proper board, commission, commissioner, department or other agency or officer.

(d) Where a pronoun of only masculine or only feminine gender appears a pronoun of the opposite gender may be added, or language may be changed for the same purpose, so long as the opening limitation of this section is not violated.

(e) By striking the word "that" wherever it appears as the first word of any section in the Kansas administrative regulations or the latest supplement thereto.

(f) By correcting doublets.

No change made pursuant to the provisions of this section shall effect any change in the substantive meaning of the rule and regulation section, and any error made by the revisor of statutes in editing the rules and regulations as authorized by this section shall be construed as a clerical error only.

**77-436.** Joint committee on administrative rules and regulations; composition; chairperson; quorum; duties; certain provisions of statutes applicable to special committees applicable to joint committee. (a) There is hereby established a joint committee on administrative rules and regulations which shall consist of five senators and seven members of the house of representatives. The five senator members shall be appointed as follows: Three by the committee on organization, calendar and rules and two by the minority leader of the senate. The seven representative members shall be appointed as follows: Four by the speaker of the house of representatives and three by the minority leader of the house of representatives. The first named appointee of the committee on organization, calendar and rules shall be chairperson or vice-chairperson of the joint committee as provided in this section. The first named appointee of the speaker of the house of representatives

shall be chairperson or vice-chairperson of the joint committee as provided in this section.

(b) A quorum of the joint committee on administrative rules and regulations shall be seven. All actions of the committee may be taken by a majority of those present when there is a quorum. In odd-numbered years the chairperson of the joint committee shall be a member of the house of representatives from the convening of the regular session in that year until the convening of the regular session in the next ensuing year. In even-numbered years the chairperson of the joint committee shall be a member of the senate from the convening of the regular session of that year until the convening of the regular session of the next ensuing year. The vice-chairperson shall exercise all the powers of the chairperson in the absence of the chairperson.

(c) All rules and regulations filed each year in the office of the revisor of statutes shall be submitted to and reviewed by the joint committee on administrative rules and regulations. All forms used by state agencies and all rules and regulations specifically excluded from the definition of rule and regulation under paragraph (4) of K.S.A. 77-415 and amendments thereto shall be subject to review by the joint committee. The committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations and agency forms.

(d) The provisions of article 12, chapter 46 of the Kansas Statutes Annotated and amendments thereto, applicable to special committees shall apply to the joint committee on administrative rules and regulations to the extent that the same do not conflict with the specific provisions of this act applicable to such joint committee.

**77-437.** Rules and regulations of the secretary of corrections and Kansas adult authority subject to provisions of the rule and regulations filing act. All temporary and permanent rules and regulations of the secretary of corrections and the Kansas adult authority shall be subject to all of the provisions of K.S.A. 77-415 to 77-436, inclusive, and amendments thereto.

**77-438.** Citation of act. K.S.A. 77-415 to 77-437, inclusive, and acts amendatory thereof or supplemental thereto shall be known and may be cited as the rules and regulations filing act.

**77-439.** Application of rules and regulations to small business to be considered adverse effect to be reduced. (a) At the time of drafting any proposed rule and regulation or amendment to any existing rule and regulation a state agency shall consider the economic effect of such rule or regulation on small business. For the purposes of this act, the term "small business" shall mean any business employing fewer than 10 employees.

(b) Whenever a state agency, in considering the adoption of a rule and regulation or an amendment thereto, determines that such rule and regulation or amendment may have an adverse economic effect on small businesses such state agency shall attempt to reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule and regulation is to be adopted. To reduce the adverse effect on small businesses the state agency is hereby authorized to:

(1) Establish separate compliance or reporting requirements for small businesses or

(2) exempt small businesses from all or part of the rule and regulation.

Appendix II

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

Appendix III

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



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 IV

The Regulatory Flexibility Act of the United States Government

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

- "Sec. 601. Definitions.
- "Sec. 602. Regulatory agenda.
- "Sec. 603. Initial regulatory flexibility analysis.
- "Sec. 604. Final regulatory flexibility analysis.
- "Sec. 605. Avoidance of duplicative or unnecessary analyses.
- "Sec. 606. Effect on other law.
- "Sec. 607. Preparation of analyses.
- "Sec. 608. Procedure for waiver or delay of completion.
- "Sec. 609. Procedures for gathering comments.
- "Sec. 610. Periodic review of rules.
- "Sec. 611. Judicial review.
- "Sec. 612. Reports and intervention rights.

§ 601. Definitions

"For purposes of this chapter—

- "(1) the term 'agency' means an agency as defined in section 551(1) of this title;
- "(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such allowances;
- "(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
- "(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

5 USC 601.

5 USC 561.

5 USC 553.

15 USC 632.

Public Law 96-354  
96th Congress

An Act

To amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

- (1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;
- (2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;
- (3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;
- (4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;
- (5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- (6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;
- (7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;
- (8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

Regulatory Flexibility Act.  
5 USC 601 note.

5 USC 601 note.

"(6) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

5 USC 602.

Publication in Federal Register.

**"§ 602. Regulatory agenda**

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

5 USC 603.

Public comment. 5 USC 553.

**"§ 603. Initial regulatory flexibility analysis**

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

**"§ 604. Final regulatory flexibility analysis**

5 USC 604.

5 USC 553.

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

"(1) a succinct statement of the need for, and the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

Public availability. Publication in Federal Register. 5 USC 553. 5 USC 605.

**"§ 605. Avoidance of duplicative or unnecessary analyses**

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

5 USC 606.

**"§ 606. Effect on other law**

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

5 USC 607.

**"§ 607. Preparation of analyses**

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

5 USC 608.

**"§ 608. Procedure for waiver or delay of completion**

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

"(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

5 USC 609.

**"§ 609. Procedures for gathering comments**

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

**"§ 610. Periodic review of rules**

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

"(1) the continued need for the rule;

"(2) the nature of complaints or comments received concerning the rule from the public;

"(3) the complexity of the rule;

"(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

"(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

**"§ 611. Judicial review**

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provi-

5 USC 610.  
Plan, publication  
in Federal  
Register.Consideration  
factors.Publication in  
Federal  
Register.

5 USC 611.



sions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

Submittal to  
President and  
congressional  
committees.  
5 USC 612.

#### "§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b)."

#### EFFECTIVE DATE

5 USC 601 note.

Sec. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

Approved September 19, 1980.

#### LEGISLATIVE HISTORY:

SENATE REPORT NO. 96-878 (Comm. on the Judiciary),  
CONGRESSIONAL RECORD, Vol. 126 (1980):

Aug. 6, considered and passed Senate.

Sept. 8, 9, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 38:  
Sept. 13, Presidential statement.

Appendix V

Issue Brief: Regulatory Flexibility and the States

# ISSUE BRIEFS

U.S. Small Business Administration

Office of the Chief Counsel for Advocacy

## Regulatory Flexibility and the States

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Prepared for the Office of Advocacy's Eighth National Conference  
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Orlando, Florida  
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## REGULATORY FLEXIBILITY AND THE STATES

### Introduction

Small businesses have all too often shouldered the same burden of government regulation as their larger competitors with fewer resources and often onerous costs. Congress passed the Regulatory Flexibility Act (RFA) in 1980 to address this problem. The RFA has changed the Federal bureaucracy's method of regulating small entities. It supplements the Administrative Procedure Act--the structure on which Federal administrative policy is built--to ensure regulators do not burden small firms disproportionately by imposing uniform regulations on all entities, regardless of size.

### Regulatory Flexibility and the States

Under the Federal law, each rulemaking agency must analyze how its regulations affect the ability of small businesses to invent, produce, and compete. Agencies must balance regulatory burdens against benefits and propose alternatives to regulations that create economic disparities between different-size entities.

The RFA, an outline for responsible, deliberate rulemaking, establishes a procedure for examining the effects of rules on small businesses. Federal regulatory agencies must make every effort to notify small concerns of proposed regulations to which they may be subjected, beyond the usual Federal Register notice. Regulated small businesses are encouraged to participate in the development and consideration of alternative means of achieving a regulatory objective. Federal agencies must consider establishing different compliance or reporting requirements, timetables, or exemptions to take into account the resources available to small entities.

Under the RFA, Federal agencies must analyze the impact of their regulations on small businesses, and whenever possible, adopt regulatory alternatives less burdensome to small business while maintaining the integrity of the substantive legislative intent. For example, the Environmental Protection Agency (EPA) has exempted some small foundries from its effluent guideline rules when the regulatory flexibility analysis indicated that the cost of complying with the proposed new rules would put many small firms out of business. By carefully analyzing the ability of different classes of small businesses to comply with the regulations, EPA exempted from regulation those small foundries not significantly contributing to water pollution. Similarly, when the Securities and Exchange Commission was proposing regulations for small offerings, it found that tiering its paperwork and reporting requirements reduced the burden of regulation without affecting investor protection. When an agency determines that proposed regulations will not have a significant economic impact on a substantial number of small businesses, the head of the agency may so certify and thereby forego the analysis.

There are several aspects of a state's regulatory procedures which can be addressed in order to improve consideration of small business perspectives. This paper addresses several of the key elements of an effective regulatory flexibility statute. Specific legislative language will of course vary as do the existing state administrative procedures.

Ideally state regulatory flexibility acts should address the following issues.

Size of Business to Benefit from RFA: Any act that addresses small business concerns must first determine who will be covered by the provisions of the act. In the Federal law, small businesses are those designated as small by the U.S. Small Business Administration (SBA) or by an agency in a specific rulemaking. In states that already have regulatory flexibility acts, the standard can be as small as 75 employees.

See California Government Code, Section 11342(e) (250 employees in manufacturing, gross annual receipts for other categories); Minnesota Statutes, Section 14.115 Subd. 1 (50 full-time employees and gross annual sales of less than \$4,000,000).

Agencies and/or Rules Covered by the RFA: The RFA legislation should clearly define which agencies and what kind of rules are covered by the act. In the Federal act, all agencies are covered but certain kinds of rules are exempt, e.g., interpretative rules, rules relating to contracts or ratemaking, and strictly procedural rules.

See New York Administrative Procedure Act, Section 202-c (Complete definition of administrative acts which are covered).

Goal of the RFA: The Federal RFA has several goals: full economic analysis of rules with significant impacts on a substantial number of small businesses, consideration of alternatives leading to a less burdensome pattern of regulation, and broad small business participation in agency rulemaking activities. Some states have differing or lesser goals. For example, an individual state may wish only to know the number of small businesses affected and does not require that the potential cost on an individual business be computed.

See Michigan Compiled Laws, Section 40 of Act. No. 306 of Public Acts of 1969.

Group to Monitor/Enforce Compliance with the RFA: Under the Federal RFA, the Office of Advocacy of the SBA monitors agency compliance with the RFA; enforcement of the act is by congressional oversight and by the availability of judicial review. Compliance mechanisms available to states are diverse. Some have legislative committees that review proposed regulations to ensure legal compliance. These committees can

return the rules to those rulewriting agencies not in full compliance with the RFA. Other states have created similar authority either in the governor's office or in the departments of commerce or economic development. The breadth of enforcement capabilities ranges from post hoc review of published regulations to a full blown hearing on the small business impacts of the rule before it became final.

See New York Administrative Procedure Act, Section 202-c(7)(a), New York Statutes, Article 39, Section 875 (full hearing by Office of Business Permits and Regulatory Assistance); Michigan Compiled Laws, Section 45 of Act No. 306 of Public Acts of 1969 (role of Joint Committee on Legislative Rules and State Department of Commerce).

Consideration of Alternatives: Perhaps the most useful section of the Federal RFA is its requirement that agencies consider less burdensome alternatives when offered during the rulemaking process. During the public comment period, members of the public often provide alternatives that meet statutory objectives more easily adapted to certain businesses. Both the Federal RFA and the Administrative Procedure Act require that these alternatives be considered and not rejected without specific reasons. A good state law should incorporate this concept.

See Wisconsin Statutes, Section 227.018(3)(f)2 (requires consideration of alternatives and reasons for rejection).

Availability of Data on Small Business: The consideration of data availability to perform the required analysis is very important. At the Federal level, the Office of Advocacy of the SBA has developed an extensive small business data base available on a reimbursable basis to agencies for their rulemaking analyses. This information is useful to states; legislators, however, may have to recognize the need to create more targeted data bases to serve their state agencies properly.

Small Business Participation in Rulemaking: The Federal law requires agencies to engage in "outreach" activities to ensure small businesses know well in advance about potential rules and to involve them in the rulemaking process. Federal agencies use the Federal Register, a daily publication, to notify the public of proposed rules. Some states have similar publications but may not require mandatory publication of their proposals in such a widely distributed document.

See Wisconsin Statutes, Section 560.03(9) (requires ombudsman clearinghouse to encourage small business participation).

Provision of Exceptions in the RFA: Under the Federal statute certain kinds of rules are exempt from RFA coverage. In addition, some allowance is made for so-called emergency rules. This exception permits agencies to avoid the often time-consuming rulemaking procedures when the public health and safety or the national defense are affected. In those situations, agencies have six months after the effective date of the regulations to perform the regulatory analysis.

Regulatory Agenda: The Federal RFA requires that agencies publish twice yearly an agenda of rules they anticipate considering during the next six months. These rules are designated in the agenda if they have a potential small business impact. This procedure informs the small business community about what lies ahead and the state monitoring agencies about where to concentrate their resources.

See New York Administrative Procedure Act, Section 202-d.

Periodic Review of Rules: The Federal RFA requires that agencies review all of their regulations to determine if they are still necessary, can be eliminated, or modified to reduce small business impact. This is a very useful tool to eliminate rules that have outlived their usefulness.

See Minnesota Statutes, Section 14.115 Subd. 6; Wisconsin Statutes, Section 227.016(6).

Cost or Budget Impact of Regulatory Flexibility Act Implementation: The Federal law, at the time it was passed, was judged as requiring no increased budgets on the part of agencies who must comply with the new procedures. This has proven to be an accurate analysis. The addition of the RFA procedures has not necessitated hiring of new bureaucracy or establishment of new Federal offices.

This paper was prepared for the participants in the Office of Advocacy's National Conference for State and Local Officials in Small Business. It was researched and written by Doris S. Freedman and edited by G.A. Chiaruttini.

Appendix VI

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.



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.

ARTICLE 6. ADJUDICATIVE PROCEEDINGS

9  
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 VII

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?

IF YES:

Yes \_\_\_\_\_ No

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 VIII

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 IX

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.
- I. *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.
- I. *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.
- I. *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 X

New York Statutes: Regulatory Impact

§ 202-a. Regulatory impact

1. In developing a rule, an agency shall, to the extent consistent with the objectives of applicable statutes, consider utilizing approaches which are designed to avoid undue deleterious economic effects or overly burden some impacts of the rule upon persons directly or indirectly affected by it or upon the economy or administration of state or local governmental agencies.

2. Each agency shall, except as provided in subdivision five of this section, issue a regulatory impact statement for a rule proposed for adoption or a rule adopted on an emergency basis. A copy of such statement shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission at the time such statement is submitted to the secretary of state for publication and, upon written request, a copy shall be sent to any other person.

3. Each regulatory impact statement shall contain:

(a) **Statutory authority.** A statement analyzing the statutory authority for the rule, including but not limited to the agency's interpretation of the legislative objectives of such authority.

(b) **Needs and benefits.** A statement setting forth the necessity for, and the benefits to be derived from, the rule;

(c) **Costs.** A statement indicating the projected costs (i) for the implementation of, and continuing compliance with, the rule to the state, its local governments and regulated persons and (ii) to the agency for the implementation and continued administration of the rule. Where an agency finds that it cannot fully provide an estimate of any such costs, it shall include a statement setting forth the reason or reasons why such estimate is not provided;

(d) **Paperwork.** A statement describing the need for any reporting requirements, forms and other paperwork which would be required as a result of the rule;

(e) **Duplication.** A statement comparing the requirements of the rule with any related state and federal requirements; and

(f) **Alternative approaches.** A statement indicating whether any significant alternatives to the rule were considered by the agency, including a discussion of such alternatives and the reasons why they were not incorporated into the rule.

4. To reduce paperwork on the agencies, an agency may:

(a) Consider a series of closely related and simultaneously proposed rules as one rule for the purpose of submitting a consolidated regulatory impact statement; and

(b) Submit a consolidated regulatory impact statement for any series of virtually identical rules proposed in the same year.

5. (a) An agency may claim an exemption from the requirements of this section for a rule that involves only a technical amendment, provided, however, the agency shall state in the notice, prepared pursuant to section two hundred two of this chapter, the reason or reasons for claiming such exemption.

(b) A rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter shall be exempt from the requirements of this section.

6. (a) Each agency shall issue a revised regulatory impact statement when there are substantive changes in the text of the rule as adopted when compared with the text of the proposed rule. Such a revised statement shall describe the reasons for the changes and shall include any modifications in the regulatory impact statement that are necessary as a result of such changes.

(b) A copy of such revised statement shall be submitted in the same manner as regulatory impact statements are submitted pursuant to subdivision one of this section.

Appendix XI

New York Statutes: Regulatory Flexibility

§ 202-b. Regulatory flexibility

1. In developing a rule, the agency shall consider utilizing approaches that will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the rule on small businesses. Consistent with the objectives of applicable statutes, the agency shall consider such approaches as:

(a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses;

(b) the use of performance rather than design standards; and

(c) an exemption from coverage by the rule, or by any part thereof, for small businesses so long as the public health, safety or general welfare is not endangered.

2. In proposing a rule for adoption or in adopting a rule on an emergency basis, the agency shall issue a regulatory flexibility analysis regarding the rule being proposed for adoption or the emergency rule being adopted. A copy of such analysis shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission at the time such analysis is submitted to the secretary of state for publication and, upon written request, a copy shall be sent to any other person. Each regulatory flexibility analysis shall contain:

(a) a description of the types and an estimate of the number of small businesses to which the rule will apply;

(b) a description of (i) the reporting, recordkeeping and other compliance requirements of the rule, and (ii) the kinds of professional services that a small business is likely to need in order to comply with such requirements;

(c) an estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in such costs for small businesses of different types and of differing sizes; and

(d) an indication of how the rule is designed to minimize any adverse economic impact of such rule on small businesses.

3. This section shall not apply to any rule defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter, nor shall it apply to any rule which the agency finds would not impose reporting, recordkeeping or other compliance requirements on small businesses. The agency's finding and an indication of the basis for its finding shall be included in the rule making notice as required by section two hundred two of this chapter.

4. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purpose of complying with subdivision two of this section.

5. In complying with the provisions of subdivision two of this section, an agency may provide either a quantifiable or numerical description of the effects of a rule or more general descriptive statements if quantification is not practicable or reliable.

6. When any rule is proposed for which a regulatory flexibility analysis is required, the agency shall assure that small businesses have been given an opportunity to participate in the rule making through such activities as:

(a) the publication of a general notice for the proposed rule making in publications likely to be obtained by small businesses of the types affected by the proposed rule;

(b) the direct notification of interested small businesses affected by the proposed rule;

(c) the conduct of special open conferences or public hearings concerning the proposed rule for small businesses affected by the rule; and

(d) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rule making by small businesses.

Appendix XII

New York Statutes: Regulatory Review

§ 202-c. Regulatory review

1. For the purposes of this section:

(a) "Office" shall mean, unless a contrary meaning is clearly intended, the office of business permits and regulatory assistance created pursuant to article thirty-nine of the executive law; and

(b) "Rule" shall mean the adoption, suspension, amendment or repeal, of any rule as defined by subdivision two of section one hundred two of this chapter, but shall not include a rule as defined in subparagraph (ii) of paragraph (a) of subdivision two of section one hundred two of this chapter or, rules proposed or adopted by the state comptroller or the attorney general, rules regarding jurisdictional classifications pursuant to subdivision one of section six of the civil service law and the alteration of hunting or fishing seasons pursuant to article eleven of the environmental conservation law.

2. An agency shall submit a copy of the complete text of the proposed rule, regulatory impact statement prepared pursuant to section two hundred two-a of this chapter and regulatory flexibility analysis prepared pursuant to section two hundred two-b of this chapter to the office at the time the notice of proposed rule making is submitted to the secretary of state for publication in the state register, unless such rule is of a type determined not to be reviewed pursuant to subdivision thirteen of section eight hundred seventy-eight of the executive law, and the agency has received a notice thereof.

3. In the case of a rule adopted on an emergency basis, the review procedure provided for in this section shall commence when the agency proceeds to adopt the rule on a permanent basis, submits a notice of proposed rule making pursuant to subdivision one of section two hundred two of this chapter and provides the office with a copy of the complete text of the rule, the regulatory impact statement prepared pursuant to section two hundred two-a of this chapter and the regulatory flexibility analysis prepared pursuant to section two hundred two-b of this chapter.

4. Upon receipt of such materials, the office shall conduct a review of the proposed rule, the regulatory impact statement and the regulatory flexibility analysis using as criteria whether:

(a) The proposed rule (i) is clearly within the authority delegated by law, (ii) is consistent with and necessary to achieve a specific legislative purpose, (iii) is clearly written so that its meaning will be easily understood by those persons affected by it, (iv) does not unnecessarily duplicate existing federal or state statutes or rules, and (v) is consistent with existing state statutes and rules; and

(b) The agency proposing the rule has complied with the provisions of sections two hundred two-a and two hundred two-b of this chapter and has provided information in the regulatory impact statement and the regulatory flexibility analysis prepared pursuant to such sections adequate to enable interested persons to evaluate the impact of the proposed rule.

5. In the event the office concludes that any of the criteria listed in subdivision four of this section have not been met, the office shall so notify the agency proposing the rule. Such notification shall be in writing and shall be sent within thirty days of the publication of the notice of proposed rule making for the rule in the state register. Such notification shall indicate the need for further demonstration of compliance with such criteria. A copy of such notification shall be submitted by the office to the secretary of state for publication in the state register and shall identify the rule making, identify the agency and state that the proposed rule shall not be adopted by the agency until at least thirty days after the agency proposing the rule has responded to the office on the matters contained in such notification.



6. The agency proposing the rule shall, in responding to such notification by the office, provide further clarifications or justifications of its rule, regulatory impact statement or regulatory impact analysis, propose changes in the rule, submit a revised statement or analysis or may withdraw the proposal. A copy of the agency response material shall be sent by the agency to the governor, the secretary to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission at the time such material is sent to the office. Should the agency fail to respond to the office within thirty days from receipt of the notification from the office, the proposed rule shall be deemed to be withdrawn, and the office shall submit a notice of withdrawal for the rule to the secretary of state for publication in the state register.

7. (a) Upon receipt of the agency response material, the office shall conduct a review of the proposed rule, regulatory impact statement, regulatory flexibility analysis and agency response material according to the criteria contained in subdivision four of this section. In the event the office concludes that any of the criteria listed in subdivision four of this section have still not been met, the office shall so notify the agency in writing within fifteen days of the receipt of such material. A copy of such notification shall be submitted by the office to the secretary of state for publication in the state register and shall identify the rule making and the agency, indicate the need for further demonstration of compliance with such criteria, and state that the agency shall hold a public hearing on at least ten days notice.

(b) Upon receipt of such notification, the agency shall hold a public hearing on at least ten days notice, such notice to be published within fifteen days of the receipt of the second notification by the office that any of the criteria have not been met. The notice of public hearing shall be published in at least three newspapers of general circulation in the state, and in such trade, industry, professional or other publications as the agency may select. In addition, the agency shall notify the office, the governor, the secretary to the governor, the temporary president of the senate, the speaker of the assembly, the administrative regulations review commission, and any other person who has indicated to the agency an interest in the proposed rule. In the event the agency fails to give such notice within fifteen days after receipt of the second notification by the office, or fails to commence the hearing within forty-five days of the receipt of such notification, the rule shall be deemed to be withdrawn, and the office shall submit a notice of withdrawal for the rule to the secretary of state for publication in the state register.

(c) Such public hearing shall be in addition to any other hearing required or permitted by law. The agency shall present, or cause to be presented, at the hearing material in response to the issues identified in the second notification to the agency by the office and shall receive such testimony as may be offered at such hearing. Upon the close of such hearing, the agency shall prepare and send to the governor, with copies to the secretary to the governor, the temporary president of the senate, the speaker of the assembly, the office, the administrative regulations review commission, and any other person who has indicated to the agency an interest in the proposed rule, a brief report indicating whether the agency intends to proceed with the rule making and including the agency response to the issues raised by the office. The proposed rule may not be adopted until ten days after such report has been sent to the governor.

8. In the event the office concludes that the minimum period, available pursuant to subdivision one of section two hundred two of this chapter is insufficient for the public to submit comments on a proposed rule, the office shall so notify the agency proposing the rule. Such notification shall be in writing and shall be sent to the agency within twenty-one days after the publication of the notice of proposed rule making for the rule in the state register. Upon receipt of such notification, the agency shall extend such period as required by subdivision one of section two hundred two of this chapter by fifteen days, and shall promptly notify any person who has indicated to the agency an interest in the proposed rule. A copy of any written notification by the office pursuant to this subdivision shall be submitted to the secretary of state for publication in the state register, and shall indicate that the proposed rule may not be adopted prior to the expiration of this fifteen day extension. A notification by the office pursuant to this subdivision shall extend the period, provided for in subdivision five of this section for the office to notify the agency of the need for further demonstration of compliance with the criteria listed in subdivision four of this section, by fifteen days.

9. In the event the office does not send to the agency in a timely fashion the notification specified in subdivision five or seven of this section, the proposed rule may be deemed by the agency to meet the criteria contained in subdivision four of this section.

10. A copy of any notification by the office pursuant to subdivision five, six, seven or eight of this section shall be sent by the office to the governor, the secretary to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission by the office at the time such notification is submitted to the secretary of state for publication in the state register.

11. An agency may consult informally with the office regarding proposed rules, regulatory impact statements and regulatory flexibility analysis at any time prior to the submission of such materials. Such informal consultation shall not be binding on the office or the agency.

Appendix XIII

New York Statutes: The Office of Business Permits and Regulatory Assistance

ARTICLE 39—OFFICE OF BUSINESS PERMITS AND  
REGULATORY ASSISTANCE

§ 875. Declaration of purpose.

The legislature finds and determines as follows:

1. Increasing regulation by the state has been accompanied by a proliferation of rules and permits entailing multiple requirements, jurisdictional overlaps, and uncertainty on the part of those who must comply. More than thirty-five state agencies issue rules and permits affecting businesses, organizations and individuals. Permits number in the hundreds in statute with still more in rules and regulations. Those who are regulated move in a maze of rules, permits, licenses, and approvals.
2. The proliferation of state agency rules imposes a burden, both economic and otherwise, on the people of this state. This increasing burden demands a program of oversight activity to test the necessity, clarity and consistency of rules proposed by state agencies.
3. The public interest will be served by overcoming the delays and burdensome permit requirements which too often accompany business regulation and by fixing responsibility for continuing and comprehensive action and review designed to consolidate, simplify, or expedite the permit and regulatory procedures of state agencies.
4. Accomplishment of these purposes will be facilitated through the establishment of an office for business permits and regulatory assistance and a program of business permit and regulatory assistance in state government which will provide comprehensive permit information, one-stop service for permit applicants, and the coordination of permit processing and continuing oversight of the administrative regulatory process.
5. It is the intent of the legislature that the program of business permit assistance will be directed to commercial or non-profit, business undertakings, projects, and activities rather than to the routine issuance of licenses and permits for individual privileges, including the occupational licenses for practicing a trade or profession, licenses for operating a motor vehicle and amateur sporting licenses, such as for hunting and fishing.
6. It is the further intent of the legislature that the program of business permit assistance focus primarily on those business undertakings needing special help with state agency requirements and procedures and generally improve the delivery of governmental services to businesses locating or expanding in the state.
7. The business permit and regulatory assistance programs will constitute an economic advantage to the state.

§ 876. Definitions.

When used in this article:

1. "Office" means the office of business permits and regulatory assistance created by this article.
2. "Director" means the director of the office of business permits and regulatory assistance.
3. "State agency" means any department, board, bureau, commission, division, office, council or agency of the state, or a public benefit corporation or public authority at least one of whose members is appointed by the governor.
4. "Permit" means the whole or part of any state agency permit, license, certificate, approval, registration, charter, or similar form of permission required by law or by state agency rules having the force and effect of law.
5. "Person" means any individual, proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization.
6. "Applicant" means any person acting on his behalf or authorized to act on behalf of any other person for the purpose of securing a permit.
7. "Rule" means any rule as defined by subdivision one of section two hundred two-c of the state administrative procedure act.

§ 877. Office of business permits and regulatory assistance

1. There is hereby created in the executive department an office of business permits and regulatory assistance. The head of the office shall be the director of business permits and regulatory assistance who shall be appointed by the governor, by and with the advice and consent of the senate, and who shall hold office at the pleasure of the governor.

2. The director shall devote his whole time and capacity to his duties as director. He shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation and shall be allowed his actual and necessary expenses in the performance of his duties.

3. The director shall direct the work of the office and shall be the chief executive officer of the office. The director may appoint such officers and employees as he may deem necessary, prescribe their duties, fix their compensation, and provide for the reimbursement of their expenses, all within amounts made available therefor by appropriation.

4. The director shall report to the secretary to the governor on the activities of the office to ensure their consistency with the overall policies of the state.

5. The secretary to the governor, working with state agency heads shall assure that the activities of the office are fully coordinated with related activities of state agencies providing related services.

§ 878. General functions, powers and duties

The office of business permits and regulatory assistance, by and through the director or his duly authorized officers and employees, shall have the following functions, powers and duties:

1. To provide comprehensive information on permits required for business undertakings, projects, and activities in the state and to make such information available to applicants and generally to any person.

2. To provide an oversight of the regulatory processes of state agencies through the review and analysis of proposed rules.

3. To develop procedures for the implementation of sections eight hundred eighty-one through eight hundred eighty-three of this article.

4. To assist applicants in obtaining timely and efficient permit review and the resolution of issues arising therefrom.

5. To consolidate hearings required pursuant to permit applications when feasible and advantageous.

6. To provide the conceptual review of business undertakings at an early stage of planning to provide interested persons with an official opinion as to the general acceptability of such undertakings.

7. To encourage and facilitate the participation of federal and local government agencies in permit coordination and regulatory review.

8. To make recommendations for eliminating, consolidating, simplifying, expediting, or otherwise improving permit procedures affecting business undertakings.

9. To analyze the impact of new and existing rules and make recommendations for simplifying the regulatory processes of state agencies.

10. To carry out the functions, powers and duties conferred on it by section two hundred two-c of the state administrative procedure act.

11. To consider objections to rule makings concerning rules proposed for adoption raised by persons who may be affected by the rule.

12. To consider requests by the administrative regulations review commission made pursuant to subdivision three of section eighty-seven of the legislative law and to advise such commission in writing and in a timely fashion of the action taken on such request.

13. To determine by rule those categories of rules which, because of their routine nature, limited application or other similar characteristics, will not be subject to review pursuant to the provisions of subdivision four of section two hundred two-c of the state administrative procedure act. Any such determination shall be transmitted in writing to the governor, the secretary to the governor, the temporary president of the senate, the speaker of the assembly, the administrative regulations review commission, the promulgating agency and the secretary of state.

14. To assist any person in the preparation of a petition for a declaratory ruling to be submitted pursuant to section two hundred six of the state administrative procedure act.

15. To monitor agency compliance with section two hundred six of the state administrative procedure act and to make recommendations to agencies for improving such compliance.

16. To prepare on an annual basis appropriate statistical reports regarding its permit assistance activities pursuant to this article and regulatory review activities pursuant to section two hundred two-c of the state administrative procedure act, and to make such reports available to the governor, the secretary to the governor, the temporary president of the senate, the speaker of the assembly and the administrative regulations review commission.

17. To adopt such rules and regulations, procedures, instructions, and forms as are required to carry out the functions, powers, and duties imposed upon the office by this article and section two hundred two-c of the state administrative procedure act.

§ 884. Permit coordination; regulatory assistance

1. Any person interested in a proposed or existing rule may confer with the office to indicate the need for additional time to evaluate and comment on the proposed rule or to obtain assistance in analyzing the impact, necessity and clarity of proposed or existing rule, and their consistency with other rules.

2. Any applicant for permits required for a business undertaking, project or activity may confer with the office to obtain assistance in the prompt and efficient processing and review of applications.

3. The office shall, so far as possible, render such assistance; and the director may designate an officer or employee of the office to act as an expeditor with the purpose of:

(a) facilitating contacts for the applicant with state agencies responsible for promulgating rules or processing and reviewing permit applications;

(b) arranging conferences to clarify the interest and requirements of any such state agency with respect to rules or permit applications;

(c) considering with state agencies the feasibility of consolidating hearings and data required of the applicant;

(d) assisting the applicant in the resolution of outstanding issues identified by state agencies, including delays experienced in permit review;

(e) assisting an interested person in the resolution of issues identified with a proposed or existing rule; and

(f) coordinating federal, state, and local regulatory procedures and permit review actions to the extent practicable.

Appendix XIV

Kentucky Revised Statutes: Tiering 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 XV

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 XVI

Regulatory Oversight in Maine

### Regulatory Oversight 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 policymakers (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 nonprofit 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 the 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, the residual animosity between the state's business community and its legislators that 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, regulators, 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.

Appendix XVII

New 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 establish 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 XVIII

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.
- (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.
- Ken

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 XIX

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 XX

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>
<b>A. <u>Codify State Regulations</u></b>		
(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
<b>B. <u>Improve Management Flexibility</u></b>		
(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	
<b>C. <u>Establish Executive/Legislative Oversight</u></b>		
(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 <ul style="list-style-type: none"> <li>a. Committee may seek and include agency input and interpretation of intent</li> <li>b. Statement may include scope and limitations of intent as well</li> </ul>	Request from BAC	Legislative Leadership
<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. <ul style="list-style-type: none"> <li>- Prepare case studies to evaluate applicability and share results</li> </ul>	Executive Order	SDO/MDF
<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	1B. Get legislature to state its intents in passing laws.	Ask legislative committees to attach a "statement of regulatory intent" to 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.	1D. 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.	1D. 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> <p>a. Quality of Regulators</p> <p>b. Lack of Legislative Direction</p> <p>c. Lack of Resources</p>	<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>Executive Order to develop career path program, high quality training.</p>
<p>1B.</p>	<p>Clarify Legislative intent when drafting legislation.</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 intent 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 in 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>1A. Establish a more formalized method of stating legislative intent</p> <p>a. Clearly establish objectives or standards within legislation</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. Legislation may be too specific thus hampering agency flexibility or too vague providing little direction and opportunity for abuse</p>	<p>b. Formalize legislative intent in record of proceedings.</p>	<p>a. Committee may seek and include agency input and</p> <p>b. Statement may include scope and limitations of intent as well</p>
<p>b. Legislative histories are frequently non-existent</p>	<p>2A. Increase legislative oversight of regulatory process</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>c. Little communication between parties</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 XXI

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.