



## Massachusetts Governor Orders Comprehensive Review of State Regulations

On March 31, 2015, the Governor of Massachusetts signed an executive order initiating a comprehensive review of all regulations promulgated by the Executive Department and leaving in place the regulatory pause announced by the Administration earlier in the year. While short in length, this executive order has the potential to significantly affect a wide range of administrative regulatory programs in Massachusetts.

Executive Order No. 562, “To Reduce Unnecessary Regulatory Burden” (the Order) directs each secretariat, agency, department, board, commission, authority or other body within the Executive Department ( Agency) “to promptly undertake a review of each and every regulation currently published in the Code of Massachusetts regulations under its jurisdiction.” The Order also invites and encourages state governmental bodies not under the Governor’s supervision to do the same.

Agencies must review their regulations to determine whether they are mandated by law or essential to the health, safety, environment, or welfare of the Commonwealth’s residents – those that are not shall not be retained or must be modified. Regulations under review must meet the following criteria:

- (a) there is a clearly identified need for governmental intervention that is best addressed by the Agency and not another Agency or governmental body;
- (b) the costs of the regulation do not exceed the benefits that would result from the regulation;
- (c) the regulation does not exceed federal requirements or duplicate local requirements;
- (d) less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives;

- (e) the regulation does not unduly and adversely affect Massachusetts citizens and customers of the Commonwealth, or the competitive environment in Massachusetts;
- (f) the Agency has established a process and a schedule for measuring the effectiveness of the regulation; and
- (g) the regulation is time-limited or provides for regular review. Order, Section 2.

The review must also ensure that each regulation is clear, concise and written in plain and readily understandable language.

The Order bars the promulgation of new regulations unless they have been reviewed and found in conformance with the six criteria. In addition, each Agency must prepare a business/competitive impact statement measuring the potential impact of all new regulatory proposals on businesses and other entities, including municipalities and non-profits.

Agencies will submit regulatory proposals and impact statements to their secretariat before review by the Secretary of Administration and Finance, who will establish a process for encouraging public input, standards and schedules. The Secretary of Administration and Finance may also provide for waivers or exceptions to regulations essential to public health, safety, environment, or welfare.

Significantly, all regulations that do not comply with the Order must be rescinded, revised, or simplified by March 31, 2016.

Executive orders are odd creatures on the legal landscape, as they apply only to actions taken by administrative agencies and are not generally enforceable. As a result, the impact of any executive order is determined as much by how it is implemented as what it actually states. In this case, the Order articulates a bold vision of how administrative regulations should work in the Commonwealth – the question now becomes how far the Baker Administration can and will go in implementing that vision.

These potential changes to the regulatory landscape in the Commonwealth could affect the way companies do business and manage regulatory compliance. Businesses that understand the potential consequences of impending regulatory changes will be better positioned to find competitive advantage and manage business risk, and should confer with counsel regarding how the Order may affect their business.

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