

**EXECUTIVE ORDER 94-07**  
**ON REGULATORY REFORM**

**I. Introduction**

A. Purpose. This executive order is adopted to increase public confidence in agency rule making activities, to improve coordination among state agencies, to improve the efficiency and effectiveness of regulatory programs, and to avoid imposing undue burdens on business, the public, local governments, and state agencies. Except as otherwise provided herein, this Executive Order supplements Executive Order [93-06](#) and provides state agencies guidance in meeting their regulatory objectives. It is the purpose of this Executive Order to:

1. Reinforce the accountability of agency directors to the Governor for the regulatory actions of their agencies.
2. Provide better information to the Governor, the Legislature, and the public about the implementation of agency regulatory programs.
3. Establish factors for agencies to consider during the rule making process.
4. Encourage voluntary compliance with statutes and rules through the provision of technical assistance.
5. Protect the public health and safety and the environment, promote the state's economy, and maintain the quality of life of the citizens of the state.

B. Philosophy of Regulation. Agency regulation is intended to benefit both the public and those who are affected by the rules. The effective use of regulation assures equal treatment for the regulated community. The use of rules provides that agency policies are made in a public setting. Ineffective regulation can result in time-consuming and expensive procedures providing little public or private benefit. In order to further the effective use of regulation, the following principles shall guide agencies in their program implementation:

1. Agencies should focus, within the constraints imposed by statutory requirements, on those issues posing greater risks to the public or from which the public can expect to receive greater benefits.
2. Agencies should attempt to use less intrusive methods of achieving desired outcomes.
3. Agencies should be open to reasonable alternative methods of achieving regulatory objectives.
4. Agencies should approach their regulatory duties assuming that most individuals and businesses who are subject to regulation will attempt to comply with the law, particularly when they are given sufficient information. In this context, enforcement assures that the

majority of a regulated community who do intend to comply with the law are not placed at a competitive disadvantage.

5. Agencies should develop methods to determine whether regulatory programs are meeting program objectives.

6. In addition to an agency director's legal responsibility over agency operations, each agency director shall be responsible to the Governor for assuring that the spirit and intent of this Executive Order are carried out.

C. Effect on Quasi-judicial Boards, The provisions of this Executive Order do not apply to a quasi-judicial board or commission as it relates to its adjudicatory proceedings.

## **II. Planning**

A. Each state agency shall prepare an annual fiscal year agenda for significant rules under development. The agenda shall be adopted not later than June 30. The agenda shall be made available upon request to any person and shall be published by the agency in the Washington State Register. The agenda shall also be submitted to the director of the Office of Financial Management and to any other state agency which may reasonably be expected to have an interest in the subject of rules which will be developed.

B. Paragraph A. of Section V. of EO 93-06, directing state agencies to adopt a list of potential rule making activities, is rescinded.

## **III. Office of Financial Management Review Procedures**

A. Quarterly Reports to the Office of Financial Management. State agencies shall submit to the Office of Financial Management each quarter a report of their rule adoption activities for the prior quarter. The report shall be provided to the Office of Financial Management in the manner and format required by the Office of Financial Management and shall include at least the following information for new, amended, and repealed rules:

1. The number adopted, proposed for adoption, and proposals withdrawn.
2. The number adopted as emergency rules.
3. The number adopted in order to comply with federal statute, with federal rules or standards, and with recently enacted state statutes.
4. The number adopted at the request of a non-governmental entity.
5. The number adopted on the agency's own initiative.
6. The number adopted in order to clarify streamline, or reform agency procedures.

7. The number of petitions for review of rules received by the agency.
8. The number of rules appealed to superior court.
9. The number adopted using negotiated rule making, pilot rule making, or other alternative rule making mechanisms.
10. Any other summary information required by the director of the Office of Financial Management.
11. For purposes of the report required by this section, each Washington State Register filing shall be considered as a separate rule.

B. When an agency commences a significant rule making activity, as determined by the agency, it shall provide a copy of its notice of intent, required by RCW 34.05.310(1), to the director of the Office of Financial Management and to other state agencies that may have an interest in or be affected by the rule making.

C. If a state agency director believes that another state agency is engaging in rule making activities which may potentially conflict with its rules or policies, the agency director shall notify the other agency and the director of the Office of Financial Management of his or her concern.

D. Agencies shall attempt to resolve disputes among themselves using the procedures established in EO 93-06 and RCW 34.05.310. If agencies are unable to resolve a dispute within a reasonable period of time, the director of the Office of Financial Management shall collect appropriate information concerning the dispute and, in the director's discretion, either resolve the dispute or inform the Governor of the nature of the dispute and provide a recommendation for resolution.

#### **IV. Regulatory Fiscal Note**

A. The Office of Financial Management shall revise the fiscal note form to include the following information on each bill for which a fiscal note is prepared: whether new rules are required or existing rules must be amended in order to implement the legislation, the approximate cost involved in developing those rules, the types of entities which may potentially be affected by the legislation, and whether other agencies have authority over the same subject matter.

B. In its review of agency request legislation prepared for introduction in the 1995 legislative session, the Office of Financial Management shall review the legislation to ensure that any proposed delegation of rule making authority is clear in its intent.

#### **V. Rule Adoption Factors.**

A. As early in the rule-development process as possible, but not later than the time a rule is published for comment and adoption as a permanent rule, an agency, based on reasonably available information, shall consider and prepare a written analysis of the proposed rule addressing the following:

1. The objective of the rule.
2. Whether changes to other rules or statutes would achieve the same objective.
3. How the provisions of the proposed rule will be coordinated with other rules of the agency and rules of other state agencies, local governments, and the federal government.
4. Whether it has chosen a reasonable, cost-effective manner to achieve the regulatory objective.
5. The anticipated environmental and fiscal consequences of adopting and not adopting the proposed rule, recognizing the difficulty of quantifying some consequences.

B. The agency shall identify and assess alternative forms of regulation and, where appropriate, shall specify performance standards in addition to standards for behavior and manner of compliance.

C. If a rule proposed in order to comply with federal law contains significant differences from a comparable federal rule or standard, or if a proposed rule provides differences in application to public and private entities, the agency shall provide a written analysis explaining the nature of the differences, evaluating their consequences, and providing a rationale for adopting the rule as drafted.

D. An agency shall include the written analyses required by Part V in the rule making file and shall make the analyses available to any person upon request. The analyses shall be updated based on additional information received by the agency during the rule making process.

E. An agency is encouraged, but not required, to comply with this Part V when adopting an emergency rule under RCW 34.05.350.

## **VI. Voluntary Compliance through Technical Assistance**

A. To the maximum extent feasible, within the limits of an agency's current budget and consistent with statutory requirements, an agency with regulatory enforcement authority shall promote voluntary compliance with state and federal law enforced by the agency and the agency's rules through the provision of technical assistance, including technical assistance visits.

B. For purposes of this Executive Order, technical assistance includes:

1. Information on the laws, rules, compliance methods, and technologies applicable to the agency's programs.
2. Information on methods to avoid compliance problems;
3. Assistance in applying for permits; and

4. Information on the mission, goals, and objectives of the program,

C. For the purposes of this Executive Order, a technical assistance visit is a visit of an agency employee to a facility, business, or other location that is declared by the agency employee at the beginning of the visit to be a technical assistance visit.

D. During a technical assistance visit, an agency employee shall inform the owner or operator of the facility of any violations of law- or agency rules and provide technical assistance concerning compliance.

E. Except as provided in Paragraph G:

1. A technical assistance visit shall not be regarded as an inspection or investigation; and

2. The owner or operator shall be given a reasonable period of time to correct violations before any penalty or sanction is imposed for those violations.

F. An agency may reinspect a facility within a reasonable period of time after a technical assistance visit and take appropriate enforcement action for any uncorrected violations.

G. An agency employee who observes a violation during a technical assistance visit may take immediate enforcement action if

1. The violation places a person in danger of death or bodily harm, is causing or is likely to cause more than minor environmental harm, presents a risk to worker or public health and safety, or is causing or is likely to cause physical damage to the property of others in an amount exceeding one thousand dollars; or

2. The person has previously been subject to an enforcement action for the same violation.

## **VII. Effective Dates**

A. The application of this Executive Order is prospective only.

B. For fiscal year 1995, the agenda required by Part III shall be adopted not later than August 31, 1994.

C. An agency is encouraged, but is not required, to comply with the provisions of Part V of this Executive Order for any rule which is proposed for adoption by filing in the Washington State Register prior to July 31, 1994.

D. Agencies shall report the information required by Part III., Paragraph A, beginning with the calendar quarter ending September 30, 1994.

This order shall take effect immediately.

**IN WITNESS WHEREOF**, I have hereunto  
set my hand and caused the seal of the State  
of Washington to be affixed at Olympia  
this 6th day of June A.D., Nineteen hundred and ninety-four.

Additional

**By:**

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**MIKE LOWRY**  
Governor of Washington

**BY THE GOVERNOR:**

Secretary of State