

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE

EXECUTIVE ORDER

Subject:		Regulatory Review and Promulgation		Number:	1996-1
Date:	February 6, 1996	Distribution:	B	By Direction Of:	 THOMAS J. RIDGE, GOVERNOR

- WHEREAS, the volume and scope of regulations promulgated by Commonwealth agencies has grown at an alarming rate in recent years; and
- WHEREAS, a regulation should be promulgated only after a determination that it is necessary to address a compelling public interest; and
- WHEREAS, political subdivisions and the private sector have often been asked to comply with regulations that were drafted and promulgated without meaningful input from these members of the regulated community; and
- WHEREAS, burdensome regulations have placed undue restrictions on the regulated community and have hampered Pennsylvania's ability to compete effectively with other states; and
- WHEREAS, despite the increasing volume and burden of regulations, they remain an appropriate and necessary means of protecting the public health and safety.

NOW, THEREFORE, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania, the Regulatory Review Act, and other laws, do hereby establish the following procedures regarding the review and promulgation of regulations:

- 1. General Requirements.** In the drafting and promulgating of new regulations and the application and review of existing regulations, all agencies shall adhere to the following principles:
- a. Regulations shall address a compelling public interest.
 - b. Costs of regulations shall not outweigh their benefits.
 - c. Regulations shall be written in clear, concise and, when possible, nontechnical language.

d. Regulations shall address definable public health, safety, or environmental risks.

e. Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law.

f. Compliance shall be the goal of all regulations.

g. Where viable nonregulatory alternatives exist, they shall be preferred over regulations.

h. Regulations shall be drafted and promulgated with early and meaningful input from the regulated community.

i. Regulations shall not hamper Pennsylvania's ability to compete effectively with other states.

j. All agency heads shall be held directly accountable for regulations promulgated by their respective agencies.

2. Evaluation of Existing Regulations.

a. Existing regulations shall be reviewed by agencies for consistency with the aforementioned principles. Any regulations that are inconsistent with these principles shall be considered for amendment or repeal.

b. Agency heads shall have the flexibility to construct a program that reviews their existing regulations to assure consistency with these principles. A plan and schedule for review of existing regulations is to be submitted to the Governor's Policy Office within six months of the effective date of this order. All review programs shall commence within one year of the effective date of this order.

c. Regulations proposed for repeal should be submitted to the General Counsel, Secretary of the Budget, and Governor's Policy Director along with a Repeal Analysis Form. The analysis shall state:

- The name of the agency.
- The name of a contact person at that agency.
- A short title of the regulation.
- An explanation of the regulation.
- A justification for the proposed repeal.
- A proposed schedule for repeal – noting any public comment periods.
- Any costs and/or savings associated with the repeal.

d. If a statute prohibits the repeal of a regulation that the agency deems to be inconsistent with the aforementioned principles, the agency head shall submit to the General Counsel, Governor's Policy Director, and Secretary for Legislative Affairs the specific citation for the statute that prohibits the repeal and the citation for any regulation that is determined to be inconsistent with the aforementioned principles, the nature of and reason for the inconsistency, and a recommendation for legislative action, if appropriate.

3. Pre-Drafting and Drafting Guidelines.

a. Before drafting a regulation, agencies, where practical, shall undertake extensive public outreach to those who are likely to be affected by the regulation. Creating advisory committees, using regulatory negotiation, and developing other creative procedures are encouraged as means to solicit the public's input during the regulatory development process.

b. Those to be affected by the regulation should continue to be consulted during the drafting process. When appropriate, members of the regulated community should be involved with the formulation of language, the development of standards, and any other areas in which the regulated community has an interest and/or can provide insight. During the regulation development and drafting process, agencies should advise and consult with the Governor's Policy Office, Office of General Counsel, and the Budget Office whenever the agency determines that any such involvement would hasten the review process.

c. Each agency shall develop its own policies regarding public involvement tailored best to meet the needs of the agency and the regulated community.

d. Within six months of the effective day of this order, agencies shall submit to the Governor's Policy Office their internal guidelines for pre-drafting and drafting public outreach.

4. Review by Governor's Office.

a. Prior to submitting a proposed rulemaking, the agency head shall evaluate each regulation and attest to the fact that the regulation addresses a compelling public need that can be best remedied by the promulgation of the regulation.

b. The agency head shall submit to the General Counsel, Secretary of the Budget, and Governor's Policy Director a written Regulatory Analysis. The analysis shall state:

- The name of the agency.
- The name of a contact person at that agency.
- A short title for the regulation and a citation from the Pennsylvania Code.
- Whether the regulation is a proposed, final-form or final-omitted rulemaking.
- A brief, clear and, if possible, nontechnical explanation of the regulation.
- The statutory authority or mandate for the regulation.
- The compelling public need that justifies the regulation.
- The public health, safety, or environmental risks associated with nonregulation.
- Individuals or groups that are likely to benefit from the regulation.

- Individuals, groups, or entities that will be required to comply with the regulation.
- The outreach conducted by the agency with the regulated community prior to submission of the regulation.
- An estimate of the costs and/or savings associated with compliance and implementation.
- A cost/benefit analysis of the regulation.
- Nonregulatory alternatives considered and the reasons for their dismissal.
- Alternative regulatory schemes considered and the reasons for their dismissal.
- A statement of the compelling Pennsylvania interest if the regulation exceeds federal standards.
- Any requirements that would place Pennsylvania at a competitive disadvantage compared to other states.
- An intra-agency review schedule for the regulation.

c. Each regulation submitted for review shall contain a brief preamble, written in clear and concise language, which shall describe in nontechnical terms the compelling public need the regulation is designed to address, what the regulation requires in legal and practical terms, and who the regulation is likely to affect.

d. The regulatory analysis, along with the preamble and draft regulation, will be reviewed by the Office of General Counsel for form, language, and legal authority. The Governor's Policy Office will review the request to determine that public interest is compelling, that no viable alternative to the regulation exists, and that the costs of the regulation reasonably relate to the benefits. The Office of General Counsel will also consider whether the proposed regulation exceeds federal standards. If the regulation does exceed federal standards, the Policy Office will then evaluate whether the regulation is justified by a compelling and unique Pennsylvania interest. The Budget Office will evaluate the cost analysis prepared by the agency and prepare a fiscal note for the regulation.

e. No agency shall proceed with a proposed, final-form or final-omitted regulation until the General Counsel, Secretary of the Budget, and Policy Director have informed the agency that the regulation is consistent with the regulatory principles and overall policies of the Administration. Review by these three offices will be conducted in a fair and timely manner.

5. Nonregulatory Documents.

a. Nonregulatory public documents such as internal guidelines, policy statements, guidance manuals, decisions, rules and other written materials that provide directives, guidance, or other relevant compliance related information to the public shall be cataloged by every agency.

b. The cataloged titles of these documents, along with an agency contact and phone number, shall be published in the Pennsylvania Bulletin on August 3, 1996. Each year thereafter every agency shall publish and update its list in the Pennsylvania Bulletin on the first Saturday in August.

6. Petitions. To further the goal of greater public participation in the regulatory process; individuals, groups, and businesses are encouraged to use the regulatory petition process outlined in *1 PA Code Section 35.18*. Agencies that have not already done so shall develop internal procedures to receive and review petitions in a fair and timely manner.

7. Continual Review of Regulations. All regulations shall be reviewed in accordance with the review schedule published annually by each agency. As part of its review, the agency shall determine whether the regulation continues to effectively fulfill the goals for which it was intended and remains consistent with the previously-mentioned principles.

8. Regulatory Agendas. Semiannually, on February 1 and July 1, each agency head shall submit to the General Counsel, the Secretary of the Budget, and the Governor's Policy Office Director, for publishing in the *Pennsylvania Bulletin*, an agenda of regulations under development or consideration. The agenda shall describe the regulations being considered, the proposed date for promulgation, the need and legal basis for the action being taken, and the status of regulations previously listed on the agenda. Each item on the agenda shall also include a contact person within the agency from whom additional information may be obtained.

9. Exemptions. The procedure prescribed by this Order shall not apply to:

a. Emergency regulations as defined in the Regulatory Review Act.

b. Any regulation for which consideration or reconsideration under the terms of this order would conflict with deadlines imposed by statute, consent decree or by judicial order, provided that any such regulation shall be reported to the Director of the Governor's Policy Office together with a brief explanation of the conflict. The agency shall publish in the *Pennsylvania Bulletin* 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. The agency, in consultation with the Governor's Policy Office, shall adhere to the requirements of this order to the extent permitted by statutory or judicial deadlines.

10. Applicability.

a. This order shall apply to all agencies under the jurisdiction of the Governor's Office.

b. This order is intended only to improve the internal management of executive agencies and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Commonwealth, its agencies, its officers or any person.

11. Effective Date. This order is effective immediately

12. Rescission. Executive Order 1982-2 is rescinded.