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;

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

WHEREAS, Financial Management Circular #2013-1 was instituted to guide implementation of the Regulatory Moratorium, and agencies would benefit from an update to the process originally implemented.

1. This Financial Management Circular (FMC) establishes the procedures OMB will use to implement Executive Order 13-03, including the review of claimed exceptions to the Regulatory Moratorium 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 December 18, 2015, this FMC applies to any request for an exception to the Regulatory Moratorium.

3. The Regulatory Moratorium does not apply to:

   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 OMB via e-mail, sent to sbarules@gov.in.gov. 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. In order to facilitate OMB’s review of proposed rules, the request shall include the following information:

a. Detailed summary of the proposed rule, including, but not limited to, the following:
   i. a history and background of the rule;
   ii. the reasons for the proposed rule;
   iii. the statutory authority for the proposed rule;
   iv. the statutory authority for the agency to promulgate the proposed rule; and
   v. a description of the existing legal framework governing the subject matter of the proposed rule with reference to all applicable statutes, regulations, and other legal provisions;

b. Identification of the exceptions that the agency believes permit the agency to promulgate the rule notwithstanding the Regulatory Moratorium and a detailed explanation of why each identified exception applies;

c. Fiscal Impact Analysis as described in FMC #2010-4;

d. Cost-Benefit Analysis as described in FMC #2010-4;

e. Copy of the proposed rule, if a draft is available; and

f. Contact information (name, phone number, email address) for an agency staff member who can answer substantive questions about the proposed rule and the underlying policy area.

This information will better equip OMB to review proposed rules to determine their eligibility for an exception under the Regulatory Moratorium and enable OMB to provide guidance to agencies as they navigate the process. This information will also expedite OMB review of proposed rules following publication of the notice of intent to adopt a rule in the Indiana Register by enabling OMB to provide substantive commentary on the proposed rule early in the rule-making process.

6. The OMB Director shall issue a determination in writing regarding the applicability of an exception.

7. 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.

8. 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-
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 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@gov.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.

10. This Circular rescinds FMC #2013-1.

Approved:

[Signature]

Ryan Bailey, Director
State Budget Agency

Date 12/17/15