

THE GOVERNOR

GOVERNOR'S OFFICE

Amendment to Proclamation

Whereas, on January 20, 1996, I amended my Proclamation of Disaster Emergency of January 7, 1996, in order to add seven additional counties to the designated disaster emergency area and to authorize the Secretary of the Department of Transportation to use all available equipment, resources, and personnel of the Department to clear debris and other obstructions from Federal and State highways located in the disaster affected area due to extensive flooding which occurred throughout the Commonwealth beginning on January 19, 1996; and

Whereas, because of the extensive flooding which occurred throughout the Commonwealth, the Department of Transportation needs to perform emergency repair, maintenance, reconstruction, construction and replacement work on numerous damaged highways and bridges and areas adjacent thereto located throughout the Commonwealth;

Now, Therefore, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S.A. Section 7101 et seq.), I do hereby further amend my Proclamation of January 7, 1996, as follows:

1. I hereby authorize the Secretary of the Department of Transportation to use all available equipment, resources and personnel of the Department, in whatever manner he deems necessary, to ensure that highways, bridges, roadbeds, and related facilities and structures, including Federal-aid highways, that have sustained damage in the disaster affected area are immediately repaired, maintained, reconstructed, or replaced or that new construction is undertaken where necessary. In addition, I hereby waive any laws or regulations that would restrict the ability of the Department to respond immediately and effectively in repairing, maintaining, reconstructing or replacing these damaged highways, bridges, roadbeds, and related facilities and structures, including Federal-aid highways, and areas adjacent thereto, or in undertaking necessary new construction.

2. The limit set forth in 35 Pa.C.S.A. § 7305(b) on the amount of individual and family grants is hereby suspended for the duration of this disaster emergency.

3. This amendment is retroactive to January 7, 1996.

GIVEN under my hand and Great Seal of the Commonwealth, this twelfth day of February, in the year of our Lord, one thousand nine-hundred and ninety-six, and of the Commonwealth, the two-hundred and twentieth.

Governor

[Pa.B. Doc. No. 96-279. Filed for public inspection March 1, 1996, 9:00 a.m.]

Title 4—ADMINISTRATION

GOVERNOR'S OFFICE

[4 PA. CODE CH. 1]

[EXECUTIVE ORDER 1996-1]

Regulatory Review and Promulgation

February 6, 1996

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.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 1. AGENCY OPERATION AND ORGANIZATION

Subchapter FF. REGULATORY REVIEW AND PROMULGATION

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§ 1.371. General requirements.

In the drafting and promulgating of new regulations and the application and review of existing regulations, agencies shall adhere to the following principles:

- (1) Regulations shall address a compelling public interest.
- (2) The costs of regulations may not outweigh their benefits.
- (3) Regulations shall be written in clear, concise and, when possible, nontechnical language.
- (4) Regulations shall address definable public health, safety or environmental risks.
- (5) If Federal regulations exist, regulations of the Commonwealth may not exceed Federal standards unless justified by a compelling and articulable Pennsylvania interest or required by State law.

(6) Compliance shall be the goal of all regulations.

(7) If viable nonregulatory alternatives exist, they shall be preferred over regulations.

(8) Regulations shall be drafted and promulgated with early and meaningful input from the regulated community.

(9) Regulations may not hamper the Commonwealth's ability to compete effectively with other states.

(10) Agency heads shall be held directly accountable for regulations promulgated by their respective agencies.

§ 1.372. Evaluation of existing regulations.

(a) Existing regulations shall be reviewed by agencies for consistency with the principles in § 1.371 (relating to general requirements). 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 shall be submitted to the Governor's Policy Office by August 6, 1996. The review programs shall commence by February 6, 1997.

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

(1) The name of the agency.

(2) The name of a contact person at that agency.

(3) A short title of the regulation.

(4) An explanation of the regulation.

(5) A justification for the proposed repeal.

(6) A proposed schedule for repeal—noting any public comment periods.

(7) Any costs or savings, or both, associated with the repeal.

(d) If a statute prohibits the repeal of a regulation that the agency deems to be inconsistent with the principles in § 1.371, the agency head shall submit to the General Counsel, the Governor's Policy Director and the 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 principles in § 1.371, the nature of and reason for the inconsistency, and a recommendation for legislative action, if appropriate.

§ 1.373. Predrafting and drafting guidelines.

(a) Before drafting a regulation, agencies, when 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 other areas in which the regulated community has an interest or can provide insight, or both. During the regulation development and drafting process, agencies should advise and consult with the Governor's Policy Office, the Office of General Counsel and the Budget Office whenever the agency determines that the 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) By August 6, 1996, agencies shall submit to the Governor's Policy Office their internal guidelines for predrafting and drafting public outreach.

§ 1.374. 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, the Secretary of the Budget and the Governor's Policy Director a written regulatory analysis. The analysis shall state:

- (1) The name of the agency.
- (2) The name of a contact person at that agency.
- (3) A short title for the regulation and a citation from the *Pennsylvania Code*.
- (4) Whether the regulation is a proposed, final-form or final-omitted rulemaking.
- (5) A brief, clear and, if possible, nontechnical explanation of the regulation.
- (6) The statutory authority or mandate for the regulation.
- (7) The compelling public need that justifies the regulation.
- (8) The public health, safety or environmental risks associated with nonregulation.
- (9) Individuals or groups that are likely to benefit from the regulation.
- (10) Individuals, groups or entities that will be required to comply with the regulation.
- (11) The outreach conducted by the agency with the regulated community prior to submission of the regulation.
- (12) An estimate of the costs or savings, or both, associated with compliance and implementation.
- (13) A cost/benefit analysis of the regulation.
- (14) Nonregulatory alternatives considered and the reasons for their dismissal.
- (15) Alternative regulatory schemes considered and the reasons for their dismissal.
- (16) A statement of the compelling Pennsylvania interest if the regulation exceeds Federal standards.
- (17) Any requirements that would place the Commonwealth at a competitive disadvantage compared to other states.
- (18) 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 describes 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) An agency may not proceed with a proposed, final-form or final-omitted regulation until the General Counsel, the Secretary of the Budget and the 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.

§ 1.375. 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.

§ 1.376. 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 § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations). Agencies that have not already done so shall develop internal procedures to receive and review petitions in a fair and timely manner.

§ 1.377. Continual review of regulations.

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 principles in § 1.371 (relating to general requirements).

§ 1.378. 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.

§ 1.379. Exemptions.

The procedure prescribed by this subchapter does not apply to:

(1) Emergency regulations as defined in the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

(2) A regulation for which consideration or reconsideration under the terms of this subchapter would conflict with deadlines imposed by statute, consent decree or by judicial order, provided that the regulation is 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 subchapter with respect to such a rule. The agency, in consultation with the Governor's Policy Office, shall adhere to the requirements of this subchapter to the extent permitted by statutory or judicial deadlines.

§ 1.380. Applicability.

(a) This subchapter applies to all agencies under the jurisdiction of the Governor's Office.

(b) This subchapter is intended only to improve the internal management of executive agencies and is not intended to create a right or benefit,

substantive or procedural, enforceable at law by a party against the Commonwealth, its agencies, its officers or any person.

§ 1.381. Effective date.

This subchapter is effective immediately.

§ 1.382. Rescission.

Executive Order 1982-2 is rescinded.

Governor

Fiscal Note: GOV 96-1. (1) General Fund; (2) Implementing Year 1996-97 is \$minimal; (3) 1st Succeeding Year 1997-98 is \$minimal; 2nd Succeeding Year 1998-99 is \$minimal; 3rd Succeeding Year 1999-00 is \$minimal; 4th Succeeding Year 2000-01 is \$minimal; 5th Succeeding Year 2001-02 is \$minimal; (4) FY 1995-96 \$n/a; FY 1994-95 \$n/a; FY 1993-94 \$n/a; (7) General Government Operations; (8) recommends adoption.

[Pa.B. Doc. No. 96-280. Filed for public inspection March 1, 1996, 9:00 a.m.]

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