



Regulatory Streamlining Initiative

Office of Regulatory Streamlining, Department of Consumer and Business Services

FACTORS AGENCIES SHOULD WEIGH WHEN EVALUATING NEED FOR NEW/EXPANDED REGULATION

Executive Order 03-01 directs all state regulatory agencies to “identify opportunities to streamline (regulatory) processes to reduce regulatory burdens without compromising regulatory standards.” The Executive Order applies to agencies that are considering new regulations, and requires that agencies review their rules for streamlining opportunities.

The following questions are a tool to help agencies determine whether new or expanded regulation is necessary at all; and to ensure that, when necessary, it is as minimally intrusive as possible on those who are being regulated. These questions are intended to be a tool to help raise issues, consider options, and thoroughly think through a situation to identify opportunities to streamline regulatory processes and to reduce regulatory burdens. They have been written primarily with business regulation in mind, but may be useful in other regulatory areas as well. Not all will apply to every situation. Not every question has a “correct” answer (although not being able to answer a question that applies to the regulatory in question may be an indication of a need to reconsider whether a legislative concept proposing expanded regulation is appropriate).

Considerations for legislative concepts proposing new or expanded regulation of businesses or business activities:

Is Expanded Regulation Required?

- What is creating the need for increased regulation? Does the concept address a new problem or risk, or is it needed to achieve a specific agency strategic direction or priority. Who is the increased regulation intended to protect, and against what risk or concern?
- Is there public support for further regulation? How do you know? Has the agency used an advisory committee or other means to gain public input for the concept?
- Is the concept intended to address an existing known problem, or a problem that the agency speculates may occur without regulatory intervention? If the latter, how likely is the problem, how severe would it be, and what would be the consequences of waiting to see whether it develops? What is the specific intended outcome? Are there other alternatives to statutorily expanding regulation that will achieve the intended outcome without a new regulatory requirement?



- Does the agency have a high degree of confidence the concept is going to achieve the desired outcome? If so, how good is the evidence? If not, what is the case for proceeding?
- What performance metrics does the agency intend to use to measure effectiveness of the proposed new regulation?
- If new statute is being proposed because prior regulations have been ineffective,, can the earlier language be repealed? Will the legislation eliminate the need for other regulation?

Questions to assist in reducing the impact of new or expanded regulation

- Does the proposed statutory language provide the responsible agency enough flexibility to design rules that are no more intrusive on business operations than necessary to achieve the desired outcome? What options have been considered?
- Can statutory language be structured to allow flexibility in how a regulated party complies, rather than prescribing a single mandatory means of compliance (for example, use of outcome-oriented rules instead of prescriptive rules)? Can the concept provide for adaptive management to accommodate new information or monitoring results, new technologies, and new approaches to compliance?
- Are required documents or submittals limited to information truly necessary for achieving the statute's outcomes? Are there feasible alternatives to requiring regulated parties to submit information (e.g., can the information be made available as needed on a case-by-case basis instead)?
- Does the responsible agency have sufficient authority and resources to provide for electronic filing, registration, or queries wherever possible?
- If the proposed statutory language will require periodic applications, submissions, permits, or licenses, how frequent do these need to be? Will the responsible agency have authority to reduce the frequency without jeopardizing public protection?
- Are the regulatory concerns the same with respect to large and small businesses? Are there alternatives that require less record-keeping, reporting, and compliance requirements, which would be appropriate for small businesses? In what other ways can the costs and impacts for small businesses be reduced?
- Are there other government agencies that regulate the same or related subject areas? If so, why is a separate regulation needed? Have the agencies coordinated to avoid overlap, duplication, and inconsistency? What steps have been taken to minimize the cumulative effects of the regulations?
- If the agency is regulating another level of government, has it considered the "secondary impacts" that will be imposed on businesses?

Minimizing the impact of new/expanded regulation when there is a Federal/National Relationship

If the proposed concept addresses an area that is also addressed by a federal or national standard:

- Is there a need for a separate state statute, or is the existing standard sufficient?
- If the state statute will vary from the federal or national standard, why? Are there specific state conditions or policy needs that justify a different state standard? If the state regulation is more stringent than the federal or national standard, what is the justification for the additional stringency? Does the incremental benefit of a more stringent state regulation truly provide benefits that outweigh the additional regulatory burden on business?
- If the state statutory language will be consistent with the federal law or national standard, to whom is consistency important? Federal agencies? State agencies? The regulated community? What problem(s) has the lack of consistency caused, or is it likely to cause?

Agency Resources

- Will the expanded regulation drive a need for increased fee or general fund resources? Does the benefit to be obtained from the new or expanded authority justify the increased fee or cost?
- Given resource constraints, will the agency be able to implement the new authority, or will it lead to rules on the books with no “teeth”? Can the agency effectively enforce the regulations? What are the proposed enforcement tools? Are the enforcement tools feasible?
- Will the concept make it easier for the agency to do business internally? What are the quantifiable (non-speculative) resource savings from any process improvement or streamlining? Are these true savings, or are they simply costs that will be transferred to regulated parties?