

EXECUTIVE REORGANIZATION ORDER

E.R.O. No. 1995-5

10.151 Creation of office of regulatory reform within the executive office of the governor; transfer of attorney general's duties under MCL 24.245 to office of regulatory reform.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of Government; and

WHEREAS, the people of the State of Michigan deserve a regulatory process that is efficient, effective, understandable and responsive to individual needs; and

WHEREAS, the regulatory process should be accessible and open to the public; and

WHEREAS, the regulatory process should respect the rights and legitimate concerns of the public and should not impose costs on society that do not justify the benefits of regulation; and

WHEREAS, the regulatory process requires enhanced planning and coordination from within the Executive Branch of Government; and

WHEREAS, existing state regulations contain duplicative, obsolete and unnecessarily burdensome requirements on Michigan's citizens and businesses; and

WHEREAS, rules are now adopted without a thorough examination and systematic analysis of their direct and indirect costs and the social and economic benefits gained through regulation; and

WHEREAS, state regulation needs to retain sufficient flexibility to take into account unique impacts, to improve the state's economy and to protect its citizens without imposing unacceptable or unreasonable costs.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. The terms "agency" and "rule" shall have the meanings ascribed to them in the Administrative Procedures Act, Act No. 306 of 1969, as amended, being Michigan Compiled Laws Section 24.201 et seq.

2. The Office of Regulatory Reform is created within the Executive Office of the Governor.

3. The Office of Regulatory Reform shall review proposed rules, coordinate the processing of rules by state agencies and work with the agencies to streamline the rulemaking process and to improve public access.

4. Agencies shall process rules only when the rules are required by law, are necessary to interpret or enforce the law, are necessary to rescind or amend obsolete or superseded rules, or are necessary due to compelling public need. Agencies shall file a Request for Rulemaking with the Office of Regulatory Reform prior to initiating the processing of any rule. The Request for Rulemaking shall include:

a. the state or federal statutory or regulatory basis for the rule; and

b. the problem the rule intends to address as well as an assessment of the significance of that problem.

5. Upon review of the Request for Rulemaking the Office of Regulatory Reform may seek additional information concerning the proposed rule including, but not limited to, the following:

a. whether existing state laws or regulations have contributed to the problem and whether those laws or regulations should be modified to achieve the intended goal of the rule more effectively; and

b. an analysis of the alternatives available to direct regulation including, but not limited to, economic incentives, rule rescission, or not regulating.

6. Each agency shall provide for public participation in the rulemaking process. Upon issuing a Request for Rulemaking each agency should, when appropriate, seek the involvement in the rulemaking process of those who are intended to benefit from and those expected to be burdened by any rule, including local officials.

7. When the Office of Regulatory Reform determines that a rule is necessary the agency shall design the rule to achieve the regulatory objective in the most cost-effective manner allowed by law. Except for emergency rules and rules seeking to rescind or amend obsolete or superseded rules, the agency shall assess the costs and benefits of the proposed rule, as required by Section 45(2) of the Administrative Procedures Act, being Michigan Compiled Laws Section 24.245(2), and such other requirements as the Office of Regulatory Reform may impose. The Office of Regulatory Reform shall provide the methodology for agencies to conduct a comprehensive analysis of the direct

and indirect costs and benefits, both social and economic, of proposed rules. This cost-benefit analysis shall include a review of all viable alternatives to regulation including non-regulatory, market-based solutions. In addition, rules should seek to impose the least onerous burden on Michigan's citizens and businesses allowed by law.

8. The Office of Regulatory Reform shall strive to ensure that rules do not expand state power or jurisdiction beyond the level of regulatory action needed to satisfy statutory requirements.

9. Each agency shall avoid rules that are inconsistent, incompatible or duplicative with its other rules or those of other agencies. Each agency shall draft its rules to be simple and easy to understand and shall seek to minimize uncertainty and litigation arising from such uncertainty.

10. No later than June 1, 1995, and on June 1 of each successive year, each agency shall submit to the Office of Regulatory Reform a Regulatory Plan, which shall include, at minimum, each rule that the agency reasonably expects to begin processing during the following 12-month period. The agency head shall personally approve the agency's Plan. The Office of Regulatory Reform shall determine such other contents of the Plan that it deems necessary.

11. Within 30 days of the date of this Order, each agency head shall designate a Regulatory Affairs Officer who shall be responsible for coordinating the agency's rulemaking responsibilities and who shall serve as the liaison between the agency and the Office of Regulatory Reform.

12. In order to reduce the regulatory burden on the citizens of Michigan and to determine whether rules now in existence remain justified and necessary under changed circumstances, and to determine whether rules are duplicative or unnecessarily burdensome, within 90 days of the date of this Order each agency shall submit to the Office of Regulatory Reform a program to review annually its existing rules to determine whether any should be modified or eliminated. Any rules that the agency identifies pursuant to its review program as duplicative, unnecessarily burdensome or no longer necessary shall be included in the agency's annual Regulatory Plan. The agency shall pursue the repeal or amendment of such rules. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose rules that the agency believes are either unnecessary or outdated by reason of changed circumstances and shall include those in the agency's annual Regulatory Plan.

13. To effectuate the goal of reducing outdated regulations, the Office of Regulatory Reform shall identify proposed regulations that seek to rescind or amend a rule that is obsolete or superseded and shall make recommendations to the Legislative Service Bureau that a statement to that effect be included in the bureau's certificate of approval pursuant to Section 44(1) of the Administrative Procedures Act, being Michigan Compiled Laws Section 24.244(1).

14. Members of the public may request the Office of Regulatory Reform to review existing rules that they consider duplicative, unnecessarily burdensome or no longer necessary.

15. In order to permit the Department of Attorney General to continue to respond to the increasing volume of litigation and administrative proceedings involving the State of Michigan, the duties of the Attorney General set forth in Section 45 of the Administrative Procedures Act, Act No. 306 of 1969, being Section 24.245 of the Michigan Compiled Laws, are hereby assigned to the Office of Regulatory Reform. The Office of Regulatory Reform shall consult with the Department of Attorney General regarding any proposed rule that the Office of Regulatory Reform finds presents a legal or constitutional issue.

16. All of the powers, duties, functions, and responsibilities assigned to agencies under the Administrative Procedures Act to promulgate a rule by filing it with the Secretary of State, contained in subsections 46(1) and 46(4) of the Administrative Procedures Act, being Sections 24.246(1) and 24.246(4) of the Michigan Compiled Laws, are hereby assigned to the Office of Regulatory Reform.

17. All departments, boards, commissions, or officers of the state shall give to the Office of Regulatory Reform, or to any representative thereof, any necessary assistance required by the Office of Regulatory Reform, or any representative thereof, in the performance of the duties of the Office of Regulatory Reform so far as is compatible with its, his, or her duties; free access shall also be given to any books, records, or documents in its, his, or her custody, relating to matters within the scope of the inquiry, study, or investigation of the Office of Regulatory Reform.

18. The invalidity of any portion of this Executive Order shall not affect the validity of the remainder thereof. This Executive Order shall become effective June 1, 1995.

History: 1995, E.R.O. No. 1995-5, Eff. June 1, 1995

Compiler's Notes: For transfer of powers and duties of the office of regulatory reform from the department of management and budget to the office of regulatory reform, see E.R.O. No. 2000-1, compiled at MCL 10.152 of the Michigan compiled laws. For transfer of powers and duties of office of regulatory reform from the executive office of the governor to the department of management and budget, see E.R.O. No. 2002-7, compiled at MCL 10.153 of the Michigan Compiled Laws.