

THE WHITE HOUSE

Office of the Press Secretary
(Birmingham, England)

For Immediate Release

May 14, 1998

EXECUTIVE ORDER 13083

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FEDERALISM

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities, embodied in the Constitution, between the Federal Government and the States that was intended by the Framers and application of those principles by the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) "Policies that have federalism implications" refers to Federal regulations, proposed legislation, and other policy statements or actions that have substantial direct effects on the States or on the relationship, or the distribution of power and responsibilities, between the Federal Government and the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 2. Fundamental Federalism Principles. In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) The structure of government established by the Constitution is premised upon a system of checks and balances.

(b) The Constitution created a Federal Government of supreme, but limited, powers. The sovereign powers not granted to the Federal Government are reserved to the people or to the States, unless prohibited to the States by the Constitution.

(c) Federalism reflects the principle that dividing power between the Federal Government and the States serves to protect individual liberty. Preserving State authority provides an essential balance to the power of the Federal Government, while preserving the supremacy of Federal law provides an essential balance to the power of the States.

(d) The people of the States are at liberty, subject only to the limitations in the Constitution itself or in Federal law, to define the moral, political, and legal character of their lives.

(e) Our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to

their own conditions, needs, and desires. States and local governments are often uniquely situated to discern the sentiments of the people and to govern accordingly.

(f) Effective public policy is often achieved when there is competition among the several States in the fashioning of different approaches to public policy issues. The search for enlightened public policy is often furthered when individual States and local governments are free to experiment with a variety of approaches to public issues. Uniform, national approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Policies of the Federal Government should recognize the responsibility of -- and should encourage opportunities for -- States, local governments, private associations, neighborhoods, families, and individuals to achieve personal, social, environmental, and economic objectives through cooperative effort.

Sec. 3. Federalism Policymaking Criteria. In addition to adhering to the fundamental federalism principles set forth in section 2 of this order, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of States and local governments, and should carefully assess the necessity for such action.

(b) Agencies may limit the policymaking discretion of States and local governments only after determining that there is constitutional and legal authority for the action.

(c) With respect to Federal statutes and regulations administered by States and local governments, the Federal Government should grant States and local governments the maximum administrative discretion possible. Any Federal oversight of such State and local administration should not unnecessarily intrude on State and local discretion.

(d) It is important to recognize the distinction between matters of national or multi-state scope (which may justify Federal action) and matters that are merely common to the States (which may not justify Federal action because individual States, acting individually or together, may effectively deal with them). Matters of national or multi-state scope that justify Federal action may arise in a variety of circumstances, including:

(1) When the matter to be addressed by Federal action occurs interstate as opposed to being contained within one State's boundaries.

(2) When the source of the matter to be addressed occurs in a State different from the State (or States) where a significant amount of the harm occurs.

(3) When there is a need for uniform national standards.

(4) When decentralization increases the costs of government thus imposing additional burdens on the taxpayer.

(5) When States have not adequately protected individual rights and liberties.

(6) When States would be reluctant to impose necessary regulations

because of fears that regulated business activity will relocate to other States.

(7) When placing regulatory authority at the State or local level would undermine regulatory goals because high costs or demands for specialized expertise will effectively place the regulatory matter beyond the resources of State authorities.

(8) When the matter relates to Federally owned or managed property or natural resources, trust obligations, or international obligations.

(9) When the matter to be regulated significantly or uniquely affects Indian tribal governments.

Sec. 4. Consultation.

(a) Each agency shall have an effective process to permit elected officials and other representatives of State and local governments to provide meaningful and timely input in the development of regulatory policies that have federalism implications.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that has federalism implications, and that imposes substantial direct compliance costs on States and local governments, unless:

(1) funds necessary to pay the direct costs incurred by the State or local government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected States and local governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by States or local governments.

Sec. 5. Increasing Flexibility for State and Local Waivers.

(a) Agencies shall review the processes under which States and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State or local government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the

applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 6. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 7. General Provisions.

(a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), and OMB Circular A-19.

(c) Executive Order 12612 of October 26, 1987, and Executive Order 12875 of October 26, 1993, are revoked.

(d) The consultation and waiver provisions in sections 4 and 5 of this order shall complement the Executive order entitled, "Consultation and Coordination with Indian Tribal Governments," being issued on this day.

(e) This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON
THE WHITE HOUSE,
May 14, 1998.

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