



STATE OF TENNESSEE
EXECUTIVE ORDER
BY THE GOVERNOR

Number 38

**AN EXECUTIVE ORDER REQUIRING STATE AGENCIES TO ASSESS THE
IMPACT OF NEW REGULATIONS ON SMALL BUSINESSES**

WHEREAS, small businesses in this state excel in the areas of agriculture, construction, finance, insurance, manufacturing, tourism, technology, and transportation, as well as many other fields of commerce; and

WHEREAS, small businesses are crucial to the continued economic well-being of this state, in that they constitute the majority of businesses here and employ hundreds of thousands of workers; and

WHEREAS, the increasing number, complexity, and cost of government regulations can impose a significant burden upon small businesses; and

WHEREAS, the regulation of businesses without regard to their size can be counterproductive for all involved: the populace, the agency, the industry, and the business itself; and

WHEREAS, in promulgating rules, agencies should strive to fulfill the legislative objective and promote better health, safety, and well-being, while not unnecessarily creating entry barriers, stifling entrepreneurial activity, or curbing innovation; and

WHEREAS, in the course of developing new rules and amending existing ones, it is important that agencies seek input from the small business community.

NOW THEREFORE, I, Phil Bredesen, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and law, do hereby order the following:

Section 1. Definitions. As employed in this Executive Order, unless the context clearly indicates otherwise, the following terms are defined as follows:

- (1) "Agency" shall mean each board, commission, department, office, or other authority within the executive branch;
- (2) "Rule" shall have the same definition as that in Tenn. Code Ann. § 4-5-102; and
- (3) "Small business" shall have the same definition as that in Tenn. Code Ann. § 29-37-103.

Section 2. Applicability. Prior to initiating a rulemaking process under the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-202(a)(3) or § 4-5-203(a), all agencies shall conduct a review of whether the rule under consideration affects small businesses in accordance with the provisions of this Executive Order. As part of its analysis, each agency shall examine whether a means exists to make the rule less costly for small businesses without

compromising the objective of the rule. However, this shall not apply to rules that are adopted on an emergency or public necessity basis under § 4-5-201 et seq., that are federally mandated, or that substantially codify existing state or federal law.

Section 3. Economic Impact Statement. In conducting its review, each agency shall prepare an economic impact statement that sets forth the following: (1) the type or types of small businesses that will be directly affected by, bear the cost of, and/or directly benefit from the proposed rule; (2) a description of how small businesses will be adversely impacted; (3) whether, and to what extent, alternative means exist for accomplishing the objectives of the proposed rule that might be less burdensome to small businesses, and why such alternatives are not being proposed; and (4) a comparison of the proposed rule with federal or state counterparts.

Section 4. Notification to the Public. Each agency shall take reasonable steps to give notice to the public and to small businesses of its analysis of the economic impact of the proposed rule. This may be done in the same manner as notice is given of the rulemaking, including but not limited to e-mail, mail, or use of the agency site on the World Wide Web. If the agency receives comments during the comment period on the analysis, it shall respond in the same manner as it would to other comments on the proposed rule.

This Executive Order shall be effective upon its signing and shall apply to any rulemaking process initiated on or after May 22, 2006. This Executive Order shall remain in full force and effect until amended or rescinded by further executive order.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 22nd day of May, 2006.

GOVERNOR

ATTEST:

SECRETARY OF STATE