

Financial Management Circular: #2013-01

Effective Date: February 8, 2013

General Subject: Administrative Rulemaking

Specific Subject: Regulatory Moratorium

Authority: IC 4-3-22-1; IC 4-3-22-14; IC 4-3-22-15; Executive Order 2-89; Executive Order 13-03

**WHEREAS**, Executive Order 13-03 established the “Regulatory Moratorium” to suspend administrative agency rulemaking;

**WHEREAS**, Executive Order 13-03 tasks the Office of Management and Budget (OMB) with conducting a comprehensive review and evaluation of existing administrative rules; and

**WHEREAS**, Executive Order 13-03 permits limited exceptions to the Regulatory Moratorium and requires agencies to cooperate with and report certain information to OMB.

1. This Financial Management Circular (FMC) establishes the procedures OMB will use to implement Executive Order 13-03, including: review of claimed exceptions to the Regulatory Moratorium; requirements to report pending, non-final rules; and requirements to report on the proposed or pending use of rulemaking authority whose source is not within Ind. Code 4-22-2 or Ind. Code 13-14-9 (including emergency rulemaking authority).

**Procedure for requesting an exception to the Regulatory Moratorium**

2. Beginning February 8, 2013, this FMC applies to any request for an exception to the Regulatory Moratorium.
3. The Regulatory Moratorium excludes the following classes of rules from the Executive Order 13-03’s suspension of administrative rulemaking:
  - a. rules to fulfill an objective related to job creation and increasing investment in Indiana or to improve the quality of Indiana’s workforce;
  - b. rules that repeal existing rules or reduce their regulatory impact;

- c. rules that implement a federal mandate and no waiver is permitted;
  - d. rules necessary to avoid a violation of a court order or federal law that would result in sanctions by a court or the federal government against the state for failure to conduct the rulemaking action;
  - e. rules to address matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within a state agency or wasteful or abusive activities perpetrated against a state agency;
  - f. rules that reduce State spending; or
  - g. rules whose predominate purpose and effect are to address matters of emergency or health or safety, including the promulgation of an emergency rule under Ind. Code § 4-22-2-37.1.
4. To receive a determination whether an exception applies to a proposed rule, the agency head shall submit a request in writing addressed to the OMB Director via e-mail, sent to [sbarules@sba.in.gov](mailto:sbarules@sba.in.gov), and include a brief statement regarding the applicable exception. The agency head shall submit this request before filing a notice of intent to adopt a rule (under Ind. Code 4-22-2) or a notice under Ind. Code 13-14-9.
  5. The OMB Director shall issue a determination in writing regarding the applicability of an exception.
  6. If the OMB Director determines no exception applies to a proposed rule, the Regulatory Moratorium suspends any formal rulemaking activity with regard to the proposed rule. Under these circumstances, the agency must not file a notice of intent to adopt a rule (under Ind. Code 4-22-2) or a notice under Ind. Code 13-14-9 with regard to the proposed rule until the Regulatory Moratorium ends.
  7. If the OMB Director determines an exception applies to a proposed rule, the agency may file a notice of intent to adopt a rule (under Ind. Code 4-22-2) or a notice under Ind. Code 13-14-9 with regard to the proposed rule. For a proposed rule that qualifies for an exception under the Regulatory Moratorium, all other applicable procedures under statute, Executive Order 2-89, and FMC No. 2010-4 govern the promulgation of the proposed rule.

#### **Requirement to report any pending, non-final rules**

8. As soon as practicable, and no later than March 1, 2013, an agency shall notify the OMB Director in writing via e-mail, sent to [sbarules@sba.in.gov](mailto:sbarules@sba.in.gov), of all pending, non-final rules for which a notice of intent to adopt a rule (under Ind. Code 4-22-2) or a notice under Ind. Code 13-14-9 was submitted to the *Indiana Register* on or before January 14, 2013, and provide for each rule:
  - a. a summary of the proposed rule;

- b. a statement regarding the proposed rule's potential to promote private-sector job growth or foster private-sector economic development; and
- c. an estimated date of the proposed rule's adoption.


A non-final rule is one that has not become effective under IC 4-22-2-36.

**Requirement to report any proposed or pending rules whose source of promulgation authority is not within Ind. Code 4-22-2 or Ind. Code 13-14-9**

9. An agency shall notify the OMB Director in writing via e-mail, sent to sbarules@sba.in.gov, as soon as practicable of any proposed or pending rulemaking action for which legal authority is not within Ind. Code 4-22-2 or Ind. Code 13-14-9, and provide the following:
- a. a summary of the proposed rule;
  - b. a statement regarding the proposed rule's potential to promote private-sector job growth or foster private-sector economic development; and
  - c. an estimated date of the proposed rule's adoption.

This includes proposed or pending emergency rules.

Approved:



Christopher D. Atkins  
OMB Director

Date: 2/8/2013