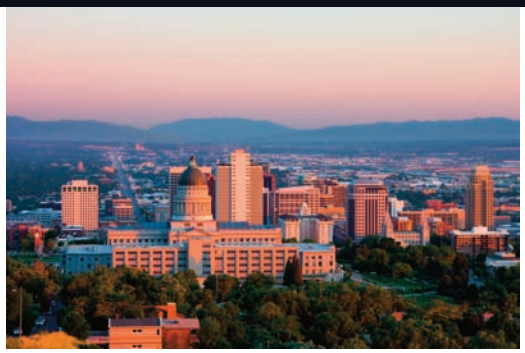
REPORT TO GOVERNOR
GARY R. HERBERT

"In order to separate regulations that serve an important purpose from those regulations that serve no purpose at all, I have asked each member of my Cabinet to review existing business regulations and determine which should be kept, which should be modified, and which will be eliminated."

—Governor Gary R. Herbert
2011 State of the State Address
January 26, 2011

Utah Business Regulation Review



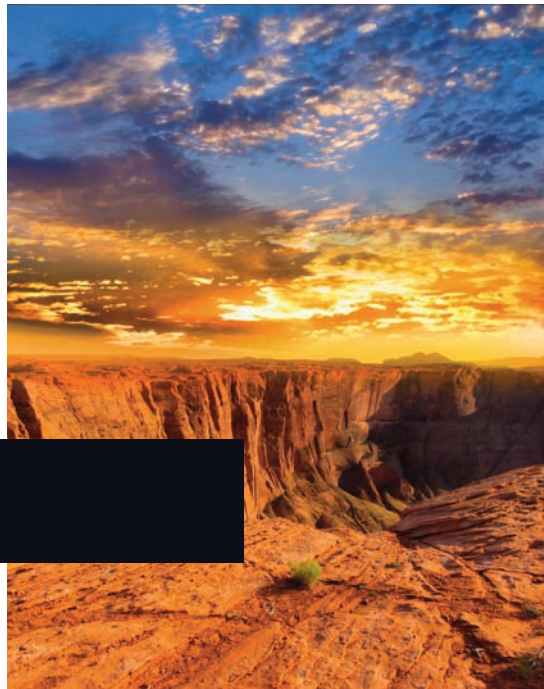


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Figure 1. Utah State Capitol. *Source:* Shutterstock.com.

I. Executive Summary

> *"I have asked each member of my Cabinet to review existing business regulations and determine which should be kept, which should be modified, and which will be eliminated."*
>
> —Governor Gary R. Herbert

I. Executive Summary

PURPOSE

Figure 2. Governor Gary R. Herbert.

Regulations pervade business operations in America. Together they represent layers of macro and micromanagement. Federal regulations determine eligibility for employment, set guidelines for overtime pay, establish wage minimums, insure adherence to the Fair Labor Standard Act, impose formulas for W2 calculation and dispersal as well as protocols for the keeping of I-9 forms.[1] Federal regulations govern copyright laws,[2] erect criteria public companies with equity and debt securities registered with the SEC must meet[3] and all manner of standards: for advertising,[4] emissions,[5] agreements with labor for federal construction projects,[6] and so on.

Regulations are often indispensable to the well-being of the people. But judgment must be exercised, and it is the goal of Governor Gary R. Herbert to only retain those laws and regulations that both protect Utahns and do not hamstring Utah businesses. It was toward this end that, during his 2011 State of the State Address, the Governor directed the members of his Cabinet "…to review existing business regulations and determine which should be kept, which should be modified, and which will be eliminated" given their influence on businesses.[7] Other non-Cabinet state agencies were also invited to participate in the review, the results of which are detailed herein.

SCOPE

This report comprehends a number of topics. First, it considers the negative impact on business of overregulation and of the desirability of a balanced regulatory environment. Second, it describes the approaches taken in the reduction of regulations in other states, here in Utah, and at the federal level. Third, it details the actions of state agencies in their response to the Governor's request. Fourth, it reviews the results of an audit of Utah's administrative rules with respect to their consequences on business. And, lastly, it documents the findings of a public outreach effort undertaken by the Governor's Office, an outreach which included over 100 business associations and thousands of businesses, with the intention of soliciting rules or statutes injurious to commerce.

KEY RESULTS

The Governor's business regulation review highlighted what most Utah citizens already know: that our state government is run well, committed as it is to the avoidance of unnecessary regulation. Nonetheless, there is always room for improvement. As such, agencies identified

[1] U.S. Small Business Administration, "Employment & Labor Law," http://www.sba.gov/category/navigation-structure/starting-managing-business/starting business/business-law-regulations/employment-labor-law (accessed June 30, 2011).
[2] U.S. Small Business Administration, "Patents, Trademarks & Copyright," http://www.sba.gov/content/patents-trademarks-copyright (accessed June 30, 2011).
[3] U.S. Small Business Administration, "Securities Law," http://www.sba.gov/content/securities-law (accessed June 30, 2011).
[4] U.S. Small Business Administration, "Advertising Law," http://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business/business-law-regulations/advertising-law (accessed June 30, 2011).
[5] U.S. Small Business Administration, "Air Pollution," http://www.sba.gov/content/air-pollution (accessed June 30, 2011).
[6] U.S. Small Business Administration, "Wage & Hour Laws," http://www.sba.gov/content/wage-hour-laws (accessed June 30, 2011).
[7] Office of Governor Gary R. Herbert, "2011 State of the State Address - Governor Gary R. Herbert," http://www.utah.gov/governor/news_media/article.html?article=4169 (accessed June 20, 2011).

hundreds of changes in their reviews, many of which have already precipitated positive developments, reducing unproductive burdens on both individuals and businesses. These changes can be enumerated and categorized:

1) THE NUMBER AND TYPE OF CHANGES MADE

368 total changes have been or are scheduled to be made. Of these:

- 295 are rule changes, which are broken down into:
  - 238 amendments
  - 47 rule or rule section repeals
  - 10 promulgations
- 32 are organizational changes
- 41 are recommended legislative changes, which are broken down into:
  - 32 amendments
  - 9 repeals

Of the 368 changes:

- 25 cut red tape by making current requirements on businesses less burdensome
- 84 provide clarification to businesses
- 18 improve business-agency interaction
- 31 remove obsolete rules or rule sections
- 35 facilitate rule simplification
- 15 permit electronic filing for those previously permitted only paper reporting
- 42 render state statutes and rules consistent
- 24 remove redundancies
- 21 render federal and state rules consistent
- 19 repeal obsolete statutes
- 14 improve agency efficiency
- 11 render state rules consistent
- 7 level the playing field for businesses
- 6 allow license extensions for constituents
- 6 now narrowly interpret the authorizing statute
- 2 broaden programs to include more potential users
- 2 eased licensing requirements for licensees
- 2 extended the public process timeframe
- 2 extended tax credits for businesses
- 2 were unclassified

2) ADMINISTRATIVE RULES CLASSIFIED

The Governor's Office randomly selected 325 of Utah's 1,969 administrative rules in effect on January 1, 2011, and reviewed them for their potential impact on businesses. The rules were randomly selected so that generalizations could be made. Among the results are these:

- 48% of Utah's rules substantially affect businesses, 51% do not.
  - Of those that affect business: 54% have seemingly lengthy requirements; 32% have procedures that seemed clear (even though substantial); 12% are required by federal or state statute, and 2% are highly specific to agencies.
  - Of those that do not affect business: 55% primarily deal with internal policies and operations, 22% are primarily procedural in nature, 8% provide definitions and contexts, 9% were classified as other, and 6% primarily deals with the public.

Utah's Ongoing Effort to Review Business Regulations

In the fall of 2010 *Forbes* magazine ranked Utah the sixth best regulatory environment in the U.S.[8] As such, when the Governor made his business regulation review request in January of 2011, he knew that Utah was already a leader. And though far-reaching

[8] Kurt Badenhausen, "The Best States For Business And Careers," *Forbes.com*, October 13, 2010, http://www.forbes.com/2010/10/13/best-states-for-business-business-beltway-best-states.html (accessed June 20, 2011).

changes were made as a result of this review, the Governor recognizes that Utah's state agencies have been and will continue to be deeply committed to an ongoing examination of their administrative rules in light of their impact on business.

Conclusion and Summary

State leaders must not flinch in the face of the ever-present challenge to protect consumers, to maintain through proper regulation a fair playing field for all businesses, and to vigilantly defend economic freedom while maintaining our quality of life. This review, made at the request of Governor Herbert, took a comprehensive approach to meeting this challenge—by, among other measures, calling upon state agencies to eliminate unwarranted hindrances to business while preserving the regulations that promote equitable and efficient commercial activity in Utah. As a result, 368 changes were made, or are scheduled to be made, and Utah's state agencies resoundingly re-endorsed their already resolute commitment to maintaining a robust business environment through the proper regulatory supervision.

II. Introduction

> *"[It] is not my intention to do away with government. It is, rather, to make it work—work with us, not over us; to stand by our side, not ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it."*
>
> —Ronald Reagan,
> 40th President of the United States[9]

THE PROBLEM

Over-Regulation's Negative Impact on Business

In the fall of 2010, the Small Business Administration published a study on the expense to small business of complying with federal regulations. The authors concluded that small businesses spend $1.75 trillion annually on federal regulatory compliance, which amounts to "an annual…cost of $10,585 per employee."[10] Similarly, according to a 2011 report commissioned by the U.S. Chamber of Commerce and conducted by Navigant Consulting, excessive state regulations are currently costing the U.S. more than 700,000 jobs, 50,000 start-up businesses, and have led to a 0.6% increase in the national unemployment rate.[11] Furthermore, in 2009, two economists—Silvia Ardagna of Harvard University and Annamaria Lusardi of Dartmouth—studied the effect of regulation on new business startup activity and concluded that "[i]rrespective of the measure of regulation we use, we always find that regulation is a detriment to entrepreneurial activity."[12]

While most regulations on the books were proposed for valid reasons and toward worthy ends (and are often by themselves not especially obstructive) after many years of unsystematized regulatory growth—the addition of more and more mandates—the cumulative effect is clearly deleterious to businesses in this country. A 2011 survey by *Chief Executive* magazine demonstrated that CEOs rank state tax and regulatory climates first among their concerns.[13]

TOWARDS A BALANCED REGULATORY ENVIRONMENT

Why Some Regulation is Necessary

While excessive regulation is indeed a problem, state leaders know that deregulation should not be the knee-jerk response to a complaint. They understand that the needs for proper regulation and the promotion of economic growth must be balanced. Government has a certain supervisory role, and hence sweeping dismissals of regulation are not in

Figure 3. Construction. *Source*: Shutterstock.com.

[9] American Presidency Project, "Ronald Reagan. XL President of the United States. 1981-1989. Inaugural Address. January 20, 1981," http://www.presidency.ucsb.edu/ws/index.php?pid=43130#axzz1Q3kNRjBW (accessed June 20, 2011).
[10] U.S. Small Business Administration, *The Impact of Regulatory Costs on Small Firms* (September 2010), by Nicole V. Crain and W. Mark Crain: iv.
[11] U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth: A 50-State Review* (Washington, D.C.: U.S. Chamber of Commerce, 2010).
[12] Silvia Ardagna and Annamaria Lusardi, "Where Does Regulation Hurt? Evidence from New Businesses in 40 Countries" (NBER working paper 14747, February 2009): 26.
[13] Dale Buss, "The State of the States," *Chief Executive.com*, May 6, 2011, http://chiefexecutive.net/the-state-of-the-states (accessed June 20, 2011).

order.[14] The following excerpt from the RAND Center for the Study of Small Business and Regulation provides a succinct explanation as to why some regulatory oversight is necessary:

> In general, government regulation of private business tends to serve two overriding public objectives: (1) to promote market competition and control the market power of large firms over customers and smaller firms, and (2) to mitigate any adverse effects of business activity on individuals, other organizations and the environment.[15]

However, when government begins to overstep these two broad regulatory bounds, the costs of compliance mount beyond warrant and pragmatic adjustments must be made.

The Benefits of Balanced Regulatory Environments

Although an exhaustive review of the literature on the relation between regulation and economic growth is beyond the scope of this report, a few signal studies highlighting the importance of a balanced regulatory environment can be cited. Djankova, McLiesha and Ramalho find that growth is positively correlated with regulatory environments that are not burdensome to businesses.[16] Similarly, Jalilian, Kirkpatrick, and Parker find "a strong causal link between regulatory quality and economic growth"[17] and "that better regulation leads to more rapid economic growth."[18] The authors defined "regulatory quality"[19] in terms of a cumulative "quantitative" burden on business, governmental price control and intervention. The fewer instances of these the better the "regulatory quality." Finally, Nicoletti and Scarpetta find: 1) the fewer the regulatory hurdles for a business to "enter the market" (i.e., to start a business) the stronger productivity, and 2) increases in privatization result in productivity gains for the entire economy.[20] These three studies are just a few of the many documenting the link between a rational regulatory climate and economic growth. They establish the absolute importance for Utah to continue to regulate commerce in the interest of prosperity and the general welfare.

In addition, we also examined the aforementioned *Chief Executive's* list of "Best/Worst States for Business" and compared states ranked high to those coming in low. The comparison largely reflects what deregulation advocates have argued for years: deregulation creates more jobs, more businesses and helps increase Gross Domestic Product (GDP). More specifically, our comparison

[14] As mandated by law, every year the Office of Information and Regulatory Affairs presents to Congress a peer-reviewed report on the benefits and costs of federal regulations. Most years show benefits outweighing costs. For a full listing of OIRA's annual reports visit: http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress. And, for a good layman's article on why some businesses actually prefer regulations see: David J. Lynch, "The Regulator: Why Business Loves Rules (Really)," *BusinessWeek.com*, January 20, 2011, http://www.businessweek.com/bwdaily/dnflash/content/jan2011/db20110119_358719.htm (accessed June 20, 2011).

[15] Lloyd Dixon, Susan M. Gates, Kanika Kapur, Seth A. Seabury, and Eric Talley, "The Impact of Regulation and Litigation on Small Business and Entrepreneurship: An Overview" (working paper, RAND Center for the Study of Small Business and Regulation, 2006): 1.

[16] Simeon Djankova, Caralee McLiesha and Rita Maria Ramalho, "Regulation and Growth," *Economics Letters* 92 (September 2006): 397-400.

[17] Hossein Jalilian, Colin Kirkpatrick, and David Parker, "The Impact of Regulation on Economic Growth in Developing Countries: A Cross-Country Analysis," *World Development* 35 (January 2007): 99.

[18] Jalilian, Kirkpatrick, and Parker, 100.

[19] Jalilian, Kirkpatrick, and Parker, 91.

[20] Giuseppe Nicoletti and Stefano Scarpetta, "Regulation, Productivity, and Growth: OECD Evidence," *Economic Policy* 18(2003): 50.

shows that during the 2007-10 period the top ten most business friendly states had much lower unemployment, higher real GDP growth, lost fewer businesses as a percentage of the population, created more jobs, and accomplished all of this with less government spending as a percentage of GDP. Indeed, the top ten most business friendly states had better scores across all seven categories employed by *Chief Executive*. Moreover, when all states were grouped into economic regions—a practice many economists undertake to reduce heterogeneity and allow for correlations—we found that the two most business friendly regions scored higher numbers on the majority of economic measurements.

Figure 4. Manufacturing plant. *Source*: Shutterstock.com.

THE SOLUTION: GOVERNOR HERBERT'S ECONOMIC DEVELOPMENT VISION AND CALL FOR REVIEW

Because of the previously mentioned studies showing a positive correlation between an nonoppressive regulatory environment and economic growth, and given the results of our own economic analysis above, it is Governor Herbert's objective to insure that Utah's laws and regulations do not needlessly disrupt business activity by imposing requirements that do more harm than good. This goal is part of the Governor's larger economic vision for Utah, which is that the state "will excel in job creation, innovation, entrepreneurship, global business, and quality workforce and have a stable and sustainable business friendly environment."[21]

In his January 2011, State of the State address, the Governor stated that "[t]wo of the most important ways government can nurture a business friendly environment are: 1) to keep taxes low and 2) make regulation fair."[22] About this second method, the Governor commented:

> In order to separate regulations that serve an important purpose from those regulations that serve no purpose at all, I have asked each member of my Cabinet to review existing busi-

[21] Governor's Office of Economic Development, "Utah's Economic Development Plan," http://business.utah.gov/start/econ-plan/ (accessed June 20, 2011).
[22] Office of Governor Herbert, "2011 State of the State Address."

ness regulations and determine which should be kept, which should be modified, and which will be eliminated.[23]

This report addresses the Governor's second objective—making regulations fair. It concretely details the steps state agencies and the Governor's Office took to realize this goal as well as actions the state routinely takes in regards to the same.

Utah's Continuous Commitment to a Balanced Regulatory Environment

As described in greater detail in Section III, for the last twenty years Utah agencies have progressively intensified their scrutiny of existing business regulations in light of their impact on business. As a consequence, Utah has recently been recognized as being the best state to do business in and for having one of the most favorable regulatory climates in the nation.[24] The Governor's request was a challenge to state agencies to go beyond the excellent work they have already done in this regard, to maintain the highest standards.

SCOPE AND STRUCTURE OF THIS REPORT

Section III provides important context. It describes how other state and national leaders are taking measures similar to Governor Herbert's business regulation review. It also recounts Utah's past and ongoing commitment to a balanced, healthy regulatory environment.

There is then an examination of actions taken as a result of the Governor's regulatory review request. Section IV lists the number of changes that have been or will be made by state agencies, along with classifications of the same.

In addition to the overall results of the Governor's Office review, responses received from state agencies and the conclusions of an audit of Utah's rules in effect as of January 1, 2011, are presented in Section V.

The Governor sought feedback from the public as part of this regulatory review. Residents were invited to reach the Governor's Office by submitting comments to a special e-mail address.[25] The Governor's Office also contacted over 100 business associations, and through the state's Chambers of Commerce, thousands of businesses were contacted. Results from this outreach appear in Section VI.

CLARIFICATION OF LEGAL TERMS

Below are the definitions of important legal terms found in this report.

• **Statutes** are laws made by the Utah Legislature. They are found in the Utah Code, which is available online at http://le.utah.gov/UtahCode/title.jsp. In this report the words 'statute,' 'act,' 'house bill,' 'senate bill,' or 'Utah Code' refer explicitly to statutes.
• **Administrative rules** are documents written by state agencies

[23] Office of Governor Herbert, "2011 State of the State Address."
[24] See: Badenhausen, "The Best States For Business And Careers."
[25] See: (1) Office of Governor Gary R. Herbert, "Governor Pushing to Make Utah More Business-Friendly," http://www.utah.gov/governor/news_media/article.html?article=4593 (accessed June 20, 2011); (2) Tracie McFarlin, "Gov. Herbert Speaks at Dixie State About Economy, China," *Saint George News*, June 10, 2011, http://www.stgnews.com/archive/2011/06/10/gov-herbert-speaks-at-dixie-state-about-economy-china/ (accessed June 20, 2011).

under authority provided by the Legislature that have the effect of law. Rules are found in the Utah Administrative Code, which is available online at http://www.rules.utah.gov/publicat/code.htm. Changes to administrative rules are published in the *Utah State Bulletin*, which is available online at http://www.rules.utah.gov/publicat/bulletin.htm. In this report the words 'rule' and 'regulation' refer explicitly to rules made by state agencies. Below we discuss how rules are promulgated.

THE RULEMAKING PROCESS

It is important to understand that a state agency may not simply start regulating. The Legislature must first give an agency authority to regulate within parameters set by statute. Once it has been authorized to regulate, an agency must follow the procedures of the *Utah Administrative Rulemaking Act* (Act).[26] These procedures require an agency to provide notice of proposed rules and an opportunity for citizens to submit comments. Formal notice is provided through the *Utah State Bulletin*. Once a rule becomes effective, it is published in the *Utah Administrative Code*. A more thorough description of Utah's rulemaking process can be found at http://www.rules.utah.gov/ abt-process.htm.

[26] *Utah Administrative Rule Making Act*, enacted by Chapter 172, Laws of Utah 1973; recodified as the *Utah Administrative Rulemaking Act* by Chapter 158, Laws of Utah 1985.

III. Context

> *"…reducing the burden of labor and employment regulation in the states could act as a 'free' shot of economic stimulus—equal to approximately seven months of job creation at the current average rate."*
>
> —U.S. Chamber of Commerce[27]

NATIONAL CONTEXT

In 2011 the governors of Utah, Florida, Nevada, New Mexico, Tennessee, Maine, Ohio, Kansas, Colorado, and North Carolina all made a review of administrative rules a state priority, most with the purpose of mitigating any negative impact they might have on business. The governors of Florida,[28] Nevada, New Mexico, and Tennessee instituted rule freezes; the governor of Maine attempted to overhaul environmental rules; the governors of Kansas and North Carolina sought to repeal outdated rules; and the governors of Utah, Colorado, and Ohio sought to limit the impact of rules on businesses.[29] In Washington, D.C., President Obama ordered all federal agencies to review those rules that lead to fewer jobs and less competitive businesses. In Executive Order 13563 the President observed, "Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping."[30] To mitigate this the President ordered all agencies to "…identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public."[31]

STATEWIDE CONTEXT: UTAH'S ONGOING EFFORT TO REVIEW BUSINESS REGULATIONS

Governor Herbert's 2011 regulation review represents the first request of its kind since 1979 and 1986. In 1979 Governor Scott Matheson issued an executive order that began a 30-year process of making Utah mandates more sensitive to business. Among other things, this executive order directed agencies to consider "the burdens imposed on those directly or indirectly affected by the regulations."[32] In 1986, Governor Norman Bangerter issued a new executive order that asked all state departments to repeal any unnecessary rules and to render the language of all extant ones more accessible.[33] Two years later, Governor Bangerter directed all agencies to follow a set of standards. One of these standards directed state agencies to examine each proposed rule in light of a question: "What fiscal and non-fiscal impact does the rule have on the citizens, businesses, state government, and local political subdivisions?"[34]

Since the recodification of the *Utah Administrative Rulemaking Act* (Act) in 1985, each agency has been required to review its rules every five years. If an agency recommends a rule be retained, it must provide cogent justification. This review process is intended to remove obsolete rules, and provide an opportunity to update rules as necessary. In 1996, the Legislature again amended the Act, this time providing that rules not reviewed every five years expire.

In 1989, the Legislature amended the Act requiring all rules—except

[27] U.S. Chamber of Commerce, *The Impact of State Employment Policies on Job Growth*.
[28] The Florida Supreme Court later struck down this rule freeze. See: Whiley v. Scott, 36 Fla. L. Weekly S451 (Fla. Aug.16, 2011).
[29] Josh Goodman, "Governors Target Rules at Businesses' Behest," *Stateline*, February 23, 2011, http://www.stateline.org/live/details/story?contentId=552633 (accessed June 20, 2011).
[30] President, "Executive Order 13563 of January 18, 2011," *Federal Register* 76, no. 2 [January 21, 2011]: 3821, available online at http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.
[31] President, "Executive Order 13563 of January 18, 2011."
[32] 80-1 Utah Bull, 79-80.
[33] Utah Division of Administrative Rules, "Governor's Bangerter's First Executive Order on Rulemaking," http://www.rules.utah.gov/law/eo1986-02-03.htm (accessed June 21, 2011).
[34] Utah Division of Administrative Rules, "Governor Bangerter's Second Executive Order on Rulemaking," http://www.rules.utah.gov/law/eo1988-03-22.htm (accessed June 21, 2011).

those mandated by federal law or the Utah Constitution—to expire annually unless reauthorized by the Legislature or the Governor (when the Legislature fails to do so).

The fiscal impact of administrative rules has received a lot of attention over the years. When the Act was recodified in 1985, it added provisions that required an agency to report the "anticipated cost or savings to state budgets, local governments, and other persons."[35] In the mid-1990s, several legislators felt that agencies were not paying enough attention to this requirement. In 1994, S.B. 40 entitled "Utah Regulatory Fairness" would have required an agency to prepare a business economic impact for administrative rules.[36] The bill did not pass. In 1996, S.B. 136 would have required the same type of analysis. This bill also failed to pass.[37] In 1998 the sponsor of the 1996 bill took a different approach. Instead of mandating a cost-benefit analysis, a new bill enjoined each department head to comment on the fiscal impact each proposed rule would have on business. The sponsor of the bill wanted someone who was politically accountable, at least to the Governor, to evaluate the impact rules would have on business. This bill also required agencies to involve those who would be affected by a rule in the drafting process. This amendment passed.[38] In 1998, the Division of Administrative Rules issued an administrative rule to clarify what type of information an agency needed to provide when it reported the "anticipated cost or savings" assessment required by statute.[39] This was followed, in 2007, by an amendment to the Act requiring each agency to report on each proposed rule's anticipated costs or benefits to small businesses.[40] And, finally, in 2008 new provisions were added to the Act requiring agencies to consider methods to mitigate any negative fiscal impact a proposed rule might have on small businesses.[41]

Figure 5. Firedancer. *Source*: Csaba Fikker.

As a consequence of the above requirements, Utah's agencies have made strong efforts to appreciate the perspective of those businesses affected by their rules. Here we highlight three examples of such agency efforts:

- The State Fire Marshall's Office includes businesses in its rulemaking process, strives to develop productive relationships, and continually seeks feedback. As a result, the Fire Marshall's Office is able to anticipate problems likely to result from a proposed rule, obviating damage that might otherwise have been done. Brent Halladay, the State Fire Marshall, learned that a potential rule

[35] *Utah Administrative Rulemaking Act* by Chapter 158, Laws of Utah 1985.
[36] S.B. 40, 50th Legislature (Utah 1994).
[37] S.B. 136, 52nd Legislature (Utah 1998).
[38] *Administrative Rules Impact Costs* enacted by Chapter 219, Laws of Utah 1998.
[39] 98-9 Utah Bull 3 (May 1, 1998), effective July 1, 1998, codified in the Utah Administrative Code as Section R15-4-10.
[40] *Impact of Administrative Rules on Small Businesses* (H.B. 64) enacted by Chapter 102, Laws of Utah 2007.
[41] *Impacts of Administrative Rules on Small Businesses* (H.B. 53) enacted by Chapter 300, Laws of Utah 2008.

change would prevent fathers in Utah's Polynesian community from teaching their children fire dancing, an important aspect of Polynesian culture. The Fire Marshall's Office was able to modify the rule to allow this cultural practice to continue uninterrupted.[42]

- The Tax Commission serves as another illustration. Much of the legislation it has sought to adopt was the direct consequence of attentiveness to business-community concerns. In 2011, *S.B. 16, State Tax Commission Tax, Fee, or Charge Administration and Collection Amendments* was drafted and passed on the basis of crucial feedback from businesses.[43] This new law allows companies to file their sales taxes concurrently with many other sales-related ones, a change the Commission expects will reduce the number of returns businesses must file.

- In February, 2011 a rule to permit the use of statistical sampling in the recovery of incorrectly paid Medicaid claims—a process known as extrapolation—was proposed by the Department of Health as Rule R380-400.[44] Public comments submitted by Medicaid providers were uniformly negative. As a result, the rule in its original form was not adopted and was allowed to lapse. All of the groups that provided public comment, along with others, were formed into a working group and met regularly with the Department of Health and the newly created Office of Medicaid Inspector General. The quality of the discussion is illustrated by the compromise over the threshold of errors that must be found in an initial sample before statistical sampling can be applied. Providers were concerned that this would be subject to manipulation, particularly by outside contractors on contingency contracts. A multiple meeting impasse was resolved by agreeing to a small random initial sample rather than a small non-random initial sample, thus eliminating the threat of manipulation. A new version of Rule R380-400 reflecting input from stakeholders is currently in the process of being promulgated.[45]

Because of the work state agencies have done in keeping our regulatory environment business friendly, Utah has justly been acknowledged as a national leader on this front. Indeed, *Forbes* ranked Utah the sixth best regulatory environment in the U.S.[46] and CNNMoney.com ranked us the most inventive state, in part because of "light regulation" of business.[47]

[42] Utah State Legislature, "Administrative Rules Review Committee," http://le.utah.gov/asp/interim/Commit.asp?Year=2011&Com=SPEADM (accessed June 21, 2011).
[43] S.B. 16, 59th Legislature (Utah 2011).
[44] 2011-3 Utah Bull 16 (February 1, 2011).
[45] 2011-18 Utah Bull 16 (September 15, 2011).
[46] Badenhausen, "The Best States For Business And Careers."
[47] Catherine Clifford, "5 Most Inventive States," *CNNMoney.com*, December 23, 2010, http://money.cnn.com/galleries/2010/smallbusiness/1012/gallery.5_most_inventive_states/index.html (accessed June 20, 2011).

IV. Agency Review Results

368 changes relating to business have been or are on track to be made. 295 are in the form of rule changes. 32 are in the form of organizational changes. 41 are in the form of statutory changes.

SCOPE OF REVIEW

The Governor's rule review request applied to all Cabinet departments. Cabinet Council agencies were invited to participate in the review.[48] The only exclusions were the offices of other elected officials and a few commissions whose rules do not affect business.[49] Of the 1,969 rules in effect as of January 1, 2011, 1,954 were examined. Thus, 99.24% of Utah's rules underwent examination by state agencies.

BREAKDOWN OF RESULTS

As a result of the Governor's business regulation review request, 368 changes relating to business have been or are on track to be made.

- 295 are in the form of rule changes
- 32 are in the form of organizational changes
- 41 are in the form of statutory changes

Tables 1, 2, and 3 list the number of rule, organizational, and statutory changes made by the various agencies. Table 4 categorizes all changes.

It is important to note that because of their statutory mandates some state agencies are necessarily more focused on business than others. Because of this, it was expected that some agencies would make more changes relating to business than others. The Department of Insurance, to take an example, identified 46 potential changes while the Department of Corrections identified one. Rather than reflecting any sort of lack of effort, this result was simply due to the fact that the Department of Insurance deals far more with the business community than does the Department of Corrections as per their legislative commissions.

1. RULE CHANGES

Table 1 (on the following page) provides a complete breakdown by department of rule changes. 111 rules have been modified, with another 127 scheduled for modification; 27 rules or rule sections have been eliminated, with another 20 scheduled for elimination; eight simplification rules have been enacted, with another two forthcoming.

Figure 6. Wasatch Mountains. *Source*: Shutterstock.com.

[48] Generally speaking, Cabinet departments are larger agencies with broad missions whereas Cabinet Council departments are smaller agencies with more specific missions.

[49] The Attorney General, State Auditor, State Treasurer, Career Service Review Office, Judicial Conduct Commission, and Judicial Performance Evaluation Commission were not asked to take part in this review. Together these agencies have promulgated 15 rules or 0.76% of the 1,969 rules in effect as of January 1, 2011.

TABLE 1: SUMMARY OF RULE CHANGES MADE AS A RESULT OF THE GOVERNOR'S BUSINESS REVIEW REQUEST

Based on Utah administrative rules in effect on January 1, 2011; update current through November 15, 2011

	# of Rules	Rules Modified	Rules or Rule Sections Repealed	New Rule Enacted	Rule Modification Expected	Rules or Rule Section Repeals Expected	New Rules Expected	Total Rule Changes	% of Total
Administrative Services	79	1	0	0	2	0	1	4	5%
Agriculture and Food	76	1	0	0	0	0	0	1	1%
Alcoholic Bev. Control	18	14	1	3	0	0	0	18	100%
Commerce	118	8	2	1	5	1	0	17	14%
Community and Culture	33	1	0	0	3	0	0	4	12%
Corrections	30	0	1	0	0	0	0	1	3%
Education*	146	0	0	0	4	0	0	4	3%
Environmental Quality	190	1	0	0	4	2	0	7	4%
Fair Corporation	5	0	0	0	3	0	0	3	60%
Financial Institutions	44	2	1	0	0	0	0	3	7%
Health	226	42	4	3	0	0	0	49	22%
Housing Corp.	8	0	0	0	4	0	0	4	50%
Human Services	139	0	0	0	5	0	0	5	4%
Insurance	130	6	2	0	38	0	0	46	35%
Labor Commission	44	4	1	1	30	4	1	41	93%
Natural Resources	243	10	1	0	13	7	0	31	13%
Public Safety	91	0	0	0	2	0	0	2	2%
Regents, Board of**	30	0	0	0	2	3	0	5	17%
Tax Commission	19	14	10	0	1	0	0	25	132%
Transportation	64	7	4	0	11	3	0	25	39%
Rules w/ No Changes	236								
TOTAL	1969	111	27	8	127	20	2	295	15%

*Utah State Office of Education. **Utah Higher Education including colleges and universities

2. ORGANIZATIONAL CHANGES

As shown in Table 2, 23 organizational changes affecting businesses have been made, with another nine scheduled. Organizational changes were classified as non-regulatory or non-statutory steps agencies took to better serve the public. The Division of Occupational and Professional Licensing (part of the Department of Commerce), for example, developed an online process to allow licensees to retrieve their renewal IDs, thus facilitating easier online license renewals. And, the Tax Commission recently created a program that allows vehicle dealers, rental car companies, and motor carriers to complete full title and registration procedures at their place of business, eliminating the need to visit state offices in person.

TABLE 2: SUMMARY OF ORGANIZATIONAL CHANGES MADE AS A RESULT OF THE GOVERNOR'S BUSINESS REVIEW REQUEST

Update current through November 15, 2011

	Organizational Change	Organizational Changes Expected	Total Organizational Changes
Administrative Services	1	2	3
Agriculture and Food	2	0	2
Commerce	7	5	12
Community and Culture	3	0	3
Governor	0	2	2
Labor Commission	3	0	3
Natural Resources	4	0	4
Tax Commission	3	0	3
TOTAL	23	9	32

3. STATUTORY CHANGES

As detailed in Table 3, ten pieces of legislation affecting businesses have been enacted and 22 have been identified as needing legislative action. Nine requests for statutory repeals are forthcoming.

TABLE 3: SUMMARY OF STATUTORY CHANGES MADE AS A RESULT OF THE GOVERNOR'S BUSINESS REVIEW REQUEST

Update current through November 15, 2011

	Legislation Enacted	New Legislation Needed	Legislation to Repeal Existing Law Expected	Total Legislative Changes
Commerce	3	9	0	12
Environmental Quality	0	12	8	20
Governor	5	0	0	5
Human Services	0	1	0	1
Labor Commission	1	0	0	1
Natural Resources	0	0	1	1
Tax Commission	1	0	0	1
TOTAL	10	22	9	41

4. TYPE OF CHANGES MADE

Where justification was given, changes were also classified by type. Descriptions and examples of each kind follow.

TABLE 4: TYPE OF CHANGES MADE

Update current through November 15, 2011

Change Type	Rule Changes	Organizational Changes	Statutory Changes	Total # of Changes
Allows online filing	6	8	1	15
Broadens program to include more potential users	0	0	2	2
Clarification	77	1	6	84
Cutting red tape	19	3	3	25
Easier interaction for the public	8	8	2	18
Easing license requirements	2	0	0	2
Fairness	4	1	2	7
Improves agency efficiency	6	7	1	14
License extension	3	1	2	6
Making consistent federal and state rules	21	0	0	21
Making consistent state rules	11	0	0	11
Making consistent state statutes and rules	41	0	1	42
Public filing process timeframe extended	2	0	0	2
Removes redundancies	24	0	0	24
Rule no longer necessary	31	0	0	31
Simplification	34	1	0	35
Statute no longer necessary	0	0	19	19
Tax credits for businesses	0	0	2	2
To statute only	4	2	0	6
Unclassified	2	0	0	2
TOTAL	295	32	41	368

Allows online filing

A change was assigned to this category if its primary purpose was to allow businesses to file electronically (in situations where only paper filing has been permitted in the past.)

• The Department of Commerce, Division of Consumer Protection has implemented a new cyber-filing system, allowing charitable organizations that plan to solicit funds to register online.

In support of this change, Lisa Sewell of Utah Arts Festival, wrote: "More governmental agencies are turning to on-line registration for filing systems and this not only saves time, but it saves environmental resources and is more secure than mailing. We receive an email confirmation when the documents are received, so we are assured of their arrival. If we have any questions, the response time via email is very timely and useful."

• The Department of Public Safety, Driver License Division intends to modify Rule *R708-21. Third-Party Testing* to allow third-party driver-license examiners to

Figure 7. Utah Arts Festival. *Source*: Lisa Sewell.

enter scores online. This change will eliminate the need for students to bring test scores to local offices, reducing the burden on these facilities.

Figure 8. Spencer Bradley, Chief Estimator, Wadman Corporation. *Source*: Spencer Bradley.

- The Department of Administrative Services, Division of Facilities Construction and Management has migrated most of its bidding to a paperless, web-based bidding system.

In support of this change, Spencer Bradley, Chief Estimator at Wadman Corporation (pictured left), wrote: "DFCM's new paperless system integrates well with the paperless practices here at Wadman Corporation. Our estimating department has been working solely off of electronic documents for the last three years."

Broadens program to include more potential users

Changes were assigned to this category if an existing program was expanded to include more businesses.

- During the 2011 legislative session the Governor's Office of Economic Development (GOED) suggested *Senate Bill 31. Rural Fast Track Program Amendments*. This bill, which is now law, reallocated existing funds within the Rural Development Office to the Business Expansion and Retention (BEAR) program for the purpose of extending that program's reach to businesses in rural Utah.

Clarification

A change was assigned to this category if its primary purpose was to make a rule or statute's scope clearer to businesses.

- The Department of Financial Institutions changed Rule *R331-26. Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions* by establishing uniform guidelines for the handling of Other Real Estate Owned (OREO) properties by state-chartered commercial and industrial banks. Prior to this change there existed separate guidelines for each type of bank.[50]

- The Department of Transportation modified Rule *R916-1 Advertising and Awarding Construction Contracts* which now

[50] 2010-22 Utah Bull 15 (November 15, 2010), effective February 1, 2011, codified in the Utah Administrative Code as R331-26.

clarifies that department's advertising guidelines, bidding proposals and requirements.[51]

- The Department of Environmental Quality, Division of Radiation Control intends to suggest a legislative change to Utah Code Section 19-3-106.2 that would disambiguate the phrase "reasonable risk" so that businesses involved in radioactive waste disposal or treatment know what is meant by it.

Cutting red tape

A change was assigned to this category if its primary purpose was to make current requirements on businesses less formidable.

- The Labor Commission has modified Rule *R610-3. Filing, Investigation, and Resolution of Wage Claims* to allow employers to pay wages with cards (ATM-type cards) thereby reducing costs and inefficiencies associated with employee payrolls.[52]

Laurie Ryerson, an Accounting Manager at Conveyors and Equipment (pictured), wrote in support of this change: "I am pleased with the way [R610-3] reads and the regulations that must be followed….There are some people that cannot or will not open a checking or savings account and therefore cannot be paid by direct deposit. The Pay card is the solution to paying these people."

Figure 9. Laurie Ryerson, Accounting Manager, Conveyors and Equipment. *Source*: Laurie Ryerson.

- In 2011, the Tax Commission suggested *Senate Bill 16. State Tax Commission Tax, Fee, or Charge Administration and Collection Amendments* to the Legislature. Its enactment now allows businesses to file their sales taxes concurrently with many other sales-related taxes, reducing the number of returns businesses must file.

- The Department of Agriculture and Food envisions streamlining business applications for food products. Simple products, such as baked goods or candy, will be fast-tracked to the Department's inspectors rather than having to undergo a complete product review.

In support of this change, Jaclyn Blain, Owner of Sophisti-Cakes in Salt Lake (pictured on the following page), wrote in support of this change: "After doing many hours of research and finding out that in most cases, the only way to operate a bakery was to open a retail store front or lease a commercial kitchen, I became discouraged. That was until I discovered that the State of Utah was a participant in the Cottage Food Program. Because a retail location and a leased kitchen were not a possibility for me, this news was great. I looked into the program and figured out it was definitely my window of opportunity to start out a small custom cake decorating business. Rebecca Nielsen and her team were awesome to work with and helped to guide me through what was at first a very daunting process. The Cottage Food Program has definitely helped my business mainly because it allowed me to have one and because I feel more confident in advertising my product knowing that I have the [Department of

[51] 2011-17 Utah Bull 16 (September 1, 2011), effective October 11, 2011, codified in the Utah Administrative Code as R916-1.
[52] 2010-4 Utah Bull 15 (February 15, 2010), effective March 24, 2010, codified in the Utah Administrative Code as R610-3-22.

Figure 10. Jaclyn Blain, Owner, SophistiCakes. *Source*: Jaclyn Blain.

Agriculture and Food] behind me. There are only a handful of states that participate in a program of this nature with more and more people with goals like me pushing for their states to adopt this program. I am definitely grateful that Utah was ahead of the game!"

- The Department of Commerce modified Rule *R162-2f. Real Estate Licensing and Practices Rules* to allow property management licensees to conduct additional types of real estate business.[53]

Easier interaction for the public

A change was assigned to this category if its primary purpose was to make interaction with an agency easier for the public.

- The Department of Commerce, Division of Occupational and Professional Licensing now allows licensees to retrieve renewal ID numbers online (rather than by direct agency contact), thereby vastly facilitating license renewals.

- The Department of Community and Culture, State Library Division, by contrast, found that some businesses preferred paper applications when applying for grants. As such, they expect to modify Rule *R223-3 Capital Funds Request Prioritization* to allow paper applications in addition to online ones.

- The Labor Commission's Industrial Accidents Division has established an online service called "Workers' COMPCHECK" that allows contractors, workers, and others to verify employer compliance with workers' compensation coverage requirements.

Easing license requirements

A change was assigned to this category if its primary purpose was to lessen the regulatory burden on licensees.

- The Department of Commerce, Division of Occupational and Professional Licensing intends to add physical therapists and landscape architects to the list of professionals eligible for an inactive license (Rule Section *R156-1-305. Inactive Licensure*),

[53] 2011-20 Utah Bull 16 (October 15, 2011).

allowing a licensee to avoid continuing education requirements during periods of inactivity.

Fairness

A change was assigned to this category if its purpose was to "level the playing field" for businesses, as Governor Herbert mentioned in his 2011 State of the State address.

- The Department of Commerce, Division of Occupational and Professional Licensing regularly denies requests by professional boards seeking changes to rules that would adversely affect the welfare of those holding another kind of license.

Improves agency efficiency

A change was assigned to this category if its primary purpose was to increase the efficiency of an agency in interacting with the public.

- The Department of Public Safety, Drivers License Division is planning a modification to Rule *R708-2. Commercial Driver Training Schools* that will streamline the process of auditing driver training schools and reduce the audit time drastically from three months.

- The Department of Community and Culture, Division of Housing and Community Development designed and implemented new software that has improved efficiencies in processing and approving Home Energy Assistance Target (HEAT) applications.

- The Governor's Office of Economic Development (GOED) is currently partnering with the State Tax Commission to monitor all state business incentives and track their outcomes. GOED believes this program will enhance its ability to market incentives to businesses by obviating redundancies.

License extension

A change was assigned to this category if its primary purpose was to extend the length of a business license.

- The Department of Commerce extended the length of a vocational rehabilitation counselor license to two years from one.[54]

- The Department of Human Services is proposing a statutory change to extend the length of human service provider license to two years, if the licensee has a record of satisfactory inspections and no violations.

Making consistent federal and state rules

A change was assigned to this category if its primary purpose was to make a rule consistent at both federal and state levels. When federal and state requirements are consistent, business compliance is simplified.

- The Department of Commerce, Division of Consumer Protection repealed an administrative rule on negative option billing (which involves consumers signing up for a free product that they are then billed for, absent explicit cancellation) and replaced it with a reference to a Federal Trade Commission requirement on the topic.[55]

Making consistent state rules

A change was assigned to this category if its primary purpose was to make a rule consistent with other state rules.

- The Department of Transportation is preparing for a modification to Rule *R933-3. Relocation or Modification of Exist-*

[54] 2011-13 Utah Bull 16 (July 1, 2011), effective August 8, 2011, codified in the Utah Administrative Code as R156-78.
[55] 2009-12 Utah Bull 14 (June 15, 2009), effective August 19, 2009, codified in the Utah Administrative Code as R152-11-12.

ing Authorized Access Openings or Granting New Access Openings on Limited Access Highways because a section in it on limited- access facilities conflicts with another rule on the same subject.

Making consistent state statutes and rules

A change was assigned to this category if its primary purpose was to make a rule consistent with the state statute it applies to.

- The Department of Insurance foresees changing at least five of its rules to update references to the Utah Code. When references to statutes are incorrect, it is difficult for businesses to comply.

Public filing process timeframe extended

A change was assigned to this category if its primary purpose was to extend the timeframe for responding to state agencies regarding submission of forms or the collection of information.

- The Department of Natural Resources modified Rules *R647-2. Exploration*,[56] *R647-3. Small Mining Operations*,[57] and *R647-4. Large Mining Operations*[58] to allow businesses extra time when declaring exploratory intentions for mining and to reduce submittal deadlines.

Removes redundancies

A change was assigned to this category if its primary purpose was to eliminate language or requirements covered by other rules or statutes.

- The Labor Commission, Division of Adjudication is in the process of promulgating Rule R600-3. Computation of Time which, once enacted, will have the purpose of establishing uniform standards for computing time limits and filing deadlines. This single rule will replace the variety of different standards for computing time that now exist.

- The Department of Environmental Quality, Division of Radiation Control intends to remove redundant leak test requirements set forth in four rules and replace them with references to Rule Section *R313-15-1104. Records of Tests for Leakage or Contamination of Sealed Sources*.

Rule no longer necessary

A change was assigned to this category if its primary purpose was to eliminate a rule that businesses or agencies no longer find necessary.

- The Department of Corrections repealed Rule *R251-304. Contract Procedures* because this rule required private contractors to go through additional steps when securing contracts beyond those already required by the Division of Purchasing and General Services.[59]

- The Department of Financial Institutions rescinded Rule *R331-3. Rule to Govern Persons Soliciting Savings or Share Accounts, Deposit Accounts, or Similar Evidence of Indebtedness or Participation Interests Therein from Residents of this State*[60] and plans on eliminating Rule *R337-2. Conversion from a Federal to a State-Chartered Credit Union* because businesses are no longer taking part in the activities governed by these rules.

[56] 2011-6 Utah Bull 16 (March 15, 2011), effective May 25, 2011, codified in the Utah Administrative Code as R647-2.
[57] 2011-6 Utah Bull 16 (March 15, 2011), effective May 25, 2011, codified in the Utah Administrative Code as R647-3.
[58] 2011-6 Utah Bull 16 (March 15, 2011), effective May 25, 2011, codified in the Utah Administrative Code as R647-4-101.
[59] 2011-12 Utah Bull 16 (June 15, 2011), effective August 3, 2011, codified in the Utah Administrative Code as R251-304.
[60] 2011-17 Utah Bull 16 (September 1, 2011), effective October 10, 2011, codified in the Utah Administrative Code as R331-3.

- The Labor Commission, Utah Antidiscrimination and Labor Division repealed Rule *R606-2. Pre-employment Inquiry Guide* because they believe businesses will be better served by posting the guide contained therein on its website.[61]

Simplification

A change was assigned to this category if its primary purpose was to simplify the language of a rule to make it more accessible to businesses.

- The Labor Commission, Division of Industrial Accidents will be publishing modifications to Rule *R612-1. Workers' Compensation Rules-Procedures* to clarify this long and important rule. Statutory references will be updated, definitions and other language will be made uniform throughout, and non-required reports will be eliminated.

- The Labor Commission, Utah Occupational Safety and Health Division identified Rule *R614-1. General Provisions* as a particularly difficult rule for businesses to understand and, as a result, will make changes for the sake of simplicity.

Statute no longer necessary

A change was assigned to this category if its primary purpose was to repeal a statutory provision that businesses or agencies believe is no longer necessary.

- The Department of Environmental Quality, Division of Air Quality will suggest to the Legislature the elimination of seven statutes, clauses or phrases because it feels they are no longer necessary. Regarding one of these statutory changes, DAQ recommends the removal of Utah Code Subsection 19-2-104(3)(t), which has to do with certification requirements for asbestos project monitors—a program never implemented and thus not necessary in the Utah Code.

Tax credits for businesses

A change was assigned to this category if its primary purpose was to extend tax credits to particular types of businesses for the purpose of economic development.

- In 2011 the Governor's Office of Economic Development (GOED) suggested *House Bill 496. Technology and Life Science Economic Development Act and Related Tax Credits* to the Legislature. This bill, now law, created an incentive program to encourage and support investment and advances in the life sciences and semiconductor industries.

To statute only

A change was assigned to this category if its primary purpose was to follow only the authorizing statute and no other non-statutory additions.

- The Department of Commerce, Division of Corporations and Commercial Code stopped rejecting collection agency bonds without a power of attorney on the face of the bond. After examining the statute and applicable rule in response to the Governor's request, the Division determined this practice was not actually required and, as a result, repealed this requirement.

- The Labor Commission is in the process of repealing Rule Sec-

[61] 2011-20 Utah Bull 16 (October 15, 2011).

tion *R610-3-21. Uniforms* because the relevant statutes do not authorize such a rule.

A NOTE ON THE REVIEW PROCESS

It is important to note that the changes referenced above were only identified by agencies after a careful review process. Although Governor Herbert asked agencies to examine which rules should be kept, modified, and eliminated in light of their impact on business, he did not instruct them as to *how* this process should be completed for a very important reason: As experts in their fields, the Governor understands that agencies are in thorough command of the regulations they have promulgated. As such, they know which rules are explicitly required by statute, which rules are necessary to carry out their agency's legislative mandate, and which rules or sections of rules may be modified. Thus, the Governor gave wide discretion to the agencies in this endeavor by deferring to their expertise.

It is also necessary to stress that those rules identified by agencies for modification either went through or will go through the required rulemaking process described at the end of Section II. As such, no rule was or will be changed arbitrarily.

V. Governor's Office Review Results

Of the 325 rules examined, 157 were characterized as having a substantial impact on business. Conversely, 168 were characterized as not having such an impact.

SCOPE OF REVIEW

In addition to having each state agency review its rules, the Governor's Office also randomly selected 325 of Utah's 1,969 administrative rules in effect on January 1, 2011, and reviewed them for their potential impact on businesses. The rules were randomly selected so that generalizations could be made. The review achieved a 95% confidence level and a 5% margin of error.

Three University of Utah graduate students each independently examined the 325 randomly selected rules. Three coders were used rather than one because examination was necessarily subjective. Three coders increased the rigor of the review. When at least two of the three agreed on a classification, the rule under consideration was assigned to it.[62] Appendix A contains the review's full methodology.

Table 5 sets forth the results of this review process. When a determination was made as to a rule's affect on businesses, it was then classified accordingly. The "yes" classifications appear on the top half of Table 3, while the "no" classifications appear on the bottom.

Figure 11. Utah State Flag. *Source*: Shutterstock.com.

Figure 12. Downtown Salt Lake City. *Source*: Utah Department of Commerce.

[62] Criteria for "substantially" included the number of requirements on businesses in the rule, whether or not the rule extensively governed how the business was to operate, or whether or not the rule would have a significant monetary impact on a business.

BREAKDOWN OF RESULTS

TABLE 5: CLASSIFICATION OF UTAH'S RULES			
Does this rule substantially affect outside businesses?			
Yes	Classification	# of Rules	% of Total
	Justification for requirements on businesses not clear, sent back to agency with questions	85	54%
	Although substantial, the procedures seemed clear	50	32%
	Required by federal or state statute	19	12%
	Other	3	2%
	TOTAL	157	100%
No	Classification	# of Rules	% of Total
	Primarily deals with the public	10	6%
	Primarily deals with internal policies and operations	92	55%
	Primarily procedural in nature	37	22%
	Provides definitions and context	13	8%
	Other	16	9%
	TOTAL	168	100%

Of the 325 rules examined, 157 were characterized as having a substantial impact on business. Conversely, 168 were characterized as not having such an impact. Generalizing this to all of Utah's rules, we can say with 95% confidence that 48.31% of Utah's rules substantially affect businesses and 51.69% do not.

Chart 1 provides a visual breakdown of how those rules coded as having significant requirements on businesses broke down. Of the 325 rules randomly selected, 85 (26.15%) were sent back to agencies with questions. Each of these 85 rules contained significant requirements on businesses. The justification for these requirements was seemingly unclear and, consequently, sent back to the agencies for clarification. The responses by agencies to these questions appear in Table 6 on the following page.

CHART 1: RULES WITH SIGNIFICANT REQUIREMENTS ON BUSINESSES

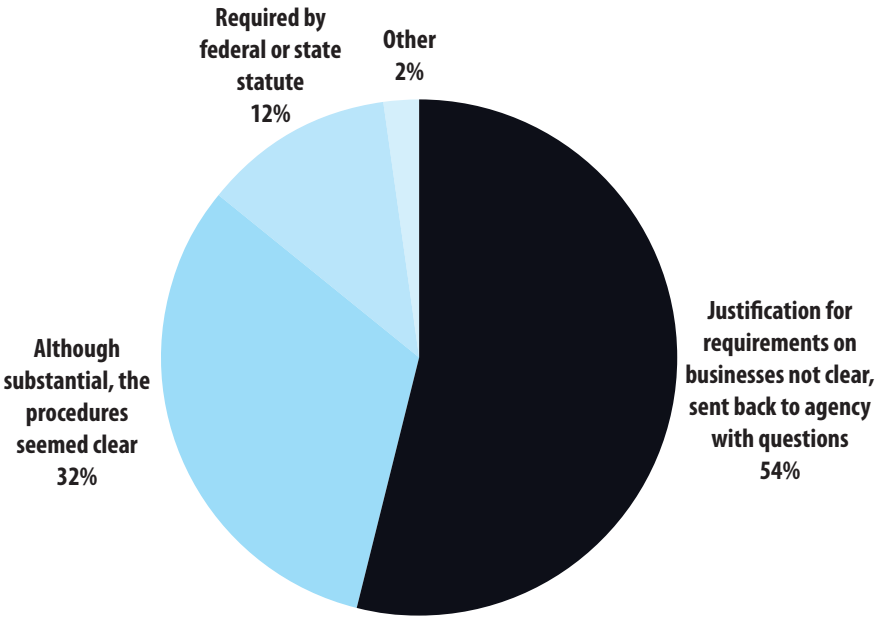


TABLE 6: AGENCY RESPONSES TO QUESTIONS ON RULES

Why does this rule substantially affect outside businesses?

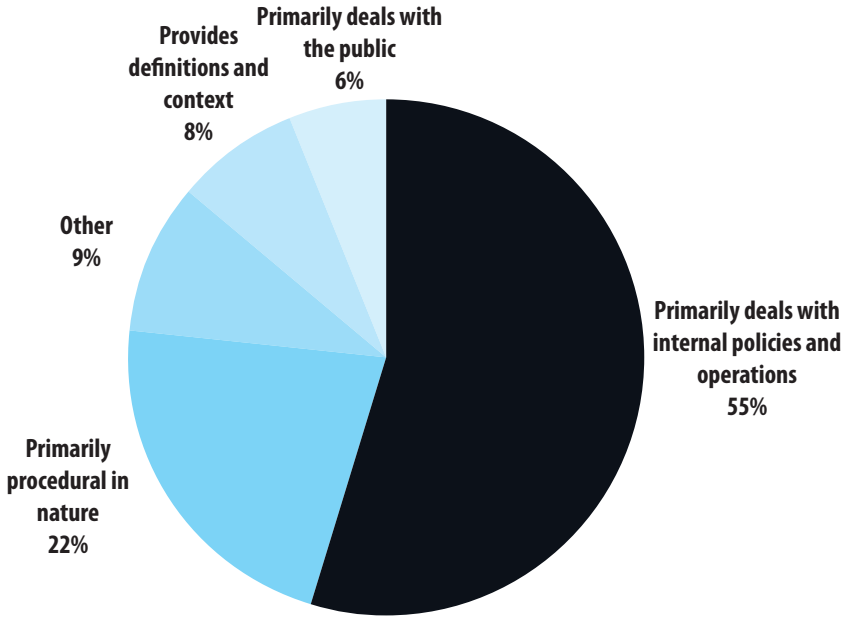
Justification	# of Rules	% of Total
Agency agreed with rule's complexity but believes it is necessary	2	2.35%
Needed for clarification to businesses	4	4.71%
For the protection of businesses	2	2.35%
For the protection of consumers	13	15.29%
Requested by businesses	33	38.82%
Explicitly required by statute	27	31.76%
Rule will be modified	1	1.18%
Requirements apply only to contracting businesses	3	3.53%
TOTAL	168	100%

As shown in Table 6, according to the agencies that responded: 33 of the 85 rules are supported by businesses, 27 are explicitly required by either state or federal statute, 13 were enacted to protect consumers, four are needed to provide clarification to businesses, three apply only to businesses that enter into contracts with a state agency, two are needed to protect businesses, two are necessarily complex, and one will be modified to make it simpler.

Returning to Table 5, the remaining 72 "Yes" rules, although identified as having a substantial impact on businesses, were not sent back to agencies with questions because the reason for the requirements on businesses were apparent: Either the requirements seemed coherent and manageable (32%), the particulars were clearly required by federal or state statute (12%), or the reason was highly specific to the agency ("Other," 2%).

Chart 2 below provides a visual breakdown of how those rules coded as not having significant requirements on businesses broke down. Of the 168 rules determined not to have a substan-

CHART 2: RULES WITHOUT SIGNIFICANT REQUIREMENTS ON BUSINESSES



tial impact on businesses (the 'No' section of Table 3), 92 were given the classification: "Primarily deals with internal policies and operations." These rules generally address an agency's internal operation. There were 37 rules classified as being "Primarily procedural in nature." These rules generally treat situation-specific agency procedure. Thirteen rules were classified into the "Provides definitions and context" category. These rules generally define or provide context for terms important to subsequent rules. Ten rules were classified into the "Primarily deals with the public" category. These rules generally deal with the public as citizens and not business people. The remaining 16 rules were classified into the "Other" category. These rules, which do not affect businesses, were classified as such because they are highly specific to their respective agencies. For example, *Rule R309-405. Compliance and Enforcement: Administrative Penalty* outlines penalties the Drinking Water Board may assign to public water utilities when rules have been violated.

VI. Public Outreach Results

The Governor's Office reached out to over 100 business associations, and through Utah's Chambers of Commerce thousands of businesses were contacted.

VI. Public Outreach Results

SCOPE OF REVIEW

A crucial element of the Governor's regulation review request was the receipt of feedback from the public. The Governor's Office reached out to over 100 business associations, and through Utah's Chambers of Commerce thousands of businesses were contacted.

ASSOCIATIONS CONTACTED

The Governor's Office asked every agency tasked with reviewing its rules to supply a list of those business associations they are in contact with most frequently. The Governor's Office asked the enumerated associations to describe changes that would make the state more business-friendly. Appendix B provides the names of these associations.

Results

The Governor's Office asked 104 business associations to respond to the Governor's business regulation request. Of these, 29 indicated they would provide feedback, five declined, and three expressed interest. By the deadline of September 30, 2011, 26 comments were ultimately received. All comments were sent to the Governor's Office and to those agencies to which they applied.

Of the business associations contracted, 67 did not respond to the Governor's request. The most common reason given for not responding was that those state rules governing their associations were currently acceptable. This is in congruence with the results of what was received from those associations that did respond, as the most common response from this group was that those regulations affecting their businesses were not cumbersome and did not need to be changed. The absence of complaints or comments from these 67 associations that did not respond supports our view that the state rules governing these associations are understood and accepted in these associations' respective industries.

Because the associations selected varied widely by industry, the comments were so diverse as to render overarching generalizations precarious.

Five associations reported that they were pleased with the regulations affecting their businesses, four sought changes to alcoholic beverage laws, three expressed criticism of select state agencies, and two expressed the opinion that the state should contract only with Utah companies whenever possible. Other comments were highly specific but addressed: federal regulations, water rights, court case backlogs, education, utility costs, unfunded mandates, Utah's business image, compliance costs, health department regulations, immigration, softening punitive regulations, sales taxes, business unemployment fees, business economic incentives, and the need to devolve power to municipalities. All other comments called for a smaller and more efficient government.

OUTREACH TO SMALL BUSINESSES

In addition to business associations, the Governor's Office also e-mailed thousands of companies through Utah's Chambers of Commerce and invited them to take a survey.[63] E-mailed companies included restaurants, daycares, consultancies, independent insurance

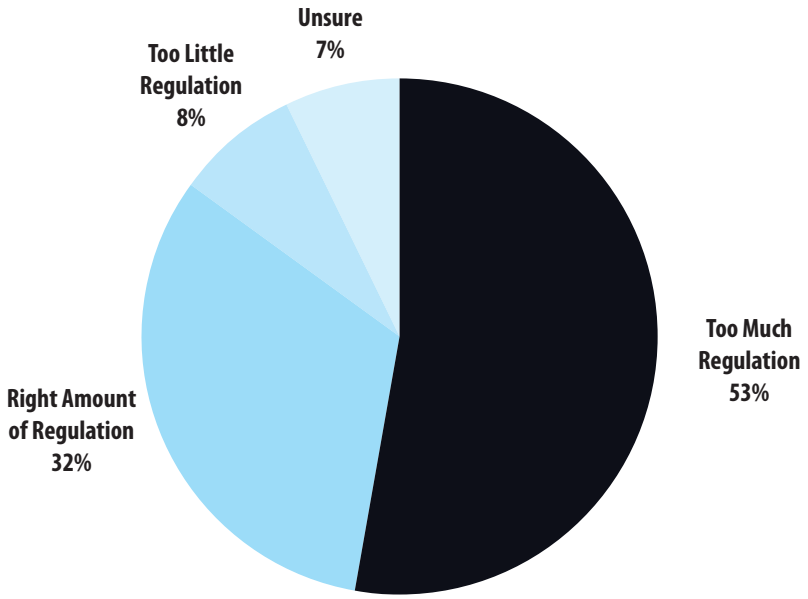
dealers, credit unions, farms, gyms, biotechnology concerns, engineering firms, auto repair shops, construction contractors, interior designers, architects, attorneys, real estate agencies, online stores, photography studios, travel agencies, manufacturers, retailers, and many more. Although unscientific, given self-selection of businesses,[64] the survey nonetheless provides valuable insight into an important segment of Utah's business community.

Results

Of those asked, 323 businesses completed the Governor's business regulation survey. Here is how they responded.

1. Considering STATE regulations that affect your business, would you say there is the right amount of regulation, too little, or too much regulation? (Chart 3)

CHART 3: AMOUNT OF REGULATION



It is important to note that it can be difficult to neatly distinguish federal from state regulations. For example, a few business owners expressed concern over OSHA rules and not unreasonably assumed that Utah's Labor Commission could change these. Although Utah does indeed have its own state administered OSHA program, the majority of the rules the Labor Commission enforces are federal rules promulgated by the U.S. Department of Labor.[65] And, as a final example, one business owner stated that "reporting requirements on new hires" should be made less burdensome. This, like the two previous examples, is not something state agencies can change. The federal government, not the State of Utah, requires employers to fill out I9 and W2s forms.[66] And although employers must report this information to state agencies, federal law dictates what must be reported.

2. Which of the following would you say are the most important challenges facing your business today? Please rank these. (Table 7)

[63] Some of the questions in this survey were based off of a similar survey conducted by the Economic and Social Research Institute: Dorothy Watson and Sylvia Blackwell, *Business Regulation Survey* (Dublin, Ireland: Department of the Taoiseach, 2007), http://www.betterregulation.ie/eng/Publications/BUSINESS_REGULATION_SURVEY.pdf (accessed June 10, 2011).

[64] This survey was not conducted through random sampling. Therefore, while it provides useful information for government to consider, it is impossible to make generalizations based upon these responses.

[65] United States Department of Labor, "Utah Plan," http://www.osha.gov/dcsp/osp/stateprogs/utah.html (accessed August 8, 2011).

[66] Internal Revenue Service, "Hiring Employees," http://www.irs.gov/businesses/small/article/0,,id=98164,00.html (accessed August 8, 2011).

The first two columns in Table 7 list in a descending manner those issues ranked by respondents as being the *most* important challenges facing their businesses today. 23% of respondents chose "Health Insurance Costs" while 4% chose "Personnel Management." Conversely, the last two columns in Table 7 list those issues ranked by respondents as being the *least* important challenges facing their businesses today. 26% of respondents chose "Availability of Credit" while 3% chose "Health Insurance Costs."

Figure 13. Survey. *Source*: Shutterstock.com.

TABLE 7: ISSUES IMPORTANT TO BUSINESSES

	1 (Most Important)		8 (Least Important)
Health Insurance Costs	23%	Availability of Credit	26%
Decreased Demand	19%	Personnel Management	21%
Federal Regulations	19%	Increased Competition	13%
Availability of Credit	13%	Decreased Demand	11%
State Regulations	10%	Federal Regulations	11%
Labor Costs	6%	State Regulations	8%
Increased Competition	6%	Labor Costs	7%
Personnel Management	4%	Health Insurance Costs	3%

3. How much impact do each of the following areas of regulation have on your business? (Table 8)

TABLE 8: IMPACT ON BUSINESSES

	A Major Impact	A Moderate Impact	Little Impact	No Impact
Federal Business Taxes	37%	37%	17%	8%
Health & Safety Regulations	30%	30%	26%	13%
Employment Regulations	29%	40%	21%	8%
State Business Taxes	26%	39%	24%	11%
Environmental Regulations	22%	24%	31%	21%
State Sales Taxes	18%	28%	27%	26%

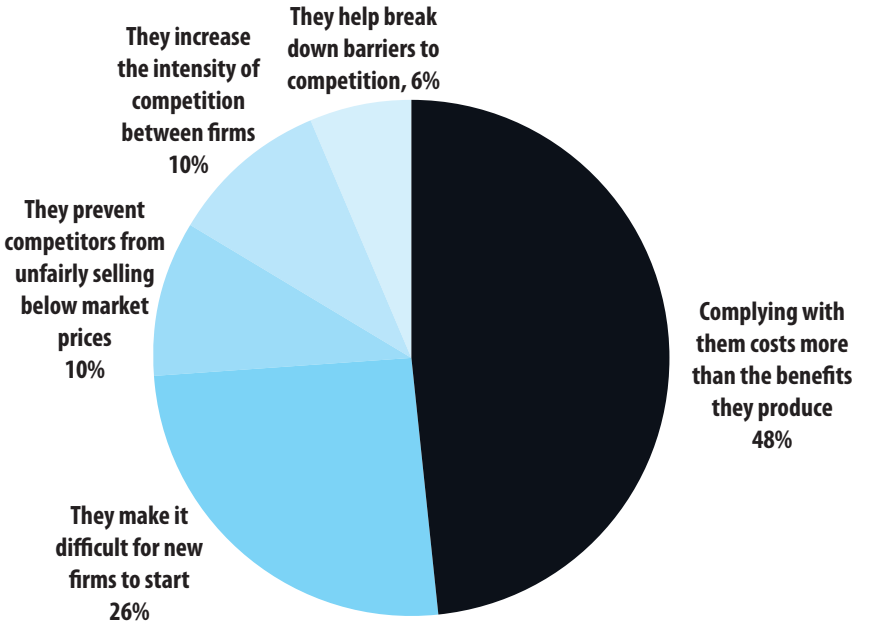
4. For those areas you rated as having a major or moderate impact in question three, please state whether it is the actual requirements of the regulations, the reporting requirements, or both that have had an impact on your business. (Table 9)

TABLE 9: TYPE OF IMPACT ON BUSINESSES

	Both	Actual Requirements	Reporting Requirements	N/A
Federal Business Taxes	46%	23%	7%	14%
Employment Regulations	41%	15%	14%	16%
State Business Taxes	36%	24%	10%	18%
Health & Safety Regulations	31%	20%	7%	27%
State Sales Taxes	27%	16%	10%	31%
Environmental Regulations	27%	13%	7%	35%

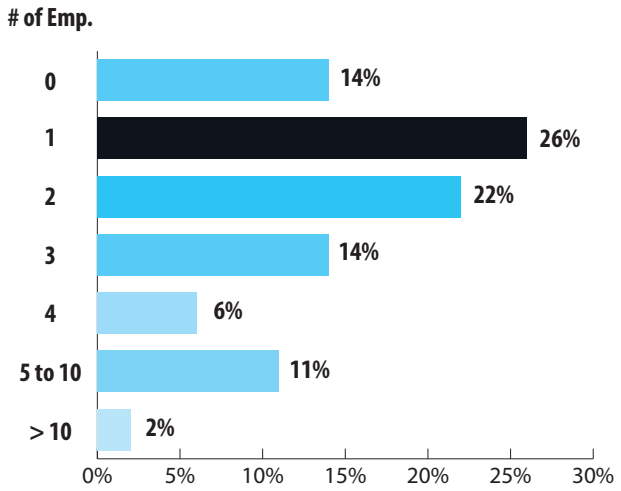
5. In general, how would you describe your attitude towards state regulations? (multiple choices are acceptable) (Chart 4)

CHART 4: ATTITUDES ON REGULATIONS



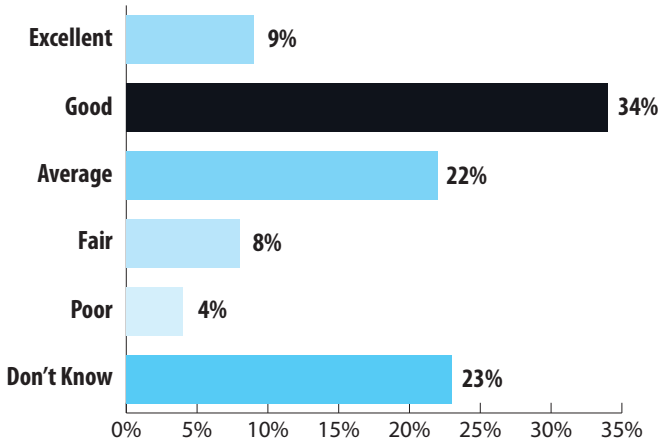
6. How many employees or outside experts do you use for compliance with STATE regulatory requirements?
(Chart 5)

CHART 5: EMPLOYEES NEEDED FOR STATE REGULATION COMPLIANCE



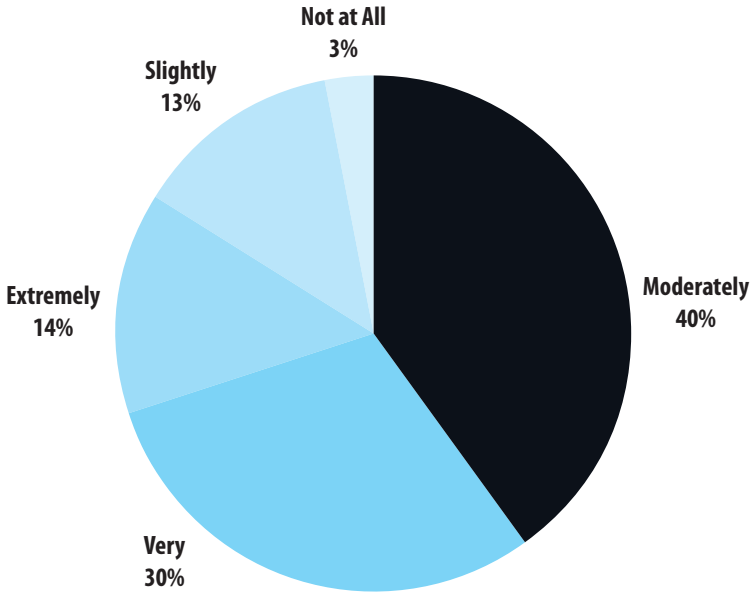
7. In comparison to other states, how would you rate Utah's regulatory environment as it pertains to your business?
(Chart 6)

CHART 6: UTAH'S REGULATORY ENVIRONMENT



8. How familiar are you with those STATE rules or regulations that affect your business? (Chart 7)

CHART 7: FAMILIARITY WITH STATE REGULATIONS

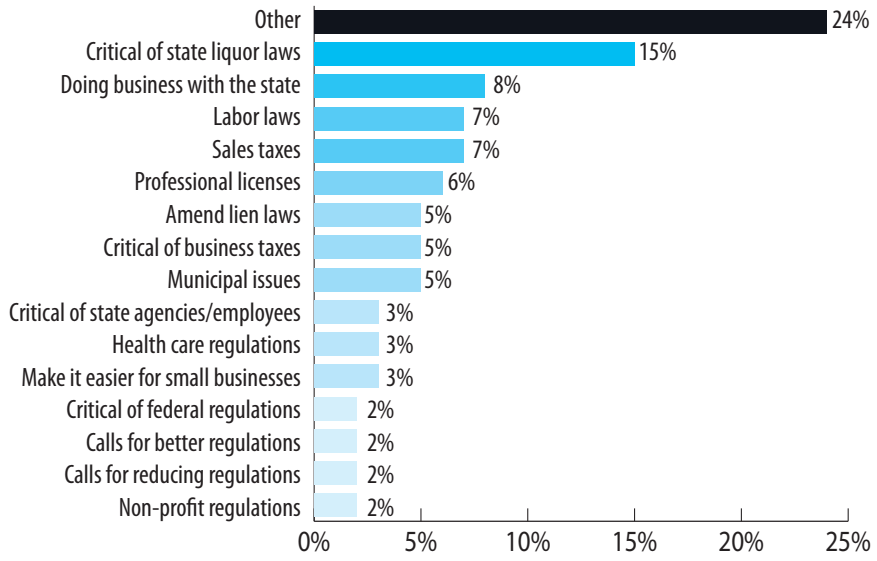


9. Are there any STATE rules or statutes you believe need to be changed? (Chart 8)

Question 9 was open-ended. Comments were sent to the agencies to which they applied. They were also classified by category. Results appear below in Chart 8.

For there to be a specific category, at least two respondents had to address the same subject. The general category of "Other" applies to subjects that concerned only one respondent. The categories in order of concern were "Other," "Critical of state liquor laws," "Doing business with the state," "Sales taxes," and "Labor laws." Unaltered samples of each appear below Chart 8.

CHART 8: AREAS WHERE BUSINESSES BELIEVE REGULATIONS SHOULD BE CHANGED



Other

"It would be good for their to be a state law or regulation which guarantees homeowners the right to place a for sale sign in their yard to sell their home, despite home owner associations or area regulations that say otherwise. It should be part of property rights for people in our State. Arizona has just such a law that allows homeowners to have a standard for sale sign on their property regardless of what anyone else may say."

"Yes. the laws regarding policy fee's are ambiguous. they can be interpreted and enforced a number of different ways. This needs clarification and i feel that we should be able to charge a policy fee to help with the cost of doing business."

Critical of state liquor laws

"The"I think the RIDICULOUS regulations regarding liquor licenses need to change! These are discouraging economic development, as restaurants cannot operate profitably without liquor. This undermines our economy and, once again, makes Utah look strange, provincial and unwelcoming. It's time our for our officials to show leadership and behave like adults and get rid of these silly regulations!"

Doing business with the state

"State departmental procedures, practices and attitudes affecting architects in Central Utah making it impossible for them to do business with DFCM."

Sales taxes

"State sales tax regulations are very difficult to follow for our business (furniture, appliance, flooring, and window treatments). We have had to revamp our procedures to accomodate ridiculous state sales tax regulations thare are very difficult, confusing and time consuming to follow. The biggest issue relates to 'installation' of products and tracking of 'coupons' or 'rebates.'"

Comments on labor laws

"The rules regarding who is an employee and who is a 1099 contractor need to be loosened! I've been audited twice this year by DWFS during which the auditor desperately tried to reclassify contractors who provided services for my company (years ago) as employees. In a nutshell, it was found that I owed the state about $80. However, it cost me thousands to prepare for these audits!! If I have a need for a one-time service, I should be able to contract with a person or organization to provide that service without being forced by the state to hire them as full time employees. I know that many folks think that business owners are hoarding piles of cash, but it isn't true. Many of us need to be able to bring in consultants and service providers under contract to perform one-time services and we should be allowed to do so without having to

evaluate whether they meet the state's ridiculous list of 12 criteria justify them as a contractor and not an employee."

10. Do you have any additional comments regarding Utah's business regulatory climate?
(Chart 9)

As with question 9, question 10 was open-ended. Each comment was sent to the agencies to which they applied. They were also classified by type. Results appear below in Chart 9.

The largest category contained positive assessments of Utah's regulatory climate. The next categories in order of size were "Other," "Regulations should be enforced with equity," "Need fewer regulations," and those critical of state agencies. Unaltered samples appear below Chart 9.

Utah positive place to do business

"Utah is a very friendly state regulatory wise to do business in. The state agencies actually treat you like a person. Also Utah is not fining, feeing permitting, surcharging and taxing me to death. If I were to rate Utah on a scale of 1 to 10 compared to California, (10) being the best. Utah is a 10 and California is a 1. Becuase in part to that, I've been here going on 10 years. THANK YOU !!!"

Other

"It would be nice if the state could coordinate so that all required business licenses (i.e., state, county, city, etc.) could be obtained at one office with one fee."

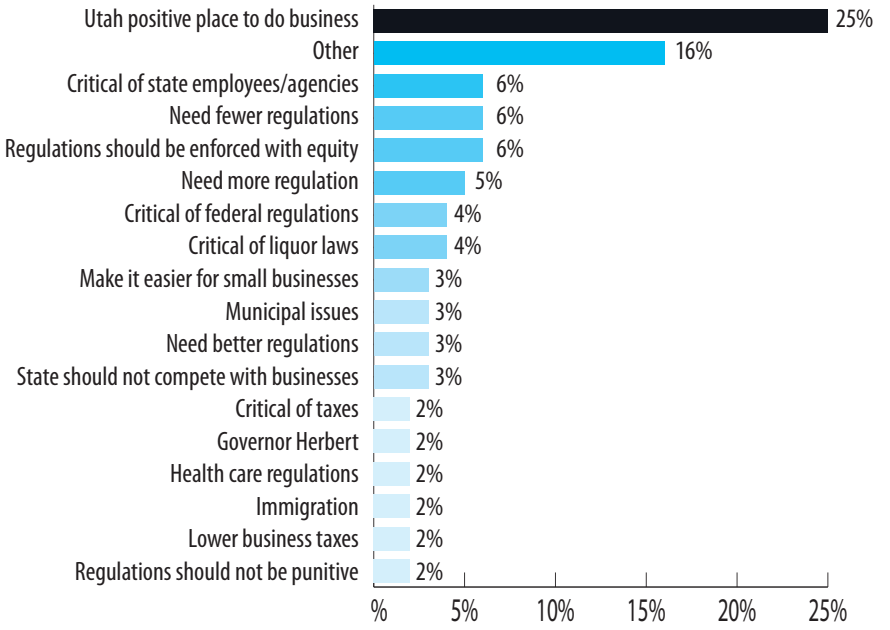
Regulations should be enforced with equity

"Need to enforce the rules and laws the state has on the books. I am part of a large company that follows all the laws but my competitors don't which puts me at a disadvantage. E-Verify is the latest unfair law. We also run into a large issue with our competitors 1099 there work force (janitors) which is the moderne form of paying their employees under the table."

Need fewer regulations

"In general the government should have little regulatory control. If businesses fail then they fail and if a person uses that business and they loose out they should have done their homework. This would help good business owners and practices and people would take responsibility for their own actions. Responsibility for our

CHART 9: ADDITIONAL COMMENTS ON REGULATIONS



actions is key. Using others to tell us what to do or how to live is wrong and does not promote a climate for personal growth or independence."

Critical of state employees/ agencies

"Regulatory staff often takes an immediate adversarial position with businesses, thereby adding additional demands on an already stretched business climate."

VII. Summary and Conclusion

It was the purpose of this review to strike a balance and, beyond unreasoning dogma, critically reexamine the regulatory environment of our state.

VII. Summary and Conclusion

Governor Herbert recognizes that markets must be regulated to prevent abuse and unfairness, but he also understands that Utah must be prosperous and that excessive regulation is economically unsustainable. It was the purpose of this review to strike a balance and, beyond unreasoning dogma, critically reexamine the regulatory environment of our state.

As a result of the Governor's business regulation review request, 295 rule changes have been or will be made: 238 in the form of amendments, 47 in repeals, and ten in promulgations. In addition, 32 organizational changes have been or will be made. And, 41 legislative changes have been made or will be requested: 32 in the form of amendments and nine in requested repeals.

An audit of Utah's administrative rules revealed that 48.31% of them substantially affect businesses while 51.69% do not. Of the former, 26.15% were sent back to the relevant agency with questions, 15.38% featured procedures deemed clear and unburdensome, 5.85% were required by federal or state statute, and 0.92% were highly specific to the agency.

Comments received from the public were also a critical part of this review. Over 100 business associations were contacted and thousands of businesses were asked to take our survey through various state Chambers. Feedback received as part of these outreach efforts was provided back to the respective agencies.

Although many needed changes were made as a result of the Governor's request, none were made because they were particularly onerous to businesses. Indeed, despite reaching out to the public in the ways described above, there was only a relatively mild—but appreciated—overall response by the public. This supports our view that those state rules governing enterprises are generally accepted by Utah's businesses. We attribute this to the fact that state agencies continuously assess the impact of their governing rules on the public and businesses. This vigilance by state agencies—and by the Governor's Office in initiating this report—is likely one of the reasons why Utah is widely seen as a great place to do business.

Figure 14. Utah State Capitol. *Source*: Shutterstock.com.

Appendix A: Governor's Office Rules Audit Methodology

Using three University of Utah graduate students, the Governor's Office randomly selected 325 of Utah's 1,969 administrative rules in effect on January 1, 2011, and reviewed them for their potential impact on business. Three coders were used rather than one because examination was necessarily subjective. Each coder was asked to independently examine each of the 325 rules. When at least two of the three agreed on a classification, the rule under consideration was assigned it. Had only one coder been involved in this review process, the results would have been less rigorous.

Moreover, the rules were randomly selected so that generalizations could be made. The review had a 95% confidence level and a 5% margin of error, meaning that if this audit were conducted 100 times, the results would likely range plus or minus five percentage points from those percentages listed in Table 5 at least 95 of the 100 times.

Each coder worked separately and with no interaction with the other. After each of the coders examined 50 rules a third party reviewed the agreement between the three coders to insure this exercise was worth continuing as a high degree of disagreement would render the results questionable. This third party determined that agreement between the three coders was sufficient enough for the process to continue.

Each coder made two major determinations for each of the 325 rules. The first was to decide whether a rule substantially affected outside businesses (assigned into the 'yes' category) or not (assigned into the 'no' category). The second determination was sub-classifying a rule based on what category it was assigned to (i.e., the 'yes' or 'no' categories). These determinations are explained in greater detail below.

1. Yes or No Determinations

Coders were asked to determine whether a rule substantially affects outside business by examining: *the number and suspected impact of requirements on businesses in the rule, whether or not the rule extensively governs how a business is to operate, whether or not the rule would have a significant monetary impact on a business, and whether the governing agency already made such a designation*. No threshold was assigned to any of these factors because, to take an example, a requirement on businesses in one rule might require far more from businesses than ten smaller requirements listed in another rule. As such, each coder was instructed to consider these factors and make reasonable determinations from them.

When at least two of the three coders agreed on a classification that rule was given the classification agreed upon by the majority. Initially, coders were allowed to put a rule into one of the three categories: 'yes,' 'no,' or 'revisit.'

In the initial phase 286 rules were assigned either a 'yes' or 'no' designation (88%). As such, at least two coders agreed upon either a yes or no classification in 286 of the 325 rules, indicating a very high degree of agreement between the coders. 13 rules were assigned a 'revisit' designation (4%). And, there was no initial agreement for the remaining 26 rules (8%), meaning that one coder selected 'yes,' one coder selected 'no,' and one coder selected 'revisit' for these rules.

The high degree of agreement likely had to do with the fact that the coders read analyses of many of the rules from the *Utah State Bulletin* in addition to reading the rules in their entirety. As required by statute, each agency promulgating a new rule, or revising an existing one, must perform an

analysis on that rule's likely impact on business and publish it in the *Bulletin*. The three coders often found their own determinations lined up nicely with those made by the agencies in the *Bulletin* or were sometimes swayed one way or the other by the agencies' statements in the same. We chose to review agency business impact determinations in the *Bulletin* because of the extensive amount of time agencies spend on rules in the rulemaking process. When agencies determine a rule will have an impact on business, it likely will; when they determine a rule will not, it likely will not. However, each coder still read the selected rules in their entirety before they read the business analyses in the *Bulletin* and still relied on the other categories detailed above (i.e., .the number and suspected impact of requirements on businesses in the rule, whether or not the rule extensively governs how a business is to operate, etc.). Furthermore, not all rules randomly selected appeared in the *Bulletin* (beyond their required five-year reviews), meaning determinations were made by the coders alone for such rules.

Figure 15. Businesspersons. *Source*: Shutterstock.com.

Disagreement 1

Early on it was determined by the committee overseeing this project that no rule's designation be left unclear. As such, it was necessary to assign a 'yes' or 'no' designation to each rule. Thus, those 39 rules assigned either a 'revisit' designation or were not assigned a classification were revisited. The coders were asked to re-read each of the 39 rules carefully and then make either a 'yes' or 'no' designation. Due to there being only two choices, each of these 39 rules were necessarily assigned into either the 'yes' or 'no' categories during this process.

2. Sub-classification Determinations

After a designation was made regarding a rule's impact on business, it was then sub-classified. Those rules determined to substantially affect business (the 'yes'

category) were placed into the following sub-classifications: J*ustification for requirements on businesses not clear, Sent back to agency with questions*; *Although substantial, the procedures seemed clear*; *Required by federal or state statute*; and, *Other*. Those rules determined to not substantially affect business (the 'no' category) were placed into the following sub-classifications: Primarily deals with the public; Primarily deals with internal policies and operations; Primarily procedural in nature; Provides definitions and context; and, Other.

There was initial agreement in 221 of the 325 rules (68%) between the three coders, which indicates a high level of agreement.

Disagreement 2

The aforementioned charge by the committee overseeing this project that no rule's designation be left unclear also applied to sub-classifications. As such, it was necessary to assign each of the 104 rules where no agreement had been reached to a sub-classification. To achieve this a reasoning and voting process was undertaken. Without names being given out, each coder 'lobbied' for their choice of classification for each of the rules and then a revote on each rule was taken. This process was repeated until every rule had an agreed-upon classification. Most of the rules, however, were classified in the first round as one of three coders tended to have a compelling argument such as evidence that the rule was required by statute.

Appendix B: List of Business Associations Contacted

List of Business Associations Contacted

AfterSchool Utah! Association
Agricultural Advisory Board
American Red Cross
American Society for Training and Development
American Water Resources Association
Americans for the Arts
Animal Damage Control
Art Works for Kids!
Associated General Contractors of Utah
Catholic Community Services
Chamber of Commerce
Community Action Partnership of Utah
Community Development Corporation of Utah
Dairy Producers of Utah
Economic Development Corporation of Utah
Farm Service Agency
Food and Care Coalition
Grow Utah Ventures
Home Health/Personal Care/Hospice Association
Independent Dealer Solutions
Intermountain Farmers Association
International Personnel Management Association
Motion Picture Association of Utah
MountainWest Capital Network
Mule Deer Foundation
National Wild Turkey Federation
Payson Fruit Growers
Professional Family Child Care Association
Provo River Water Users Association
Rocky Mountain Elk Foundation
Rural Water Association of Utah
Safari Club International Main
Sevier River Water Users Association
Small Business Administration
Society for Human Resource Management
Sportsmen for Fish And Wildlife
Tax Executives Institute, Inc., Salt Lake Chapter
Tobacco Merchants Association
United Way of Salt Lake
Utah Assisted Living Association
Utah Association of Certified Public Accountants
Utah Association of Conservation Districts
Utah Association of Counties
Utah Association of Health Plans
Utah Association of Realtors
Utah Association of Special Districts
Utah Auto Dealers Association
Utah Bankers Association
Utah Bass Federation
Utah Beekeepers Association
Utah Beer Wholesalers Association
Utah Berry Growers Association
Utah Brewers Guild
Utah Cable & Telecommunications Association
Utah Cattlemen's Association
Utah Community Reinvestment Corporation
Utah Credit Union Association
Utah Crop Improvement Association
Utah Cultural Alliance
Utah Dairy Commission
Utah Dental Association
Utah Family Practice Association
Utah Farm Bureau
Utah Farmer's Market Association
Utah Farmers Union
Utah Food Industry Association
Utah Fund of Funds
Utah Funeral Directors Association
Utah Government Finance Officers Association
Utah Groundwater Association
Utah Health Insurance Association
Utah Healthcare Association
Utah Homebuilders Association
Utah Hospital Association
Utah Hotel and Lodging Association
Utah Housing Coalition
Utah Humanities Council
Utah Land Title Association
Utah League of Cities and Towns
Utah Manufacturers Association
Utah Medical Association
Utah Microenterprise Loan Fund
Utah Mining Association
Utah Museums Association
Utah Nonprofits Association
Utah Pest Control & Lawn Care Association
Utah Petroleum Association
Utah Pharmacists Association
Utah Restaurant Association
Utah Retail Merchants Association
Utah Rural Telecom Association
Utah State Bar
Utah State Bowmen's Association
Utah Taxpayers Association
Utah Technology Council
Utah Tourism Industry Coalition
Utah Trucking Association
Utah Water Users Association
Utah Weed Supervisors Association
Utah Woolgrowers Assoc.
Utah World Trade Center
Wayne Brown Institute
Weber River Water Users Association
Western Energy Alliance

Appendix C: The Methodologies of State Business Regulatory Environment Rankings

FORBES' "BEST STATES FOR BUSINESS AND CAREERS" LIST

In the fall of 2010 Utah topped *Forbes*' "Best States For Business And Careers" list. A state's ranking depends upon how well it scores in the following six areas: business costs, labor supply, regulatory environment, economic climate, growth prospects, and quality of life. Regulatory environment, for which Utah was ranked sixth, "Measures regulatory and tort climate, incentives, government integrity, transportation and bond ratings."[67] Because *Forbes* does not publish this list's methodology, the authors contacted Kurt Badenhausen, a senior editor at *Forbes*, for more information. In an August 9, 2011, phone conversation, Mr. Badenhausen explained how the six variables that make up the regulatory environment were measured. Here is what Mr. Badenhausen had to say:

1) **Regulatory Score**: This score for this variable is tied to the Pacific Research Institute's 2008 "U.S. Economic Freedom Index."[68]

McQuillan, Maloney, Daniels, and Eastwood—the index's authors—define economic freedom as "the right of individuals to pursue their interests through voluntary exchange of private property under a rule of law."[69] They write further that, "economic freedom is the freedom to produce and trade goods and services according to one's own judgment, unrestrained by the physical coercion or compulsion of others, including the government."[70] The more freedom by this definition, the higher a state's score.

The Economic Freedom Index considers five factors: fiscal, regulatory, judicial, the size of government, and spending on welfare.[71] Utah was ranked fourth in total economic freedom[72] but second in matters regulatory,[73] to which we turn now.

The regulatory factor weighs 53 indicators: occupational licensing requirements (the fewer the better); continuing education requirements for professionals (the fewer the better); requirements that state agencies must grant preference to a certain type of business (such as small businesses) in public procurement processes (undesirable); requirements that state agencies and contractors must buy or use certain products such as recycled materials in construction, soybean ink, alternative fuel, etc. (undesirable); right-to-work laws (desirable); a higher minimum wage than the national standard (undesirable); workers compensation requirements beyond national minimums (undesirable); gun control (undesirable); parental choice of schools (desirable); and environmental health standards (the fewer the better). For a state to score high on regulatory environment, the authors recommend that it should, "drop occupational licensing, mandatory workers' compensation, and restrictions on parental choice of schools."[74]

2) **Tort Score**: The score for this variable tallies with the Pacific Research Institute's "Tort Liability Index."[75] The tort score, which ranked Utah 13th in 2010, measures:

> …which states impose the highest, and the lowest, tort lia-

[67] Kurt Badenhausen, "Table: The Best States For Business And Careers," Forbes.com, October 13, 2010, http://www.forbes.com/2010/10/13/best-states-for-business-business-beltway-best-states-table.html?partner=contextstory (accessed June 20, 2011).
[68] Pacific Research Institute, U.S. Economic Freedom Index: 2008 Report (September 2008), by Lawrence J. McQuillan, Michael T. Maloney, Eric Daniels, and Brent M. Eastwood.
[69] McQuillan et al., 7.
[70] McQuillan et al., 16.
[71] McQuillan et al., 25-26.
[72] McQuillan et al., 11.
[73] McQuillan et al., 34.
[74] McQuillan et al., 42.
[75] Pacific Research Institute, *U.S. Tort Liability Index: 2010 Report* (June 2010), by Lawrence J. McQuillan and Hovannes Abramyan.

bility costs both in absolute and in relative terms. The study also measures relative tort litigation risks across states. Finally, it examines which states have rules on the books that, if implemented and enforced, help reduce lawsuit abuse and tort costs, resulting in a more balanced, predictable, and affordable civil-justice system.[76]

According to McQuillan and Abramyan—the index's authors—a good tort liability environment "ensures that businesses and individuals have proper incentives to produce safe products and provide safe services, and that true victims are fully compensated."[77]

The Tort Liability Index falls into two sections. The first measures tort losses and tort litigation risks and the second assesses the desirability of various tort laws in each state. Both sections are described briefly below.

Tort losses and litigation: There are 13 detailed variables that make up the tort losses and litigation component. Let's consider two of them. States with lower per capita medical-malpractice insurance losses and lower per capita auto insurance losses score higher than states with the opposite trends. States with a low number of per capita jury-verdict awards, resident and active attorneys, and total tort caseloads score higher than states with a higher number.[78]

Tort rules: There are 29 detailed variables that comprise the tort rules component. States with monetary caps on tort awards, laws that encourage settlements and/or arbitration rather than lawsuits, laws that tighten standing (who may sue), laws that limit attorney fees in medical malpractice cases, laws that establish stricter standards for filing claims, and laws that allow businesses to fix a problem before a lawsuit may be filed enjoy higher scores than states without these provisions.[79]

3) Incentives Score: The score for this variable is calculated by examining the types of incentives a state offers to businesses. Higher scoring states offer incentives; offer multiple types of incentives, not just one or two; actively reach out to companies rather than let them come to the state; and offer incentives to multiple industries, not just a favored few.

4) Government Integrity Score: The score for this variable is derived from the Better Government Association's "BGA-Alper Integrity Index." This index ranks states according to five types of laws: freedom of information allowances, whistleblower protections, campaign finance reforms, open meetings requirements, and conflict of interest disclosure requirements. In 2008 Utah ranked 36th.[80] Each type of law is described below.

Freedom of Information Laws: States that allow for broad access to governmental records, have fast response times to FOI requests, and have good appeals processes in place for those denied FOI requests score higher than states with only some or none of these capacities.

Whistleblower Laws: States that allow for broad state employee whistleblower protections, prohibit governmental retaliation in whistleblower situations, assign penalties and damages when the government violates these laws, and informs employees of their whistleblower rights score higher than states with only some or none of these features.

[76] McQuillan and Abramyan, 9.
[77] McQuillan and Abramyan, 9.
[78] McQuillan and Abramyan, 24.
[79] McQuillan and Abramyan, 40.
[80] Better Government Association, *The BGA - Alper Integrity Index* (Chicago, IL: Alper Services, 2008), 3.

Campaign Finance Laws: States that "place limits on campaign contributions, mandate disclosure of contributions and sometimes provide for public funding [of campaigns]"[81] score higher than states with some or none of these characteristics.

Open Meetings Laws: States that require governmental boards to make all their decisions in public and not behind closed doors, post the date and time of their meetings far in advance, record and post minutes, and establish rules allowing for generous time frames for lawsuits to be filed against these boards score higher than states with some or none of these requirements.

Conflict of Interest Disclosure Laws: States that "mandate that lawmakers publicly disclose their financial interests so the public can be aware if they have possible conflicts of interest in legislation they are voting on"[82] score higher than states with some or none of these laws.

It is worth noting that Mr. Badenhausen claimed that not as much importance is attached to this variable and that it may in fact be eliminated in subsequent *Forbes*' rankings.

5) **Transportation Score**: The score for this variable is determined by reviewing various transportation issues that affect businesses. States with more miles of highway per capita, high airport usage rates, low transportation fees on businesses, and greater ease of "getting around" rank higher than states with the opposite features.

6) **Bond Ratings Score**: The score for this variable is determined by examining the state's bond rating as well as the bond ratings of its municipalities. As of August 2011, the State of Utah and most Utah municipalities have excellent AAA bond ratings from the three main rating agencies.[83]

Businesses care about these bond ratings because when governments cannot pay their debts, or are at risk of default, higher taxes and unpredictability may be on the horizon. Moreover, in general, a governmental entity with a less-than-stellar bond rating suggests to the business community poor management and the likelihood of producing economically unsound legislation.

CHIEF EXECUTIVE'S "BEST/WORST STATES FOR BUSINESS" LIST

Utah is ranked ninth in *Chief Executive* magazine's 2011 "Best/Worst States for Business" list.[84] The list is made up of these components: taxes and regulation, workforce quality, and living environment. Unlike *Forbes*, *Chief Executive* publishes the methodology of its state regulation ranking.[85] However, its description was not particularly detailed, the author contacted Michael Bamberger, Director of Chief Executive Group for additional clarification. In an August 9, 2011 email, Mr. Bamberger explained how his publication's list was created. In early 2011, 556 CEOs were asked to list

[81] Better Government Association, *The BGA - Alper Integrity Index*, 3.
[82] Better Government Association, *The BGA - Alper Integrity Index*, 3.
[83] Marjorie Cortez, "AAA credit ratings abound in fiscally sound Utah, but 5 local government ratings under review," *Deseret News*, August 8, 2011, http://www.deseretnews.com/article/705388885/AAA-credit-ratings-abound-in-fiscally-sound-Utah-but-5-local-government-ratings-under-review.html (accessed August 14, 2011).
[84] Buss, "The State of the States."
[85] Dale Buss, "Best/Worst States for Business Survey Methodology," *Chief Executive.com*, May 1, 2011, http://chiefexecutive.net/bestworst-states-for-business-survey-methodology (accessed June 20, 2011).

the four best and worst states for business. These CEOs were then asked to rank, from one to ten, how well each of the states they had chosen perform in the areas of taxes and regulations, workforce quality, and living environment. No further questions were included on these areas. Thus, *Chief Executive's* "Best/Worst States for Business" list relies entirely on the perceptions of CEOs across the United States. It is hoped that when asking a CEO to list those states he or she believes to be best and worst for business, he or she will know a good deal about the taxes and regulations, workforce quality, and living environment of those states.