

Common Sense Business Regulation Review Worksheet

For Implementing Executive Order 2008 - 04S

Overview: On February 12, 2008, Governor Strickland signed Executive Order 2008-04S “Common Sense Business Regulation” and called upon state agencies to simplify their rules, treat those affected by the rules as customers and partners, and streamline inefficient and drawn-out regulatory processes. The Executive Order calls for a top to bottom review of current regulations, eliminating those that are unnecessary or needlessly burdensome while establishing regulatory performance standards that will make Ohio a more competitive place to do business.

Purpose: This worksheet is designed to guide all agencies through the major decision points for implementing the Executive Order, and to create a record of your analysis. It will help each agency conduct a consistent, rigorous review of all regulations, provide documentation for transparency and future rule reviews, and offer advice on eliminating and modifying rules to make them consistent with the Executive Order.

When using the worksheet, keep these principles of common sense business regulation in mind. Rules should be drafted so that they promote transparency and predictability regarding regulatory activity, consistency of business regulation within the state, appropriate flexibility, and a reasonable balance between the underlying regulatory objectives and the burdens imposed by the regulatory activity. [EO paragraph 4.c]

Businesses and individuals affected by administrative rules should be treated as partners in identifying and achieving regulatory goals. Accessibility, flexibility, respect, timely responsiveness, problem solving, and continuous improvement should be the hallmarks of Ohio’s approach to regulatory activity [EO paragraph 2]

Rule Review Summary Rule Number _____ As a result of reviewing this regulation, the rule was:

_____ **New Rule that is in compliance with Common Sense Business Regulation Executive Order 2008 – 04S.**

_____ **Amended** – Please identify specific changes made _____ Date _____

_____ **Rescinded** – Date _____

_____ **Certified as in compliance with Common Sense Business Regulation Executive Order 2008 – 04S without change.**

The Chief Legal Officer, or designee, has reviewed the rule for clarity and compliance with the Governor’s Executive Order 2008 – 04S.

Signature

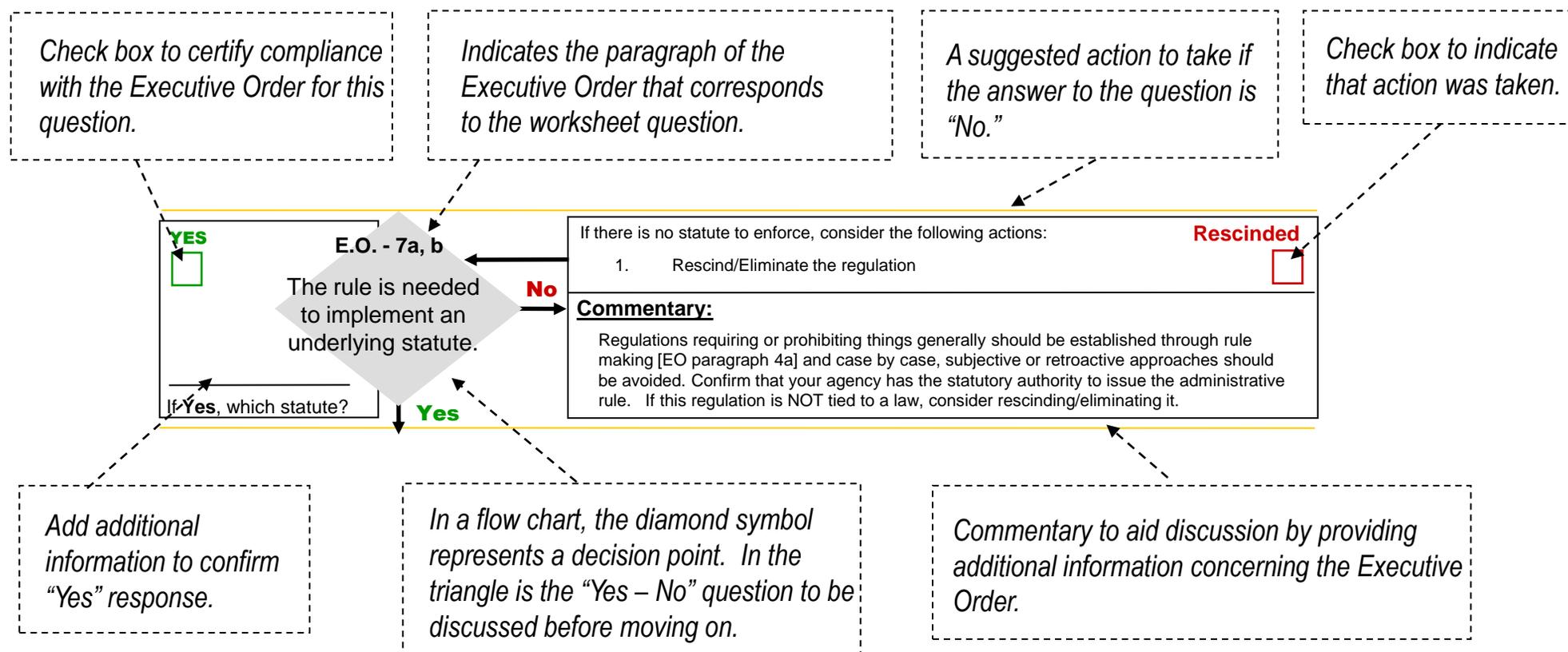
Date

Before you get started:

1. Agencies are directed to identify which of their regulations are LEAST in compliance with the Common Sense Business Regulation Executive Order and review them first. To do this, identify which regulations have the most complaints, take the longest, have the highest costs and/or most negatively impact economic growth. Your customers and your agency Ombudsperson would be good sources of this information.
2. All new rules need to go through this process
3. Take the time to identify similar and related regulations before starting the process so they can all be reviewed at the same time to reduce unneeded duplication and complexity.
4. The goal is to ensure that all agency regulations are in compliance with the Executive Order by making each as simple and clear as possible, require only what is absolutely needed, and eliminate rules where possible and appropriate.

Directions:

This worksheet has been designed as a decision tree to guide you through a series of questions that ensure compliance with the Common Sense Business Regulation Executive Order. The questions have been written so you can proceed if you answer “Yes,” but should consider making modifications if you answer “No.” Each of the questions has several sections to help you think through the process, and are identified below:



Common Sense Business Regulation Review Worksheet

YES

E.O. - 7a, b

The rule is needed to implement an underlying statute.

If **Yes**, which statute? _____

No

If there is no statute to implement, consider the following actions: **Rescinded**

1. Rescind/Eliminate the regulation

Commentary:
Regulations requiring or prohibiting things generally should be established through rulemaking [EO paragraph 4a] and case-by-case, subjective, or retroactive approaches should be avoided. Confirm that your agency has the statutory authority to issue the administrative rule. If this regulation is NOT tied to a law, consider rescinding/eliminating it.

YES

E.O. - 4b,d, 5c, 7b

The rule does not unnecessarily duplicate federal regulations, national standards, or already exist in this or another agency's regulations.

Indicate date of review for duplication _____

No

If **there is duplication**, consider the following actions: **Rescinded**

1. Review federal regulations and national standards for duplication.
2. If similar rules within state government are found, have interagency dialogue.
3. Rescind/Eliminate the duplicated regulations or unneeded duplicate topics. **Amended**

Commentary:
If there is already an existing federal regulation or recognized national standard that covers the subject matter, why duplicate it with a state regulation? The only reason for duplication would be to achieve an Ohio-specific public policy goal.

YES

E.O. - 4d, 7b.

The rule is outcome-based.

No

If **no clear outcome or Ohio public policy goal**, consider the following actions: **Rescinded**

1. Develop clear outcomes and then write the rule
2. Rescind/Eliminate the regulation **Amended**

Commentary:
When writing a new regulation or reviewing an existing rule, it is best to begin with the end in mind. First ask what is the desired outcome, then determine how to achieve it.

Please state the outcome(s) that the rule attempts to achieve.

YES

E.O. – 4e, 7b

The rule can be applied consistently.

No

Yes

If the rule can not be applied consistently:

1. Amend the rule to eliminate elements of the regulation.
2. Rescind/Eliminate the regulation.

Amended

Rescinded

Commentary:

Rules should be drafted so they are consistent in application and results across regions, offices, departments, and other entities of the state government. They should be consistent with rules issued by federal and local entities. Rules should not impose conflicting or inconsistent obligations on the regulated community.

YES or N/A

E.O. – 4e

The desired outcomes of the rule are based on the best information, including scientific and technical data, that can be reasonably obtained.

No

Yes or N/A

Indicate the last date the related scientific information was reviewed.

If not based on current data, consider the following: **New science-based outcomes developed**

1. Review updated technical information and review benchmarks from other states.
2. Revise specific outcomes consistent with best scientific information available.
3. If no longer relevant, eliminate the rule.

Rescinded

Commentary:

If a rule is based on scientific or technical information, that information should meet the highest standards of accuracy, reliability and objectivity. The passage of time and the progress of science and technology can change the basis or the need for a rule. When such changes occur the rule should be amended or rescinded.

YES

E.O. – 4a,b, 5g,h.

Stakeholders and those affected by the rule were given notice and provided an opportunity for input.

No

Yes

If **No**, consider the following actions: **Reviewed by stakeholders**

1. Contact those affected by the rule to ask for feedback.

Commentary:

The rulemaking process should be transparent, and it should be accessible to persons and entities outside of government at the earliest time practicable in the process -- well before publishing a proposed rule for public notice and comment. Agencies should consider the perspective of those who will be affected by rules and involve interested parties as partners in finding the best means to achieve the public policy goal.

If not practical to engage stakeholders early in process, please explain

YES

E.O. – 4, 4b.

The rule is easy to understand and comprehend.

No

Yes

If **No**, consider the following actions: **Rewritten**

1. If not written in clear, understandable language, rewrite the rule. Guidance can be found in the document Plain English Writing Tips.

Commentary:
Rules must be written in plain, clear English. To the extent possible, rules should be written in standardized regulatory language and format. If a rule is subject to complaints, administrative proceedings, or litigation concerning its meaning, it is most likely not clear and should be rewritten.

YES

E.O. – 4f,g, 5d, 7b.

When achieving the regulatory objective, the rule is a reasonable balance between the regulatory objective and the burden imposed by the regulatory activity.

No

Yes

If **burdensome, inefficient and/or costly**, consider the following actions: **Amended**

1. Amend the rule to eliminate those parts of the regulation.

Commentary:
The agency should consider whether the rules and the **cumulative** effect of **related** rules make Ohio a more or less attractive place to do business. Agencies should make exceptions to rules for small matters and provide exceptions for small businesses where authorized and appropriate.

YES or N/A

E.O. – 4g, 7b.

If appropriate, the rule was written to sunset with a specific expiration date.

No

Yes

If **No**, consider the following actions: **Add a sunset date**

1. Consider if it is appropriate to add a sunset date.

Commentary:
Change occurs rapidly in many sectors of the economy, and technological change is occurring across the economy. In such circumstances, a rule may become outdated or redundant quickly. In such cases an expiration date, or earlier review, should be written into the rule.

In addition to the regulatory review, it is also important to consider the **process**:



YES

E.O. – 5a-g.

The **PROCESS** to administer the rule is the quickest and least burdensome means of accomplishing the outcome.

No

Yes

If the process is complex, slow or burdensome, consider: **Referred for process improvement**

1. Use a process improvement team or Kaizen event to reduce cycle time and eliminate waste in the process.

Commentary:
If customers are complaining about delays, frustrations or costs and/or the agency is concerned about excessive staff time requirements, the issue may be the process and not the rule. Consider using Lean Six Sigma tools to analyze the effectiveness and efficiency of the process.