

AUG 25 2003

EXECUTIVE ORDER
03-15Matt Blunt
SECRETARY OF STATE

WHEREAS, a vibrant and growing small business sector is critical to creating jobs in a dynamic economy; and

WHEREAS, small businesses representing a diverse cross-section of the State's economy, population and geography in the areas of manufacturing, tourism, agriculture, technology, construction, finance, transportation, insurance, real estate, retail, services and others have played a vital role in the continuing development of a stable and diverse Missouri economy; and

WHEREAS, when adopting regulations to protect the health, safety, and economic welfare of Missouri citizens, executive agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small business employers; and

WHEREAS, uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses with limited resources; and

WHEREAS, the failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, restrict improvements to productivity, create entry barriers in many industries, and discourage potential entrepreneurs from introducing beneficial products and processes; and

WHEREAS, alternative regulatory approaches that do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses.

WHEREAS, the process by which state regulations are developed and adopted should include the ideas and comments of small businesses and to examine the impact of proposed rules; and

WHEREAS, it is important to review new regulations for compatibility with existing requirements affecting small business as well as to review existing rules that regulate small businesses; and

NOW, THEREFORE, I, Bob Holden, Governor of the State of Missouri, by the virtue of the powers vested in me through the constitution and the laws of the state of Missouri, do hereby create and establish the Missouri Small Business Regulatory Fairness Board (hereinafter, the Board). For administrative purposes, the Board shall be assigned to the Missouri Department of Economic Development. By these same powers, I also do hereby direct each department or agency of state government to determine whether each proposed rule will have an economic impact on small businesses, and to take the following steps accordingly:

Section 1. Definitions

As used in this executive order, unless the context clearly indicates otherwise the following terms mean:

- (1) "Affected small business" or "affects small business", any requirement imposed upon a small business through a state agency's proposed rule that will cause direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business;
- (2) "State Agency", has the same meaning as set forth in section 536.010(5), RSMo;
- (3) "Small business", a for-profit enterprise consisting of fewer than fifty (50) full or part-time employees.

Section 2. Small Business Impact Statements

Prior to submitting proposed rules for adoption, amendment, revision, or repeal, the state agency shall determine whether the proposed rules affect small businesses and, if so, the availability and practicability of less restrictive alternatives that could be implemented to achieve the same results of the proposed rule. This requirement shall not apply to emergency rulemaking pursuant to section 536.025, RSMo. This requirement shall be in addition to the fiscal note requirement of sections 536.200 to 536.210.

If the proposed rules affect small businesses, the state agency shall prepare a small business impact statement to be submitted to the Secretary of State and the Joint Committee on Administrative Rules with the proposed rules. A copy of the proposed rules and the small business impact statement shall also be filed with the Board on the same date as they are filed with the Secretary of State. The statement shall provide a reasonable determination of the following:

- (1) The type of small businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules;
- (2) A description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs, such as fees or administrative penalties, and indirect costs, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance if such costs are capable of determination;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used, if such costs are capable of determination;
- (5) The methods the agency considered or used to reduce the impact on small businesses such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small businesses in the development of the proposed rules; and
- (7) A comparison of the proposed rule to any comparable federal, state, or county standards.

Any proposed rule that is required to have a small business impact statement but does not include such a statement shall be invalid and the Secretary of State should not publish the rule. If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the Secretary of State, stating that it has determined that such proposed rule will not have an economic impact on small businesses.

Section 3. Exceptions to Small Business Impact Statement Requirement

This executive order shall not apply where the rule is being promulgated on an emergency basis, where the rule is federally mandated, or where the rule substantially codifies existing federal or state law. Notwithstanding the provisions of this section, federally mandated regulations are subject to the federal Regulatory Flexibility Act as amended by the Small Business Regulatory and Enforcement Fairness Act of 1996, P.L. 96-354, as amended by P.L. 104-121. Any federally mandated regulations that do not comply with these acts shall be subject to this executive order.

Section 4. Missouri Small Business Regulatory Fairness Board

The Board shall be composed of nine members appointed in the following manner:

- (1) One member who is the chair of the minority business advocacy commission;
- (2) One member appointed by the president pro tempore of the Senate;
- (3) One member appointed by the minority leader of the Senate;
- (4) One member appointed by the speaker of the House of Representatives;
- (5) One member appointed by the minority leader of the House of Representatives; and
- (6) Four members appointed by the Governor, two of whom shall be public members.

Each member of the Board, except for the public members and the chair of the minority business advocacy commission, shall be a current or former owner or officer of a small business. All members of the Board shall represent a variety of small businesses, both rural and urban, and from a variety of geographical areas of this state, provided that no more than two members shall represent the same type of small business.

Members of the Board shall serve a term of three years and may be re-appointed at the conclusion of the term. No member shall serve more than three consecutive terms. Appointments shall be made so that one-third of the membership of the Board shall terminate each year. The governor shall appoint the initial chairperson of the Board and a majority of the Board shall elect subsequent chairpersons. The chairperson shall serve as chair for a term of not more than two years.

Members of the Board shall serve without compensation, but may be reimbursed for reasonable and necessary expenses relating to their performance of duties, according to the rules and regulations of travel issued by the Office of Administration. Members will be required to submit an expense account form in order to obtain reimbursement for expenses incurred.

The Board shall meet as often as necessary, as determined by the chairperson of the Board. All meetings of the Board will be conducted in accordance with the Governmental Bodies and Records Act (Chapter 610, RSMo), including closed sessions. Notice will be posted and will be provided to the Joint Committee on Administrative Rules. Minutes of the meetings shall be provided to all members, the office of the Governor, and the Joint Committee on Administrative Rules.

Section 5. Purpose and Duties of the Board

The purpose of the Board shall be to independently review complaints brought by small businesses concerning state agency regulations that have a disproportionate impact on the conduct of small businesses in the State of Missouri. The Board also shall promote awareness of state agency rulemaking as it affects small business, identify issues in state agency rulemaking that disproportionately and adversely affect small businesses, identify issues for the Governor and the General Assembly to act upon, and monitor state agency compliance with requirements for filing small business impact statements and small business participation statements as required by this Executive Order.

The Board may:

- (1) Provide state agencies with input regarding rules that adversely affect small businesses;
- (2) Consider any request from small business owners for review of any rule adopted by a state agency;
- (3) Conduct hearings and solicit input from small businesses and state agencies regarding any request for review of rules adopted by a state agency; and
- (4) Provide an evaluation report to the Governor and the General Assembly including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses and a summary of any public testimony on rules brought before the Board for consideration.

In any review or hearing conducted by the Board because of a request or complaint from a small business, the Board shall base any recommendations resulting from its review or hearing on any of the following grounds:

- (1) The rule creates an undue barrier to the formation, operation and expansion of small businesses in a manner that significantly outweighs the rule's benefit to the public; or
- (2) New or significant economic information has created an undue impact on small businesses; or
- (3) Technology, economic conditions or other relevant factors justifying the purpose for the rule has changed or no longer exists; or
- (4) New or significant economic information has created an undue impact on small business; or
- (5) If the rule was adopted after the requirements of this Executive Order became effective, whether the actual effect on small businesses was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules;

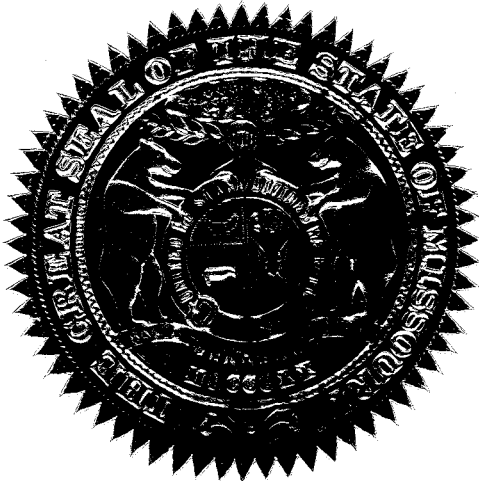
Section 6. Miscellaneous

Any state agency receiving comments or recommendations from the Board shall promptly consider such comments or recommendations and should file a response with the

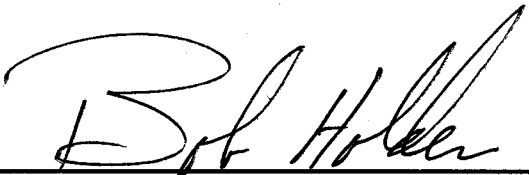
Board within sixty (60) days of receiving the Board's comments or recommendations. If the state agency determines that no action shall be taken on the Board's comments or recommendations, the agency should explain its reasons for its determination. If the state agency determines that the Board's comments or recommendations merit adoption, amendment or repeal of a rule, the agency should indicate this in its response and thereafter initiate proceedings in accordance with the applicable requirements of Chapter 36, RSMo.

With this executive order, Executive Order 96-18, which created a requirement for state agencies to determine whether or not any proposed rule had an economic impact upon small businesses, is rescinded.

The provisions of this executive order shall become effective upon the date of its issuance set forth below. The provisions of this Executive Order shall continue in effect until superseded or changed by constitutional amendment, by law or by a subsequent Executive Order.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 25th day of August, 2003.



Bob Holden
Governor

ATTEST:



Matt Blunt
Secretary of State