

1996 SUNSET REVIEW

Office of Regulatory Reform



Submitted by the
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Regulatory Agencies
Office of Policy & Research

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Roy Romer
Governor

October 15, 1996

Members of the General Assembly
c/o Doug Brown, Director
Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the Colorado General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Office of Regulatory Reform. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the 1997 Legislative Committees of Reference. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ."

The report discusses the question of whether there is a need for the regulation provided under article 34 of title 24, C.R.S. The report also discusses the effectiveness of the office and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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EXECUTIVE SUMMARY

The Department of Regulatory Agencies has concluded the 1996 Sunset Review of the Office of Regulatory Reform. This report recommends allowing the provisions of Article 34 of Title 24, C.R.S. to terminate.

The sunset review was conducted in an unusual environment. Legislation had been passed in the 1996 session to move the Small Business Clean Air Ombudsman to the Department of Public Health and Environment. In addition, the Small Business Assistance Center was relocated to the Office of Business Development in July, 1996. The relocation was premised on the belief that consolidation of economic development activities in one department would lead to improved coordination, effectiveness and accountability.

This report concludes that there are major deficiencies in the operation of the Office of Regulatory Reform. Each year hundreds of rules and regulations are reviewed by ORR with only a few designated as burdensome and unnecessary. The amount of time spent in reviewing all proposed rules affecting small businesses with the number of rules found to adversely affect the business is disproportionate.

Another significant problem with ORR is the lack of direction toward identifying regulatory reform issues. A majority of the energy and resources of the Office have been spent in assisting in the Small Business Assistance Center because of the tremendous demand for services.

This review also recommends to forgo the wind-up provision as stated in §24-34-104(5)(b), C.R.S. The primary purpose of the one year winding up period is for the purpose of coming to closure on issues regarding licensure and disciplinary actions. Since there are no licensure provisions within the Office of Regulatory Reform, the wind-up period is not needed.

BACKGROUND

The Office of Regulatory Reform (ORR) is scheduled to terminate on July 1, 1997 unless continued by the General Assembly (§24-34-104, C.R.S.). The purpose of this Sunset Review is to evaluate the performance of the ORR based on statutory evaluation criteria which are attached as Appendix A of this report. During the year prior to the sunset date, it is the responsibility of the Department of Regulatory Agencies to conduct a sunset review and evaluation of that regulatory program.

During this review, the Office of Regulatory Reform must demonstrate that there is a need for the continued existence of the program. The Department's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly.

The Sunset Review process includes an analysis of the statute and interviews with state authorities, professional and trade associations, local and federal government officials, and the ORR staff. Advisory committee meetings and small business seminars were attended. Every effort was made to elicit information and comments from interested parties.

It should be noted at the outset that the Office of Regulatory Reform has a significantly different mission than other statutory programs normally reviewed in the sunset process. The ORR does not regulate any business or occupational group nor does it promulgate rules and regulations. For this reason, not all of the sunset criteria shown in Appendix A are applicable to this report.

The Office of Regulatory Reform was established in 1981 within the Department of Regulatory Agencies (Department). The Office was created as the result of a study conducted by the Department and funded by the now defunct Four Corners Regional Commission which analyzed business permitting and license requirements, potential areas of regulatory reform and means of making regulatory information available to businesses. Sunset reviews were conducted in 1982, 1986, and 1990 and each review recommended the continuation of the Office. Since ORR's commencement in 1981, the General Assembly and the Governor have added to its responsibilities.

For example, shortly after Governor Romer took office, he established several major initiatives to foster business growth and development in Colorado. On December 10, 1987, the Governor issued an Executive Order pertaining to minority business opportunities which established the Office of Certification to be located and administered as an Office of the Governor in the Office of Regulatory Reform in the Department of Regulatory Agencies.

In addition, in 1988, legislation was passed that directed the Advisory Committee of the Office of Regulatory Reform to hear and review the complaints of any person who believes that a state agency has violated any provision of §24-113-105, C.R.S., pertaining to state government competition with private enterprise. In addition, the ORR was designated as the office to house the State Small Business Ombudsman for stationary source clean air issues under SB 92-105, "Colorado Pollution Prevention and Clear Air Act," which implemented the 1990 federal Clean Air Act Amendments (CAAA).

SUMMARY OF STATUTE

Section 24-34-903, C.R.S., authorizes the creation of the Office of Regulatory Reform within the Office of the Executive Director of the Department of Regulatory Agencies. The Director of the Office of Regulatory Reform is appointed by, and subject to removal by, the Executive Director of the Department of Regulatory Agencies.

Statutory references to the Office of Regulatory Reform are found in the following sections of the Colorado Revised Statutes:

1. §24-34-901, C.R.S., et. seq., authorizing the creation of the Office of Regulatory Reform.
2. §24-4-103.5, C.R.S., requiring the ORR to conduct “regulatory flexibility” analyses on new rules and regulations that impact small business.
3. §25-7-109.2(5), C.R.S., authorizing the air quality Ombudsman for small business stationary sources to reside in ORR.
4. §24-113-105, C.R.S., directing the Advisory Committee of the ORR to hear and review complaints concerning state government competition with private enterprise.

Enabling Legislation

The Legislature created the Office of Regulatory Reform to assist commercial or non-profit business projects by providing comprehensive business permit information that would allow new businesses to comply with government rules and regulations quickly and efficiently. The ORR was to provide guidance through the regulatory process, to make recommendations which would simplify and coordinate permit processing and review, and to make recommendations to eliminate unnecessary and duplicative regulation.

Power and Duties

Pursuant to §24-34-904 and §24-34-913, C.R.S., as amended, the Office of Regulatory Reform is mandated to provide the services listed below:

- To provide comprehensive information on the federal, state and local requirements necessary to begin a business and to make this information available to the public;
- To develop master application procedures to expedite the permitting process;
- To assist applicants in obtaining timely permit review;
- To consolidate required hearings when feasible and advantageous;
- To convene preapplication conferences during the early stages of the applicant's business planning;
- To encourage and facilitate the participation of the federal, state, and local government agencies in permit coordination;
- To hold hearings or to have the Advisory Committee hold hearings to elicit public comment on business regulation;
- To conduct reviews of permit requirements and the need by the state to require such permits and to use such reviews to prepare recommendations for appropriate agencies;
- To conduct reviews of business paperwork requirements and to eliminate unnecessary forms, combine duplicate forms and simplify language therein;
- To annually report to the General Assembly on the cost effectiveness of the Office and make recommendations to the General Assembly and the Governor concerning the elimination of unnecessary and antiquated permit requirements, the consolidation of duplicative permit requirements, the simplification of permit application procedures, the expedition of time consuming agency reviews and approval procedures and other improvements in the permitting process;

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- To undertake, with respect to rules affecting small business, the regulatory flexibility analysis discussed in §24-34-913; C.R.S. (This is the analysis of new rules and regulations to see if they unfairly burden small business);
 - To appoint an Advisory Committee to assist it in performing its duties; and
 - To review, analyze, and evaluate the necessity of mandatory continuing education for any profession or occupation whose practice requires a state of Colorado license, certificate or registration. This provision is not applicable to any profession or occupation that had mandatory continuing education as of July 1, 1991.

Section 25-7-109.2(5), C.R.S., authorizes the Ombudsman for small business stationary sources to reside in the Office of Regulatory Reform. The duties and responsibilities of the Ombudsman are detailed in §24-34-904(o), C.R.S., below:

- To provide assistance to small businesses in the implementation of the federal "Clean Air Act Amendments of 1990" in the framework of a clean air Ombudsman as follows:
 1. Disseminate information to small businesses and other interested parties about the federal Clean Air Act Amendments of 1990;
 2. Participate in and sponsor meetings and conferences;
 3. Periodically review with trade associations and small business representatives the work and services performed by the state small business technical and environmental compliance program;
 4. Periodically report to the General Assembly regarding Title V of the federal Clean Air Act and its impact on small businesses and conduct studies to evaluate the impact of Title V on the state's economy;
 5. Facilitate and promote participation of small businesses in the development of rules and regulations for the federal Clean Air Act and the Colorado Air Quality Control Act;

6. Investigate and facilitate resolution of complaints and disputes regarding permit program issues from small businesses against state and local air pollution control authorities;
7. Contract with a private vendor to conduct a study to determine the best way to market the assistance that is available for small businesses in this program;
8. Serve as ex officio representative to the state compliance advisory panel;
9. Conduct periodic independent reviews and evaluations of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program;
10. Arrange for and assist in the preparation of guideline documents by small business stationary source technical and environmental compliance assistance program and ensure that the language is readily understandable to the lay person;
11. Work with trade associations and small businesses to bring about voluntary compliance with regulations under the Clean Air Act; and
12. Conduct an economic analyses of all air pollution control measures on stationary sources, in coordination with the Department of Public Health and Environment, Air Pollution Control Division beginning in the year 2000 and every five years after that, pursuant to §25-7-110.5(4), C.R.S.

Other portions of ORR's legislation empower the Office to request assistance from other government bodies and to accept and expend moneys from sources other than the State of Colorado (§24-34-905(2), C.R.S.). The Office also is directed to provide information on its services free of charge to local governments and the public at large (§24-34-907, C.R.S.). Section 24-34-908, C.R.S., provides that the ORR may confer with and assist an applicant in obtaining permits and may also work with other agencies and government entities to coordinate the processing of the application. This assistance may also take the form of informal conferences, consolidated hearings, contracted services as specifically provided in §24-34-909, 910, and 911, C.R.S., respectively .

Rule-Making Affecting Small Business

Section 24-34-913, C.R.S., defines the role of the ORR as a regulatory flexibility analyst and outlines the method of reviewing rules that affect small businesses. During the rule review process, the ORR has many options available when examining the proposed rules. The Office may recommend the elimination, consolidation, or amendment of existing rules and coordinate between agencies to consolidate and simplify rules and reporting requirements. The ORR may also comment at the public hearing on the effect on small businesses of proposed rules.

The Office of Regulatory Reform is empowered by §24-34-913, C.R.S. to notify the General Assembly of any proposed rules that are unnecessary for the administrative functions of an agency. The General Assembly has the authority to review such rules and to introduce legislation that rescinds or deletes the rules.

Section 24-4-103.5, C.R.S., requires that an agency making a rule that will affect small businesses shall submit such proposed rule to the Office of Regulatory Reform not less than ten days before notification of proposed rule-making.

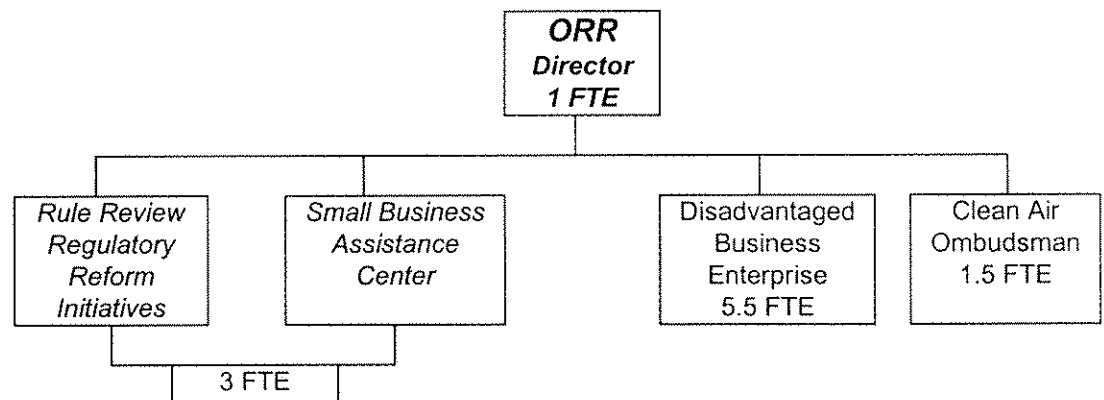
State Agency Competition

Section 24-113-105(1), C.R.S., allows any person who believes that a state agency has violated any provision of the unfair competition statute to file a written complaint with the Advisory Committee to the Office of Regulatory Reform stating the grounds for such a complaint. The Advisory Committee must review the complaint and issue a report of its findings to the complainant and the state agency.

PROGRAM DESCRIPTION & ADMINISTRATION

Recent legislation and administrative changes have further altered the structure of the Office of Regulatory Reform (ORR). The organization described in this review reflects the Office of Regulatory Reform's functions and missions through July, 1996. Various organizational changes will be discussed later in the report.

The legislation enumerating the powers and duties of the Office of Regulatory Reform are found in §24-34-901, C.R.S., et. seq. and is discussed in Chapter 2 of this sunset review. The ORR is located within the Office of the Executive Director of the Department of Regulatory Agencies, where it was created as a Type II transfer pursuant to §24-1-122(1.1), C.R.S., and §24-34-903, C.R.S. The ORR is presently staffed by 11 FTE and has more than doubled since the Office was created in 1981. The organization of the Office of Regulatory Reform is illustrated below:



The primary purpose of the Office of Regulatory Reform is to assist small business owners by participating in the following functions. Each component is described in detail below.

- Small Business Assistance Center
- Rule and Regulation Review
- Variance Requests
- Paperwork Reduction
- Small Business Ombudsman
- Disadvantaged Business Enterprise Certification

Small Business Assistance Center

The Small Business Assistance Center (SBAC) offers both telephone and personal walk-in assistance for answering questions, and providing referrals, to persons wishing to start or expand a business.

SBAC is one of the many state's governmental programs that began during the 1980s and early 1990s to specifically target economic development in the State of Colorado. About fourteen different economic development programs have been created by statute, gubernatorial directives, or federal mandates. Although most of the programs listed below were created during the 1980's, no mechanisms were initiated to categorize them as economic development programs or to oversee them as a group until 1989. At that time, the General Assembly required (via §2-3-1401, C.R.S.) the Governor's Office to create an economic development strategic plan and a report outlining the progress of the State's economic development programs.

The various programs that were created in statute, by the Governor or through federal mandates, are listed below.

Program/Division	Year Created	Statute or Authorizing Authority
Office of Regulatory Reform	1981	§24-34-901, C.R.S.
Tourism Board	1983	§24-32-1301, C.R.S.
Customized Training	1984	§23-60-306, C.R.S.
Colorado Advanced Technology Institute	1984	§23-11-101, C.R.S.
Enterprise Zones	1986	§39-30-101, C.R.S.
Economic Development Commission	1987	§24-46-101, C.R.S.
International Trade Office	1987	§24-47-101, C.R.S.
Small Business Development Centers	1988	Federal Law
Office of Economic Development (later re-created as the Office of Business Development)	1988	Governor Directive
Office of Business Development	1990	§24-48.5-101, C.R.S.
Minority Business Office	1990	§24-49.5-101, C.R.S.
Economic Development Advisory Board	1990	§24-49-101, C.R.S.

Beginning in 1989, in an effort to identify the total financial impact of various economic development programs, the General Assembly appropriated all funds for economic development to the Department of Local Affairs, although various other departments and agencies actually administer many of the programs. Funds are then moved from the Department as cash fund transfers to the administering agencies. For example, the appropriation for the Office of Regulatory Reform is made to the Department of Local Affairs as general funds that are then transferred to the Department of Regulatory Agencies where the ORR is organizationally located.

The Small Business Assistance Center is jointly staffed by the ORR, the Office of Business Development, and the Taxpayer Service Division of the Department of Revenue. The goal of the Center is to provide a single point of contact (one stop walk-in center) containing all relevant information available from government agencies currently needed by interested businesses and citizens with emphasis on equal availability to all users. The Center provides federal, state, and local permitting and licensing information to assist new and expanding businesses in meeting government requirements. The Center provides walk-in service for trade name registration, state sales tax licenses, and wage withholding accounts. The Center operates a toll-free information hotline for persons desiring assistance in starting a new business. The Office holds public meetings throughout the state to receive comments from business owners about regulations and to help identify areas of duplicative, burdensome, and unnecessary requirements.

The Small Business Assistance Center, previously housed within the Office of Regulatory Reform, was relocated in July of 1996. The Center is now physically housed within the Office of Business Development but is still organizationally located and managed by the Office of Regulatory Reform. The purpose of this reorganization was to improve the coordination, effectiveness, and accountability of the state's economic development programs by placing them under one director. Another goal was to reduce duplication of efforts and functions among state programs. The potential problems associated with this organizational structure are discussed in the Recommendations Section of this report.

Rule and Regulation Review

ORR reviews proposed state agency rules and regulations to determine whether they adversely affect small business. The Office also makes recommendations to better adapt the state's regulatory structure to the needs of small business.

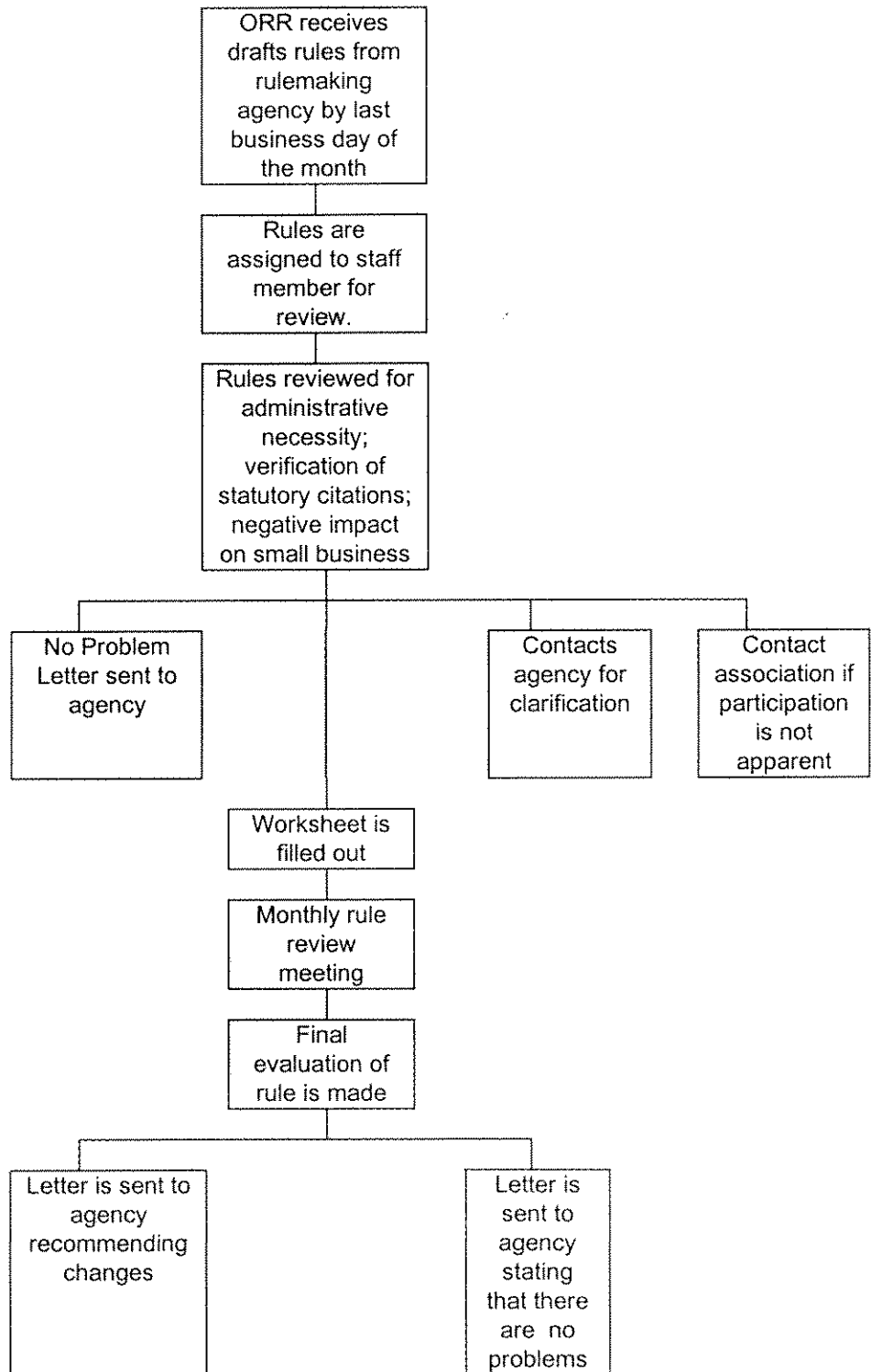
Agencies throughout Colorado state government are continually promulgating rules to better administer the statutory provisions of various programs. An agency making a rule that affects small businesses is required to submit the proposed rules to the Office of Regulatory Reform not less than ten days before publication of the notice of proposed rule-making. The notice of rule-making must include a copy of the draft rules and the date, time, and location of the rule-making hearing.

ORR reviews proposed and amended rules for two distinct purposes. First, they are analyzed to ensure they are not overly burdensome on small businesses pursuant to §24-4-103.5, C.R.S., and §24-34-913, C.R.S. Secondly, rules are reviewed for administrative necessity pursuant to §24-34-914, C.R.S. The Office reports in their annual review that these efforts are beneficial from at least two perspectives. Regulated businesses are better served by regulations that are easily understood and not unnecessarily burdensome or costly. In addition, agencies operate more efficiently when they do not allocate resources to conduct unnecessary rule-making hearings or to enforce rules which do not provide meaningful regulation.

After the rule is reviewed for its negative impact on small business and its administrative necessity, the statutory citations are verified. Next, the sponsor, director, or division administrator is contacted to clarify any questions regarding the proposed rule.

If the rule does not indicate trade association participation, the appropriate association is contacted. A rule review worksheet that summarizes the review process is subsequently filled out. A monthly review meeting is held and participants discuss their individual findings and receive feedback from other members of the group. During this session there are often additional concerns raised which are then investigated. After final evaluation of the rule and determination that there is a conflict, a letter is sent to the agency recommending changes. Once the ORR submits their recommendations to the agency, the agency can decide whether to incorporate or disregard these recommendations. There is no requirement that the agency must adopt recommendations from the Office of Regulatory Reform. The chart on the following page illustrates the rule review process.

Rule Review Process



Variance Requests

The Office of Regulatory Reform represents the Department of Regulatory Agencies on the Consumer Protection Division of the Department of Public Health and Environment's variance request appeals panel. This panel consists of three members: one representative from the Department of Public Health and Environment, one county health official; and one representative from the Office of Regulatory Reform. The panel reviews appeals generally submitted by restaurant owners who believe that state regulation is unnecessarily burdensome.

Paperwork Reduction

Pursuant to §24-34-904(1)(l), C.R.S., the ORR is required to conduct reviews of business paperwork requirements and eliminate unnecessary forms, combine duplicate forms, and simplify language.

Small Business Ombudsman

The Small Business Ombudsman (Ombudsman) provides support assistance to small businesses in complying with the requirements of the Federal Clean Air Act Amendments (CAAA) of 1990. Section 507 of the CAAA '90 mandates that each state create a Small Business Stationary Source Technical Assistance and Environmental Compliance Program to aid small businesses with their requirements under the CAAA '90. This Compliance Program is comprised of three separate parts: Small Business Assistance Program (SBAP), Small Business Ombudsman (Ombudsman), and Compliance Advisory Panel (CAP). The SBAP provides technical assistance and the Ombudsman provides advocacy assistance. The CAP, made up of a non-governmental body, is to provide oversight to both the SBAP and the Ombudsman.

In 1992, the Colorado General Assembly adopted SB 92-105 implementing the 1990 Federal Clean Air Act Amendments. The Colorado Clean Air Act (through Senate Bill 92-105) requires the Air Pollution Control Division, Stationary Sources Program to establish a Small Business Assistance Program (SBAP) and requires the Office of Regulatory Reform to serve as the Small Business Ombudsman (Ombudsman). There are no federal funds appropriated to the Ombudsman program. This program is paid for through fees charged to stationary sources that emit pollutants. The table below illustrates the funding appropriated to the Ombudsman program through the Colorado Department of Public Health and Environment (CDPHE).

Table 1: Funding Appropriated for the Small Business Ombudsman Program

	FY 92-93 Actual	FY 93-94 Actual	FY 94-95 Actual	FY 95-96 Actual
Total funds	\$80,496	\$90,765	\$88,019	\$93,235
General funds				
Cash funds	\$80,496	\$9,654		
Cash Exempt*		\$81,111	\$88,019	\$93,235
FTE	1.5	1.5	1.5	1.5

*Cash exempt funds are through the Department of Local Affairs and funded by the Stationary Sources Cash Fund.

During the passage of Colorado's Air Pollution Control Act, the General Assembly determined that the Health Department was the appropriate department to handle technical assistance for small businesses, but not to be an advocate for small businesses. Industry felt it was inappropriate for the Health Department that regulates industry to also be an advocate for small businesses with air regulatory issues. Since the ORR already had statutory authority as an advocate for small businesses in other areas, adding another arena, clean air, was suitable. Therefore, the duties of the Small Business Clean Air Ombudsman were added to the ORR.

A Memorandum of Understanding was signed in February, 1996 between the Office and Regulatory Reform and the Colorado Department of Public Health and the Environment, Air Pollution Control Division, Stationary Sources Program. This memorandum details the mission of the Small Business Assistance Program (SBAP) and the Small Business Ombudsman, and describes how the SBAP is to provide direction, technical assistance and compliance information to the small business community regarding clean air regulations. The purpose of the SBAP is to assist in determining type and quantity of air pollutants emitted, to help in identifying ways to reduce air pollution through waste reduction, to assist with air quality permit applications, and to provide air pollution technology information.

The Ombudsman's mission is described as providing independent, neutral information and dispute resolution assistance to small businesses regarding clean air regulations. Working cooperatively with the SBAP, the role of the Ombudsman is to assist in cutting government red tape; to work with businesses to develop, modify or repeal policies to support small businesses in their efforts to meet the goals of the Clean Air Act; and to help in resolving disputes between small business and the regulating authorities.

Disadvantaged Business Enterprise Certification Program

The Office of Regulatory Reform administers the Disadvantaged Business Enterprise (DBE) certification program. The DBE program is available to for-profit businesses seeking to be certified as contractors, consultants or suppliers for the Colorado Department of Transportation, Regional Transportation District (RTD), Denver Water Board, City of Greeley, and the City of Colorado Springs. Federal law sets forth criteria for certifying that certain businesses are eligible for contracting preferences. In awarding contracts which provide for the use of federal or state moneys, businesses must be certified according to federal requirements.

DBE's purpose is to maximize business opportunities for minority and women owned businesses. In its most simple terms, a DBE is defined as a business that is at least 51% owned and controlled by one or more minorities or women. A DBE must also be a small business as defined by the Small Business Administration and U.S. Department of Transportation.

In 1987, Governor Romer established a Minority Business Opportunities Task Force to consider appropriate options to maintain and expand economic opportunities for minority businesses. Pursuant to the task force report, the Governor created a Minority Business Office as an Office of the Governor to be located as part of the statewide economic development initiatives and administered within the Department of Local Affairs. In addition, he established an Office of Certification administered as an Office of the Governor within the Office of Regulatory Reform to certify legitimate minority businesses.

The Colorado Department of Transportation requested approval from the Federal Highway Administration to use the certification funding for the Office of Certification. The Office of Certification (Office) was also directed to work with the Department of Administration and the Department of Local Affairs to identify additional resources to expand the certification functions of the Office to non-highway contracting. The Office was directed to investigate and make recommendations for establishing the Office as a cash funded office providing centralized certification services in the State of Colorado for the State, its political subdivisions, and other governmental entities which might wish to employ the services of the Office. Expenditures for the Office of Certification are illustrated on the chart below.

Table 2: Office of Certification Expenditures

Fiscal Year	Cash Funds	Cash Funds Exempt*	Total Expenditures
1990-91	\$174,298	-0-	\$174,298
1991-92	\$194,368	-0-	\$194,368
1992-93	\$224,815	-0-	\$224,815
1993-94	\$31,180	\$175,641	\$206,821
1994-95	\$33,513	\$188,260	\$221,773
1995-96	\$36,033	\$174,315	\$210,348

*Cash exempt funds are federal funds passed through the Colorado Department of Transportation (CDOT).

OFFICE OF REGULATORY REFORM ADVISORY COMMITTEE

Mission and Make-Up

Pursuant to §24-34-904(1)(l)(1), C.R.S., the Office of Regulatory Reform (ORR) is required *“to appoint an advisory committee to assist in the performance of its duties.”*

The Office of Regulatory Reform's duties include:

- Providing comprehensive information on the federal, state, and local requirements necessary to begin a business and to make this information available to the public;
- Developing master application procedures to expedite the permitting process;
- Assisting applicants in obtaining timely permit review;
- Consolidating required hearings when feasible and advantageous;
- Convening preapplication conferences during the early stages of the applicant's business planning;
- Encouraging and facilitating the participation of federal, state, and local government agencies in permit coordination;
- Holding hearings, or having the Advisory Committee hold hearings, to elicit public comment on business regulation;
- Conducting reviews of permit requirements and of the need by the state to require such permits and to use such reviews to prepare recommendations for appropriate agencies;
- Conducting reviews of business paperwork requirements and eliminating unnecessary forms, combining duplicate forms, and simplifying language therein;

-
- Annually reporting to the General Assembly on the cost-effectiveness of the office and making recommendations to the General Assembly and the governor concerning:
 - elimination of unnecessary and antiquated permit requirements;
 - consolidation of duplicative permit requirements;
 - simplification of permit application procedures;
 - expedition of time-consuming agency reviews and approval procedures; and
 - other improvements in the permitting process.
 - The office shall impartially review evidence, analyze and evaluate proposals, and report in writing to the General Assembly whether mandatory continuing education would likely protect the public served by the practitioners.

The Office of Regulatory Reform's statute does not specify membership or term limits for members of the Advisory Committee. The current committee was appointed by the previous ORR director, and has served the office for more than three consecutive years.

The committee is comprised of various business representatives who, in addition to managing their individual firms, also represent various councils and chambers throughout Colorado. They include:

- Aurora Chamber of Commerce;
- Black Chamber of Commerce;
- Boulder Chamber of Commerce;
- Denver Chamber of Commerce;
- Hispanic Chamber of Commerce;
- Small Business Development Centers in eastern Colorado;
- Colorado Retail Council;
- Colorado Association of Commerce and Industry;
- West Chamber of Commerce;
- Metro North Chamber of Commerce;
- Pueblo Chamber of Commerce; and
- East Central Council of Governments.

The Advisory Committee's mission is to "create a climate in which small business can succeed and contribute to the economic well being of the State of Colorado." This mission is to be accomplished by "assisting ORR in its small business assistance, advocacy and certification by providing small business input into rules and regulations, acting as a resource to staff in the small business community on the small business issues and acting as the initial decision maker in government competition hearings."

Pursuant to §24-113-103, C.R.S. and §24-113-105, C.R.S., the Advisory Committee is required to hear cases in which small businesses have claimed unfair competition by state agencies. Although the committee has no enforcement authority in cases where they find unfair competition, it is required to send a letter to the agency stating its findings. Additionally, the Advisory Committee is statutorily required to review and approve projects, studies and procedures which the Office of Regulatory Reform wishes to carry out using non-state monies such as those received by Regional Transportation District (RTD) and the Denver Water Board. (§24-34-905(2), C.R.S.)

Meetings and Expenditures

The Office of Regulatory Reform Advisory Committee has met 8 times since July, 1995. The following are dates of meetings and number of members present (from minutes that were submitted by ORR):

<i>Date of Meeting</i>	<i>Number of Members in Attendance</i>
July 1995	9
August 1995	10
September 1995	11
October 1995	8
November 1995	9
December 1995	9
January 1996	8
April 1996	10

Members do not receive per diem, travel, or other compensation for serving on this committee. The Advisory Committee normally holds meetings from 11:00 a.m. to 2:00 p.m., with the ORR providing lunch. Other than lunch expenses for the 6 meetings in 1995 and the 2 meetings in 1996, totaling \$834.00, the Advisory Committee has incurred no expenses.

Committee Accomplishments and Goals

Accomplishments of this Advisory Committee may best be gathered by examining the reasons for continuing the Advisory Committee submitted by the ORR, by reviewing minutes of Advisory Committee meetings and by discussion with Advisory Committee members.

ORR identified the following accomplishments within its reason for continuing the Committee:

1. Assisting in acquisition of equipment to facilitate the legislative fax network;
2. Participation in the 1994 Small Business Statehouse Conference; and
3. Presentation of issues to the business community.

Following is information obtained from minutes of meetings of the Advisory Committee:

In 1995, the Advisory Committee held a continuous quality improvement workshop to develop their goals and objectives. A review of minutes from the December 13, 1995 meeting indicates that the following goals and objectives were adopted:

- Ensure continued support of the functions of the ORR by taking a proactive role in the possible streamlining of all state economic development offices;
- Facilitate the awareness and use of the unfair competition resources of the advisory council;
- Ensure small business interests are represented in the formulation of legislation, rules and regulations, and the regulatory reform task force;
- Be a communication link between the ORR and small business, including the Chambers of Commerce, associations and other affiliations;

- Facilitate the awareness and use of the ORR by the small business community; and
- Support the ORR in becoming the national leader for DBE certification and registration.

Other items addressed at meetings include:

- Upcoming meetings, seminars, and conferences which affect small businesses;
- Handouts, flyers, and informational packets were distributed to the members and they were asked to present this information to their organizations and respective Chambers of Commerce;
- Advisory Committee members were informed that the Business-Start-Up Kit was available on the World-Wide Web. Additionally, forms from the Occupational Safety and Health Administration, Department of Labor and Employment, and Department of Revenue are also available on line;
- Members were updated on the activities of the ORR, including the Clean Air Ombudsman and the Regulatory Reform Task Force;
- Members were asked to participate on a business task force which was charged with submitting a report to the JBC concerning Alternative Dispute Resolution. (*The Committee felt that a Whitehouse Conference delegate would be best to serve on that task force.*); and
- Two members volunteered to give presentations on the Advisory Committee and what it does at the Rural Development Council Service meeting in September 1995. (*One member gave a presentation at that conference.*)

Although the Committee members were solicited on a couple of occasions for input regarding Clean Air Ombudsman task force issues, conversations with the ORR staff and a review of their minutes do not reflect that input had been given.

As part of this review, Committee members were interviewed regarding a variety of subjects including the overall usefulness of the committee. Members were somewhat divided in their response. Four of the 12 members recommended termination of the Committee. Most reported that the Committee was more effective in the past than now.

Reasons For Continuing The Advisory Committee

The following reasons were submitted by the ORR in support of the continuation of the Office of Regulatory Reform Advisory Committee:

"The Advisory Committee of the Office of Regulatory Reform was created in response to 24-34-904 (1) C.R.S. According to this statute, the director of the Office of Regulatory Reform is to appoint an Advisory Committee to assist in the performance of its duties. The Committee also serves as the authoritative body for addressing unfair competition issues throughout state government."

"The Committee has been instrumental in accomplishing monumental tasks for the Office of Regulatory Reform. Some examples include the influence of the council in acquiring for ORR's use, the equipment necessary to begin and sustain the legislative fax network. The committee also propelled the legislature to provide necessary funds for the phone and customer service systems needed to further the ability to provide beginning small businesses, in and outside of Colorado, information in a timely and efficient manner."

"The Committee has and continues to be a major resource for the Office of Regulatory Reform. In an office where FTEs are a rare commodity, and individual responsibilities of the staff continue to increase, the committee has filled the gap. They are willing to host hearings in their geographical regions, organize meetings, and provide much needed information to the office on a completely volunteer basis."

"This Committee played a major role in the success of the Small Business Statehouse Conference in 1994. During this conference the legislative fax network became an issue, and later a reality. Therefore, without budgeted funds to undertake such an endeavor, the Committee successfully identified the need, provided the rationale, and successfully lobbied for the funds."

"In addition, and more importantly than all the above, the Committee provides one primary service which the Office of Regulatory Reform considers invaluable . . . their ability and flexibility to present the issues to the small business community. It places ORR in a precarious position, at best, to assume it can or should rally the small business community for or against an issue presented by another state agency. At best, this could be considered lobbying; at worst, coercion. Both are implied prohibitions. The Committee is not constrained by such political and bureaucratic barriers. These individuals are intimately aware of the issues and legislation affecting the small business community and can, by virtue of their representation reach large segments with recommendations for action. This same representation affords the Office opportunities to address various issues potentially impacting them."

"The Corporation for Enterprise Development published its Development Report Card for 1996 on July 11. Colorado received straight A's in Economic Performance overall, and in addition the study concluded that Colorado was second in the increase in new company formations and sixth in new business job growth. While the study did not specify what percentage of this growth was through small business development, it is safe to say it was significant. It is therefore, extremely important for these businesses to be represented in state government and have the voice of ORR leadership at the capitol and the Advisory Committee members in the community."

"All of this describes the necessity of the Committee. However, it is possible for fewer individuals to serve as active members to achieve these accomplishments. It is also possible for ORR to be as effective by appointing special committees or as-needed committees to accomplish the goals and objectives of the office."

"Unfair competition is a important but rarely argued issue before the committee. When this issue arises, a special committee could be appointed to address it."

Analysis

The Office of Regulatory Reform Advisory Committee was established to assist the Office of Regulatory Reform in the performance of its duties. However, without submission of a listing of proposals and their status, this review relies upon the minutes of the meetings and Office of Regulatory Reform Annual Reports.

Prior to 1994, the Advisory Committee members hosted 10 hearings prior to the Statehouse conference to elicit comments on business regulations. These hearings were held in conjunction with small business development centers and the various chambers of commerce. There have been no hearings held within the last two years.

The goals adopted at the last meeting of the Committee closely mirror the statutory duties of the Office of Regulatory Reform. Additionally, a review of the minutes from the last two years reveal that the Committee had not advised the ORR on rules, regulations, legislation or any of the other of the various duties of the ORR. Prior to FY 1994/95, the Committee was very active in the rule review process of ORR.

It is very important that small businesses throughout Colorado are informed about changes in rules, regulations, and laws that will affect them. As mentioned earlier in this review, Committee members are asked to take back information to their respective chambers and disseminate via newsletter, announcements, etc. However, there is no indication that this has been accomplished.

One of the primary functions of this Committee is to conduct hearings on Private Enterprise Competition (§24-113-103, C.R.S.); and State Agency Competition (§24-113-105, C.R.S.) However, there have been no cases heard in the last 6 years. There were 2 cases which were heard by the Committee prior to 1990. If the Committee were to find an instance of unfair competition, they are only authorized to inform the agency by letter of their findings. There is no enforcement authority in statute.

Another duty of this Committee is to approve all projects, studies or procedures the Office of Regulatory Reform wishes to undertake using **non-state monies**. Since FY 1994, approximately \$56,500 in such funds have been received by the Office of Regulatory Reform. A review of the minutes from the last two years shows that the Committee was not approached for approval of any projects. This money has always been spent on the production of the Small Business Start-Up Kit.

Although the original intent of the General Assembly when creating this Committee is commendable, the burden of proving that this Committee is vital in carrying out the Office's duties has not been met. In order to inform small businesses of needed information, the ORR could compile a listing of chambers and organizations and send the information out or place necessary information on the Internet.

Recommendation

The General Assembly should allow the Office of Regulatory Reform Advisory Committee pursuant to §24-34-904(l)(l), C.R.S. to Sunset on July 1, 1997.

SUNSET ANALYSIS

Although the Office of Regulatory Reform has many diverse functions, its primary purpose is the promotion of small business in Colorado. The concept that one small office in a single part of state government would have as its responsibility the power to review and comment on the rules and regulations of all state agencies that pertain to small business is unusual. ORR's duties routinely require it to review areas which are the province of other parts of government.

ORR was originally conceived of as a "one stop" office where small business owners could go in order to find out what government required of them and to meet those requirements. This goal has been achieved through the Small Business Assistance Center and the Small Business Hotline which offers a wide range of information to new and expanding businesses.

During its first ten years, the Office of Regulatory Reform had a strong directive to aggressively pursue regulatory reform issues. The emphasis of the Office changed in 1990 when the ORR moved to an expanded facility where it was able to develop a "one-stop" walk-in business assistance center. A majority of the energy and resources of the Office was directed to the Small Business Assistance Center. Since the Center required additional resources due to significant demand, regulatory reform functions were not the subject of further focus by the Office of Regulatory Reform.

Because of the complexity of the various functions of the Office of Regulatory Reform, for the purpose of this analysis, they have been divided into three categories:

- information functions
- assistance functions
- suggestions for reform

An analysis of these functions was performed to determine whether the ORR is performing its duties efficiently and effectively.

Information Functions

Small Business Assistance Center

ORR provides information in a variety of ways. The Small Business Assistance Center is an excellent resource for the small business owner to obtain all relevant information available from government agencies currently needed to assist with new and expanding businesses. The demand for services and resources of the Small Business Assistance Center has remained steady from 1990 through 1996. Fiscal year 1992-93 saw a 15% increase in inquiries from fiscal year 1991-92. An example of the growth of the Small Business Assistance Center is illustrated by the increased walk-in business from approximately 480 in 1989 to 27,367 a year during FY 1994/95. In addition, 9,433 calls were received through the toll free hotline in FY 1994/95.

Improvements (such as the installation of a computer database that provides an improved method of tracking contacts, and that allows for follow-up surveys to gauge customer satisfaction) were established in 1994. In FY 1995/96, the ORR received a general fund authorization to upgrade and improve the Center's phone sequencing and customer service systems. The phone sequencing system gives the customer the option to listen to recorded answers for commonly asked questions and allows them the ability to leave voice mail messages when the staff of the Center are not immediately available. The changes to the customer service system have enabled the staff to better provide service and information to their customers.

A less obvious but important informational function performed by the ORR is that of information courier to the small business community. Information is provided to small businesses by delivering speeches, co-sponsoring the Small Business Day at the Capital, and holding public meetings around the state. The ORR has established itself as an information link between the state government and the business community.

The table below illustrates the constant demand for services provided by the Small Business Assistance Center.

Table 3: Small Business Assistance Center Activity

<i>Fiscal year</i>	<i>1991-92</i>	<i>1992-93</i>	<i>1993-94</i>	<i>1994-95</i>
Telephone hotline	47,443	52,905	51,815	49,443
Total walk-ins	17,906	22,388	27,168	27,367
Total correspond.	544	434	929	538
Total inquiries	65,893	75,727	79,912	77,348

No criteria have been established to measure the effect of the Small Business Assistance Center on Colorado's economic growth. There exists too many nonmeasurable factors involved in the success or failure of a business to determine whether the outcome is directly affected by the assistance received at the Small Business Assistance Center. What can be measured is the demand from the small business owner for services provided by the Center and the level of customer satisfaction. The Small Business Assistance Center conducted a survey of walk-in customers to evaluate customer satisfaction. One thousand taxpayers were selected randomly from all who visited the office during the month of June, 1994. Surveys were distributed by mail in July. The following is a brief summary of the 245 survey responses.

Small Business Assistance Center - Customer Satisfaction Survey

<i>Type of Customer</i>	<i>Number of Customers</i>
New Business	206
Existing Business	22
Non-Business Taxpayer	8
Professional Consultants	7

<i>Reason for Visit</i>	<i>Number</i>
New Business Start Up	137
Open New Business Account(s)	122
Income Tax Assistance	22
Existing Account Assistance	13
Financing Information	3
Legal Assistance	3
Management Assistance	2
Marketing Information	2

Were your questions answered to your satisfaction?

Yes	226
No	19

Was the information/assistance you received accurate/result?

Yes	226
No	19

Did you receive courteous, professional service?

Yes	216
No	29

Do you feel you were waited on in a timely manner?

Yes	198
No	47

What was your overall impression of the office?

No Response	2
(1) Very Negative	2
(2)	9
(3)	9
(4) Neutral	41
(5)	66
(6)	73
(7)Very Positive	40

Overall, clients of the Small Business Assistance Center rated the services as good. Most customers felt that their questions were answered in a timely and courteous manner. The information received was both accurate and useful.

Assistance Functions

One of the Office of Regulatory Reform's primary purposes is to assist small businesses by identifying and eliminating duplicative, burdensome and unnecessary regulations. During 1990, 1991 and the early part of 1992, the Office successfully eliminated burdensome regulations. For example, the ORR participated in the passage of legislation that allows the Insurance Commissioner greater flexibility in regulating workers' compensation rates and places limits on claims. Also, in cooperation with the Department of Labor and Employment, the ORR created a method for officers of corporations without additional employees to exempt themselves from workers' compensation insurance. Another accomplishment was the passage of legislation that places limits on the amount an insurer may increase small group rates for health insurance in any one year and gives employees some protection from losing coverage due to a pre-existing condition if an employer changes carriers. In addition, the ORR participated in legislation that streamlined and standardized state purchasing by establishing a database of purveyors. However, there has been very little effort by the ORR since 1992 to eliminate burdensome regulations.

Small Business Ombudsman

The office of the Small Business Ombudsman has undergone continuous changes since its inception in 1992. In the first year, the Ombudsman spent most of the time working with the subcommittee formed to set up the Small Business Assistance Program in Colorado. During 1993 and 1994, the Ombudsman performed many functions not required by statute by helping with the Small Business Assistance Center telephone hotline service and walk-in assistance service. In 1995, it was decided that the non-Ombudsman functions being performed should be assigned to other ORR staff. Subsequently, the Ombudsman could concentrate solely on air quality issues affecting small businesses.

The 1996 Memorandum of Understanding between the Ombudsman and the Small Business Assistance Program is a positive step towards cooperation between the two programs. Its purpose is to provide small businesses with accurate and prompt information about how to comply with air quality regulations. This will be accomplished through outreach to the regulated and small business community (pamphlets, booklets, workshops, and one-to-one assistance for small business owners), by providing pollution prevention information, and by training and networking with the business community and government agencies. The two entities will create a mutual work plan; share information and knowledge gained through workshops, seminars, and classes; and inform each other about upcoming internal policy changes.

Traditional ways of measuring success do not always apply to the Office of the Ombudsman. It is very difficult to measure the success of this program because indicators may not be reliable. The Office of the Ombudsman can count the number of phone calls, site visits, workshops, and surveys distributed but these measures do not point out the environmental benefits derived from their programs. However, the responsibilities of the Ombudsman, as outlined in §24-34-904(o), C.R.S., were examined to determine whether statutory responsibilities are being carried out. Each item in bold summarizes the statutory citation and is followed by a brief analysis.

§24-34-904(o), C.R.S. To provide assistance to small businesses in the implementation of the federal “Clean Air Act Amendments of 1990” including but not limited to the following:

1. Disseminate information to small businesses and other interested parties about the federal “Clean Air Act Amendments of 1990” including responding to inquiries through a telephone hotline and making referrals to the Air Pollution Control Division.

Findings: *The Ombudsman has prepared a brochure, **Helping Small Businesses with Air Quality Issues**, that explains the Clean Air Act and the problems encountered by small businesses. It also provides information concerning how the Department of Public Health and Environment and the Office of Regulatory Reform can assist with problems regarding air quality regulations, pollution prevention, pollution control equipment and the permitting process.*

Findings: *The Small Business Assistance Center within ORR has maintained a business hotline for several years providing access through the 800 number and the local telephone number. This hotline number is publicized also for persons seeking assistance for air quality issues. If the persons answering the telephone cannot assist the caller, the call is referred to the desk of the Ombudsman.*

The Ombudsman Program Environmental Log-In Sheet process was developed in June, 1995. Calls specific to environmental issues are documented using the log-in sheets. The log-in sheet includes the following information: name of caller, company name, address and telephone number, description of business, nature of inquiry, agency/person referred, and follow-up information. Recordkeeping for telephone inquiries was very minimal until the log-in sheet was developed in June, 1995. There has been no subsequent inquiry to determine the outcome of the response to the hotline calls.

The table on the following page summarizes the fifteen telephone inquiry calls to the Office of the Ombudsman from June, 1995 to February, 1996. It should be noted that very few inquiries were actually resolved by the Ombudsman. Most of the inquiries were referred to other agencies, mainly the Department of Public Health and Environment.

Table 4: Telephone Inquires to the Office of the Ombudsman

Type of Business	Telephone Inquiry	Disposition
Photo finishing ⇨	Environmental standards ⇨	Referred to SBAP-CDPHE.
Automotive paint distributor ⇨	Compliance with EPA, OSHA and DOT regulations ⇨	Referred to SBAP-CDPHE, the Hazardous Waste Hotline, CDOT.
Plastics manufacturing ⇨	Environmental regulations ⇨	Referred to Air Pollution Control Division and Governor's Office of Business Development.
Citizen ⇨	Information on underground storage tanks ⇨	Referred to Hazardous Waste Public Assistance Hotline.
Citizen ⇨	Colorado OSHA regulations ⇨	Referred to Federal OSHA in Denver.
Dry cleaners ⇨	APEN, hazardous material requirements ⇨	Referred to a CDPHE inspector.
SPDC re: dry cleaner ⇨	Environmental compliance requirements ⇨	Referred to SBAP-CDPHE.
Dry cleaners ⇨	Clean air requirements ⇨	ORR sent dry cleaner workshop information, dry cleaner fact sheet and SMA loan information.
City Environmental Affairs Office	General information on Ombudsman and Clean Air ⇨	Sent brochures and information from ORR.
Management consulting ⇨	Clean Air Act and nature of the ORR ⇨	Sent brochures and information from ORR.
Print shop ⇨	Owner called regarding complaint lodged with OSHA against him ⇨	ORR called OSHA and relayed response to business owner. Referred to SBAP, who in turn, investigated.
Air quality specialist ⇨	RFP on Brown Cloud ⇨	Referred to DBE (ORR).
Filter manufacturing ⇨	Reporting requirements regarding CERCLA and OSHA ⇨	Referred to EPA.
Environmental consultant ⇨	Clean air monitoring requirements ⇨	Referred to Air Pollution Control Division-CDPHE.
Environmental consultant ⇨	Clean air regulations affecting print shops ⇨	Small Business Ombudsman left message.

2. Participate in, and sponsor meetings and conferences in conjunction with hearings held to elicit public comment on business regulation.

Findings: *In cooperation with Denver Metro Chamber, the Ombudsman sponsored the January, 1996 Small Business Assistance and Ombudsman Program Workshop.*

Findings: *In FY 1992/93, FY 1993/94, FY 1994/95 and FY 1995/96, the Ombudsman participated in hearings and workshops. The hearings and workshops were presented to various business groups, Chambers of Commerce and the Denver, North Metro, Boulder, Loveland, Fort Collins and Greeley Coalitions.*

Findings: *Sponsored and participated in workshops throughout the state to assist Colorado dry cleaners with Maximum Achievable Standards Technology (MACT) standards compliance.*

3. Periodically review with trade associations and small business representatives the work and services provided by the state small business technical and environmental compliance program.

Findings: *The Ombudsman attends Colorado Association of Commerce & Industry (CACI) Environmental meetings and consults with CACI on various environmental issues. In addition, the Ombudsman attends the monthly meetings of the Denver Metro Chamber of Commerce, Environmental Committee.*

4. Periodically report to the General Assembly concerning Title V of the federal "Clean Air Act" and its impact on small businesses and conduct studies to evaluate the impact of Title V on the state's economy, local economies and small businesses and report the findings and recommendations to the U.S. Environmental Protection Agency and the state and local air pollution control authorities.

Findings: *There have been no reports thus far submitted to the General Assembly regarding Title V of the Federal Clean Air Act.*

5. Facilitate and promote the participation of small businesses in the development of rules and regulations for the federal "Clean Air Act" and rules and regulations for the "Colorado Air Quality Control Act".

Findings: *The Environmental Fax Network (EFN) was officially set up in November of 1995. The purpose of EFN is to inform small businesses about regulatory and legislative issues pertaining to clean air. Faxes are sent on an as needed basis. The fax network can include such items as a legislative update on bills of environmental small business issues and interests, an update on the Risk Assessment/Cost Benefit Task Force, and the Denver Metro Chamber of Commerce's survey to evaluate the impacts that air quality issues and regulations have on the Colorado business community. Prior to November, 1995, information was informally provided to interested parties by fax or other means. EFN was discontinued in 1996.*

Findings: *The Ombudsman co-chaired a task force that made recommendations on the mission and focus of the Small Business Assistance Program. This task force met for several months. The Ombudsman presented the rule through testimony to the Air Quality Control Commission and effected the passage of the rule.*

Findings: *The Ombudsman represented small business interests on a CDPHE taskforce formed to write regulations for visibility standards. There was a positive outcome in that the Ombudsman influenced the committee to keep the diminimus reporting and regulatory requirements high enough to exempt many small businesses from additional regulation.*

Findings: *The Ombudsman participated in the Independent Enhanced Testing Work Committee during the first quarter of 1995 trying to reach consensus on whether or not Independent Emissions testing facilities that test "81" and older vehicles needed to have an enclosed facility. There were heated debates with no consensus being reached. The rule remained in place that Independent Emissions Testing facilities needed to have an enclosed facility.*

Findings: *The Air Quality Control Commission Generic Emission Trading Subcommittee, in conjunction with the Colorado Association of Commerce and Industry and the Office of Regulatory Reform conducted a survey of air emission sources. The purpose was to determine background information for, and general interest in the development of a Generic Emissions Trading Program. The program would potentially allow individual sources of air pollution to credit reductions that they make and sell/trade those credits to other air emission sources in the state. The Commission plans to identify problems inherent in the current regulation and develop rules which are more user friendly and beneficial to the regulated community.*

Findings: *The Colorado Maximum Achievable Control Technology (MACT) Subcommittee of the Air Quality Control Commission has worked on prioritizing the order that source categories are scheduled for MACT development. The Ombudsman has been involved in this group and has tried to increase the participation of small businesses.*

Findings: *Beginning in February, 1995 the CDPHE initiated the Colorado Health Advisory Network for Government Efficiency (CHANGE) process. Several task forces have been established to allow for a multi-tiered examination of the ways CDPHE can become more assessable, responsive, and user-friendly to all their customers including the regulated community, the environmental community, local health and environmental organizations, and the general public. ORR's Ombudsman is a member of the Incentives for Pollution Reduction/Prevention Task Force, the Environmental Enforcement and Compliance Task Force, the Environmental Permitting Task Force, and the Environmental Metrics Task Force.*

Findings: *Represented the small business community in the development of the State Implementation Plan (SIP).*

6. Investigate and facilitate the resolution of complaints and disputes concerning permit program issues from small businesses against state and local air pollution control authorities.

Findings: *Generally, small business owners contact the Department of Health initially when they have a dispute or complaint because they are either unfamiliar with the Ombudsman or do not understand the difference between the two entities. The CDPHE is a known agency and is usually the point of first contact. In the past, the CDPHE would not refer these calls to the Ombudsman but would try to resolve the dispute internally. Therefore, the role of the Ombudsman as an advocate has been very limited. Examples of the advocacy rule of the Ombudsman has only been demonstrated in four different ways:*

- *Provided assistance to a small businessman in understanding and interpreting asbestos regulations;*
- *Testified before the AQCC on behalf of a metal finishing company about emissions trading;*
- *Provided assistance to a cosmetologist on the Western Slope regarding water violations; and*
- *Assisted a company in obtaining a letter from the permit section of CDPHE in order to facilitate the sale of company.*

7. Contract with a private vendor to conduct a study to determine the best way to market the assistance which is available for small businesses in this program and other related programs.

Findings: *In May 1993, an RFP was issued by the Office of Regulatory Reform. The work identified for the marketing study would include:*

- *Identification of the target market for the program;*
- *Development of a mailing list of businesses;*
- *Development of a public service announcement for all media;*
- *Development of a direct mail informational flyer and an estimate of the cost of a direct mail program; and*
- *Development of informational brochures for the Ombudsman office and the business assistance program.*

The Office of the Ombudsman noted several problems with the stationary sources database of the consultant's report. These problems include: incomplete listing of businesses in Colorado by type, inability to access list of SIC Codes in database, improper printing of labels, and lack of phone numbers for all businesses.

8. Serve as ex officio representative to the state Compliance Advisory Panel.

Findings: *The Compliance Advisory Panel (CAP) renders advisory opinions, reviews information to assure that it is understandable by the lay person, and submits periodic reports on the effectiveness of the program to the Governor and EPA. The Ombudsman submits a progress report to CAP at their quarterly meetings.*

9. Conduct periodic independent reviews and evaluation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

Findings: *The Ombudsman and the SBAP have informal meetings throughout the year but there has never been an official review written by the Ombudsman evaluating the SBAP.*

Findings: *The Ombudsman prepared and submitted an annual report to the U.S. Environmental Protection Agency regarding the Small Business Stationary Source Technical and Environmental Program.*

10. Arrange for and assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program and ensure that the language is readily understandable by the lay person.

Findings: *A joint project was established between ORR, CDPHE and a task force of business owners to develop Air Pollution Emission Notice (APEN) forms for reporting air emissions. These forms were geared toward individual industries such as dry cleaners, printers, and autobody shops. The forms used terminology specific to the industry and included instructions developed by people in the industry. In some cases, the standard five page reporting form used by CDPHE was reduced to less than a single page. This greatly reduced the time and expense to complete the forms for the affected industry.*

11. Work with trade associations and small businesses to bring about voluntary compliance with regulations under the "Clean Air Act"

***Findings:** The Ombudsman has attempted to instruct business owners and staff on how to comply with a variety of regulations and record-keeping requirements. Permit holders are taught how to integrate self-inspections of their equipment into regular maintenance activities. Classes are geared to learning and developing a cooperative partnership with business to achieve compliance. Business owners are not fearful that classroom discussions will be used to target individual businesses for inspection and penalties.*

The Small Business Assistance Program and the Ombudsman sponsored a series of workshops throughout the State of Colorado to assist dry cleaners in understanding the new federal requirements effective September 22, 1996. A publication concerning revised federal dry cleaning regulations and the notice of the workshop was mailed to 950 dry cleaners, suppliers, trade groups, and appropriate governmental agencies in Colorado.

As shown by the evaluation of the Ombudsman's statutory requirements, a tremendous amount of time and energy has been spent on small business outreach. Seminars, conferences, and meetings have been organized and attended. The outreach to the small business community has been through personal contact and through the associations representing those businesses. However, quite often the response to the seminars and workshops is very limited. Hundreds of business owners will be contacted, with only a small percentage actually attending the workshops.

Business owners often have difficulty differentiating between the assistance offered by the Ombudsman and those offered by the Small Business Assistance Program (SBAP). As mentioned previously in this report, a small business owner will often contact the Department of Public Health and Environment with their concerns. Since this Department is the regulating agency, business owners are more familiar with this agency. The SBAP is often quite willing to support small businesses in their efforts to meet the goals of the Clean Air Act as well as assist the business owner with both their technical and compliance needs.

House Bill 96-1307 mandated that the duties of the Ombudsman be moved from the Office of Regulatory Reform to the Colorado Department of Public Health and Environment in July, 1997. HB 96-1307 was initiated by the Stationary Source Efficiency Task Force set up to review CDPHE's Air Pollution Control Division stationary sources program for ways to improve its efficiency and effectiveness. The task force was concerned that the Ombudsman was not fulfilling its statutory requirements and concluded that the Small Business Ombudsman program should be moved to the Department of Public Health and Environment.

The majority of other states' programs which are established to date, house the SBAP and the Ombudsman under the same department, some within the same division and some within different divisions. The following chart portrays the location of the Ombudsman and SBAP in several Rocky Mountain and Western States.

Table 5: State Location of Ombudsman and Small Business Assistance Program

<i>Dept. of Environmental Quality</i>	<i>Dept. of Commerce</i>	<i>Dept. of Health</i>	<i>Dept. of Ecology</i>
Arizona	Montana+	North Dakota*	Washington
Nevada			
New Mexico			
Oregon*			
Utah*			
Wyoming			

* reside in same department but different divisions

+ same person for both positions

Suggestions For Reform

Business continues to be bewildered by the multiplicity of government agencies, requirements, and offices. The Office of Regulatory Reform's efforts through their information and assistance function has supported the small business community. Finally, the ORR is charged with making recommendations to better adapt the state's regulatory structure to the needs of small business in several different ways. This function includes the review of rules and regulations, paperwork reduction, and variance requests.

Rules and Regulations Review

ORR reviews proposed rules and regulations for impact on small businesses. As part of this sunset review, ORR's annual reports for fiscal years 1990-91 through 1994-95 were reviewed. Each annual report lists the number of proposed rules reviewed and the number of agencies submitting rules to ORR. In addition, the annual reports note the number of burdensome rules and unnecessary rules identified by ORR. The chart below illustrates the activity performed by the ORR regarding rule review from 1990 through 1995 as reported in the ORR annual reports.

Table 6: Rule Review Activity Reported in ORR's Annual Reports

<i>Fiscal Year</i>	<i>Rules Reviewed</i>	<i>Number of Agencies⁺</i>	<i>Burdensome Rules</i>	<i>Identified Unnecessary Rules</i>
1990-1991	284	49	7 (n.a.)	13 (n.a.)
1991-1992	308	53	12 (12)*	6 (12)*
1992-1993	312	57	12 (12)*	9 (9)*
1993-1994	345	63	7 (9)*	2 (2)*
1994-1995	454	56	6 (7)*	6 (4)*

*The numbers in parentheses represent totals from internal summary files.

+Includes boards, commissions, divisions, and agencies that have rule-making authority.

The Office of Regulatory Reform, as reflected in the above table, did not report the outcome of recommendations regarding proposed rules. Until recently, the ORR had not systematically noted whether any proposed rules had been modified after input from their office. The Office has recently been designing a tracking scheme to determine the result, if any, of their rule recommendations.

To further examine the rule review activity of ORR, files containing yearly summaries were reviewed for accuracy. Discrepancies and inconsistencies were found between the numbers reported in ORR's annual reports and the yearly summaries found in the internal fiscal year files as reflected in the numbers in parentheses in the above table.

In addition, as part of this sunset review, the Office of Policy & Research (OPR) examined monthly and yearly summary files that include agency rule-making data from 1992 through 1995. The following chart is a compilation of available figures and illustrates OPR's findings. Statistics from April, June, November, 1992; April - November 1993; and March, September, and December, 1994 were not available to review because the files are not available and therefore the numbers reflected are not complete for those years.

Table 7: OPR's Findings - Rule Review Activity

<i>Year</i>	<i>Rules Reviewed</i>	<i>Number of Agencies*</i>	<i>Burdensome Rules</i>	<i>Identified Unnecessary Rules</i>
1990	92	30	7	13
1991	148	46	7	9
1992	156	51	12	9
1993	53	27	9	2
1994	191	46	7	4
1995	182	46		

*Includes boards, commissions, divisions, and agencies that have rule-making authority.

The numbers between the two charts are substantially different. One reason for the difference is that the OPR data reflects activity performed in the calendar year while the ORR data reflects activity for the fiscal year. Notwithstanding these differences, there is a substantial difference in summary data between OPR's research and the published ORR annual report data. This discrepancy suggests that ORR's record keeping has not been consistent.

Several agencies were surveyed that had proposed rules reviewed by the ORR in the past 16 months to determine the degree of effectiveness of the rule review process. While one or two agencies noted that having a review of agency rules is critical to ensuring that rules are compatible with statutes, most agencies expressed some level of dissatisfaction with the process. Several agencies commented that recommendations were made looking at the proposed rules and they felt that the ORR should review final rules. Agencies expressed concern that because the ORR staff has little experience with the various agencies that are undergoing rule-making (i.e. technical knowledge) it is difficult for them to evaluate the rules. A few agencies questioned the need for an Office of Regulatory Reform.

The performance of the Office of Regulatory Reform in regard to rule review could be improved by narrowing the focus of rule review as well as establishing guidelines for specific types of agency rules to be reviewed that directly affect small businesses. For example, there should be established a precise length of time in which the Office should respond to the proposed rules. Also, the rule review process should be tightened so that the focus is on small business concerns and not extraneous rules. The Office of Regulatory Reform needs to improve its record-keeping regarding its rule review activities to eliminate present inconsistencies.

Paperwork Reduction

Since 1990, the Office of Regulatory Reform has reviewed a few agencies' administrative procedures to recommend reduction of unnecessary and duplicative paperwork. Listed below are the various recommendations made to state agencies to facilitate paperwork reduction. Most of these recommendations were made during the 1990-91 fiscal year.

1990-91 Reviewed purchasing procedures and recommended consolidation of forms to the Department of Health.

1990-91 Participated in a working group with the Department of Labor and Employment and the Department of Revenue to examine the procedures for employer registration, reporting and remittance of wage withholding, and unemployment insurance accounts.

1990-91 Made recommendations to the Public Utilities Commission on outdated and unnecessary material in some of its applications.

1993-94 Worked with Department of Revenue and local home rule cities to simplify the filing requirements for sales tax returns.

While the ORR has grown and evolved over the last fifteen years, so too have Colorado's general economic development efforts as well as specific state efforts to assist small business. At first, the ORR was one of the few offices in state government to actively assist small business. Since 1986, many such business promotion efforts have been instituted. If the Office of Regulatory Reform is to continue, it needs to begin identifying how it can best carry out its statutory functions and be of service to a complex and changing Colorado economy over the next ten years.

Important questions that need to be answered include: What kinds of regulatory reform efforts should the ORR be focusing on for the 21st century? What kinds of issues will be important to small business in Colorado during the next five or ten years? What role should the ORR play in assisting small business and in coordinating the efforts of other state agencies toward that goal? These kinds of questions can be answered and a direction developed through a long-range planning effort.

Variance Requests

The Office of Regulatory Reform has reviewed several variance requests submitted to the Colorado Department of Public Health and Environment since 1991. In 1991, the ORR supported the reversal of a variance denial and as a result, a restaurant in Grand Lake was allowed to operate with a CDPHE variance. During fiscal year 1993-94, the ORR reviewed four CDPHE variance requests and subsequently recommended approval in three cases. Two variance request denials were overruled in 1994/95 as a result of ORR's appeals review. Six variance requests were reviewed during the 1995-96 fiscal year. The ORR recommended approval in five cases. In the sixth case, the ORR successfully mediated a compromise between the business owner and the CDPHE.

Continuing Education Review

Pursuant to §24-34-904(1)(n), C.R.S., before any bill which contains a mandatory continuing education requirement for any profession or occupation that requires a state license, certificate or registration, is introduced in the General Assembly, the group or association shall first submit information concerning the need for such requirement to the Office of Regulatory Reform. In reviewing each request, the ORR considers whether such requirements will protect the public and may include, but need not be limited to the following facts: changing knowledge base, that continuing education is required in other states, results of independent studies on the effectiveness of continuing education, and sanctions for noncompliance.

The following summaries illustrate ORR's participation in reviewing mandatory continuing education requests.

1993 - The ORR reviewed the request for mandatory continuing education from the Colorado Professional Land Surveyors Association. In the course of the study, the ORR contacted 47 state boards and 92 Colorado licensed surveyors. In their report, the ORR recommended against mandatory continuing education and encouraged continued high standards through the use of professional responsibility and peer support.

1994 - The ORR reviewed the evidence submitted by the Water Well Contractors Association supporting mandatory continuing education. During the review process, the ORR also conducted interviews with both the Water Quality Control Division of the Department of Health and regulatory authorities in surrounding states. Significant concerns for public safety relating to water well drilling were expressed. However, the evidence did not support mandatory continuing education as a means to address the issue. The ORR supported funding stronger enforcement of existing regulations as an appropriate alternative.

1995 - The ORR received a report from the Division of Insurance, Bailbond Advisory Committee, concerning the introduction of continuing education requirements for professional bail bond agents in Colorado. The review of the request only included evidence supplied by the Division of Insurance, Bailbond Advisory Committee. The ORR was unable to conduct further research due to the timing of the submittal for the continuing education request. At the same time that the ORR received the information from the Division of Insurance, a bill was concurrently being drafted for introduction into the 1995 Legislative Session. Based on the information they received, the ORR recommended that mandatory continuing education requirements would benefit the professional bail bond agents.

Disadvantaged Business Enterprise Certification (DBE)

As indicated earlier in this report, the Office of Regulatory Reform has been assigned, (through an Executive Order), the responsibility for conducting the certification process for socially and economically disadvantaged individuals seeking to qualify for contracts which are set aside for minority and woman-owned businesses.

As part of this sunset analysis, the Disadvantaged Business Enterprise Certification program housed in the Office of Certification was asked to submit data for 1990 through 1996 that revealed the activity of the Office including the number of inspections, new certifications, yearly renewals, and certification denials and appeals. A database program was not in use prior to 1992. Most of the files were inherited from the Colorado Minority Business Development Agency which previously contracted with CDOT to provide certification services.

Summary of DBE Activities to Date (Prepared 8/21/96)					
A database program was not in use prior to 1992. Most of the files on record at that time were inherited from CMBDA/CDOT/RTD. Figures for periods prior to 1992 are, at best, estimated.					
New Applicants Certified	CDOT	Non-CDOT	Total		
prior to 1991	228	27	255		
in 1991	83	85	168		
in 1992	102	82	184		
in 1993	80	110	190		
in 1994	67	59	126		
in 1995	41	29	70		
1996 to date	17	17	34		
New applications pending	39	7	46		
Applicants denied, graduate, and non-compliant					
prior to 1991	3	2	5		
in 1991	0	5	5		
in 1992	22	20	42		
in 1993	80	69	149		
in 1994	93	83	176		
in 1995	97	90	187		
1996	incomplete				
Recertifications					
There is no provision in the database for tracking renewals - other than for current and previous year. Essentially, all certified enterprises must apply for a recertification every year, on the anniversary of their certification. Additionally, we are required to conduct a full investigation of 10 already certified companies every year, even if there is no reason to suspect a problem exists. We also conduct full investigations in the case of a change in any of the required standards, in response to complaints, in response to any cue that suggests a certified company may not still be eligible. Therefore, recertifications for each year = all files not yet closed (although many files are reopened).					
Year	Investigator Recommended	Initial Agency Action	Agency Appeal Decision	ALJ Appeal Decision	Final Action
1989	2 for denial	2 certified	N/A	N/A	2 certified
1990	no figures				
1991	2 for denial	1 denied, 1 certified	1 upheld, 1 certified	up-held, N/A	11 denied, 1 denial pending
1992	15 for denial	15 denied	4 appealed, 1 upheld, 3 certified	N/A	11 denied, 1 denial pending
1993	35 for denial, 3 for certify	38 denied	12 appealed, 7 upheld, 5 certified	3 appealed, 1 upheld, 2 withdrew	28 denied, 6 certified, 4 withdrew
1994	25 for denial, 13 for certify	38 denied	11 appealed, 6 upheld, 2 certified, 3 withdrew	2 appealed, 2 withdrew	26 denied, 5 certified, 7 withdrew
1995	11 for denial, one other	12 denied	1 appealed, ___ upheld	N/A	11 denied, 1 certified
1996	2 for denial	2 denied	1 appealed, ___ upheld	N/A	2 denied

RECOMMENDATIONS

Recommendation 1: The General Assembly should allow the Office of Regulatory Reform to Sunset on July 1, 1997 and the winding up provision §24-34-104(5)(b), C.R.S., should not apply.

The sunseting of the Office of Regulatory Reform would result in the termination of the following functions:

- Rule and regulation review.
- Representative to the variance request appeals panel of the Consumer Protection Division of the Colorado Department of Public Health and Environment.
- Review of business paperwork requirements to eliminate unnecessary forms and simplify language.
- Advisory committee's review of complaints regarding unfair competition statute.
- Small Business Assistance Center.
- Review of the need for mandatory continuing education.

This sunset review concludes that there are deficiencies in the operation of the Office of Regulatory Reform. As illustrated in the Sunset Analysis portion of this report, each year hundreds of rules and regulations are reviewed by the ORR with only a few designated as burdensome and unnecessary. For example, the Office reviews rules submitted by the Division of Banking which regulates institutions which are generally larger than what the ORR considers a "small business". The ORR also reviews proposed rules from the Department of Revenue regarding scratch cards and Department of Public Health's immunization requirements. The amount of time spent in reviewing all proposed rules affecting small businesses with the number of rules found to adversely affect small businesses is disproportionate. Even when the ORR identifies rules that are burdensome, the Office has no enforcement power and can only make recommendations to the agency, testify at the rule-making hearing, or notify the General Assembly.

Another significant problem with the Office is the lack of direction toward identifying regulatory reform issues. A majority of the staff time in recent years has been spent in assisting in the Small Business Assistance Center because of the tremendous demand for services as illustrated in the previous section. There has been a very limited review of business paperwork requirements and permit requirements.

In addition to examining the efficiency and effectiveness of the Office, another sunset criteria is whether conditions which led to the initial regulation have changed. The climate of Colorado State government has been evolving over the past several years since the creation of the Office of Regulatory Reform. With the advent of total quality management and the emphasis on customer service, agencies are more sensitive to their customer, whether it is a professional licensee or a small business owner. Subsequently, during rule-making, agencies often consider the small business owner and the negative effect that the rule may have.

This recommendation also advises to forgo the wind-up provision as stated in §24-34-104(5)(b), C.R.S. The primary reason for the one year wind-up period is for the purpose of coming to closure on issues regarding licensure and disciplinary actions. Since there are no licensure provisions within the Office of Regulatory Reform, the wind-up period is not needed.

Recommendation 2: Continue the Small Business Assistance Center and relocate to the Office of Business Development.

The cessation of the Office of Regulatory Reform would result in the termination of the Small Business Assistance Center. Previous data illustrates that there exists a considerable demand for the services offered by the Small Business Assistance Center. In an effort to improve the coordination, effectiveness, and accountability of the State's economic development programs, the Colorado Economic Development Advisory Board recommended that the state's economic development programs be restructured under a single director.

Section 24-48.5-1(1) et seq., C.R.S., created the Office of Business Development (OBD) and charged OBD with implementing a variety of economic development activities throughout the state, including encouraging the expansion and retention of Colorado businesses, providing services to small businesses, providing technical assistance and research support, and fostering a positive business climate.

This new structure move was justified on the basis that such an arrangement could lead to better policy and program coordination and improved administrative efficiencies. Currently, the overall objectives and activities of the Office of Business Development and the Office of Regulatory Reform's Small Business Assistance Center are interrelated. Therefore, the decision was made to physically relocate the Small Business Assistance Center to the Office of Business Development.

A potential problem exists with the ORR staff of the Small Business Assistance Center residing in one location yet being managed by a different department in a different location. As part of this sunset review, there were no compelling reasons found, either managerial or efficiency, why this situation should continue. It makes more sense in day-to-day operations and to alleviate complicated accounting procedures to relocate the Center to the Office of Business Development.

Recommendation 3: Continue the Review of Continuing Education and Transfer the Function to the Executive Director's Office of the Department of Regulatory Agencies.

There still exists a need for an impartial review and analysis regarding the need for continuing education among occupations and professionals in Colorado. There is no objective study that shows that mandatory continuing education translates into continued competency and therefore each individual request needs to be researched to determine whether the State of Colorado should involve itself in the business of creating a market for purveyors of continuing education courses.

Professions and occupations should be required to submit their request for a review of mandatory continuing education at least three months before the legislative session. This requirement would allow the reviewing agency adequate time to review opposing arguments unlike the request from professional bail bond agents which only included evidence supplied by the Division of Insurance.

Recommendation 4: Allow the Small Business Ombudsman to be transferred to the Colorado Department of Public Health and Environment.

House Bill 1307, which passed in 1996, mandates that the duties of the Small Business Ombudsman be moved to the Colorado Department of Public Health and Environment (CDPHE) effective July, 1997. Even though the Ombudsman has made an admirable outreach effort to the small business community, its advocacy role has been very limited. The ORR argues that if the Ombudsman were to be housed within the same department as the regulating authority, the Ombudsman would lose its current level of independence. According to HB 96-1307, CDPHE shall carry out the duties using personnel outside of the Air Pollution Control Division, which is the entity that regulates stationary sources.

Recommendation 5: Continue the Disadvantaged Business Enterprise Program.

The Office of Certification was created by the Governor's directive in 1987 to certify legitimate minority businesses. The Disadvantaged Business Enterprise Program operating in the Office of Certification is well versed in conducting certification reviews and determining whether specific businesses meet certification qualifications. The agencies using the Office for their certification programs are satisfied with the current program. The Office of Certification enjoys an admirable reputation for their thorough analysis of applications.

Recommendation 6: The General Assembly should allow the Office of Regulatory Reform Advisory Committee pursuant to §24-34-904 (1)(I), C.R.S. to sunset on July 1, 1997.

(Please see Chapter 4 for analysis.)

APPENDICES

Appendix A

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Appendix B

Statute

24-34-901. Legislative declaration. (1) The general assembly hereby finds and declares:

(a) That the number of licenses and permits required for a new business and the renewal of existing licenses place an undue burden on business;

(b) That there are jurisdictional overlaps and duplication of requirements among the federal, state, and local agencies regulating business;

(c) That the state can reduce its regulatory costs by consolidating, simplifying, and expediting state permit procedures;

(d) That the public interest will be served by establishing an office of regulatory reform to provide comprehensive business permit information to the public, to create a procedure to simplify and coordinate permit processing, and review, and to make recommendations to eliminate unnecessary and duplicative regulation; and

(e) That it is its intent that the program of business permit assistance shall be directed toward commercial or nonprofit business projects and activities and not directed toward the routine issuance of licenses and permits for individual privileges such as practicing a trade or profession, operating a motor vehicle, or engaging in sporting activities such as hunting and fishing.

24-34-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Affected agency" means a federal, state, or local agency which issues a permit for a business project.

(2) "Applicant" means any person acting on his own behalf or authorized to act on behalf of another person for the purpose of securing a permit.

(3) "Business project" means any private or public business activity required to have two or more permits.

(4) "Director" means the director of the office of regulatory reform.

(5) "Individual application" means an application prepared by a federal, state, or local agency for the purpose of gathering information to assist it in deciding whether to approve a business project.

(6) "Local agency" or "local government" means any statutory or home rule municipality, city and county, or county in this state.

(7) "Nonaffected agency" means any federal, state, or local agency other than an affected agency as defined in subsection (1) of this section.

(8) "Office" means the office of regulatory reform created by this part 9.

(9) "Permit" means any permit, license, or other form of approval required by a federal, state, or local agency prior to the operation of a business or required as a condition to the continued operation of a business.

(10) "Person" means any individual, proprietorship, limited liability company, partnership, association, cooperative, corporation, nonprofit organization, and any other organization required to register with the state to do business in this state and to obtain two or more permits from a federal, state, or local agency.

(11) "State agency" means an agency as that term is defined in section 24-4-102 (3).

24-34-903. Office of regulatory reform created. (1) There is hereby created, in the office of the executive director of the department of regulatory agencies, the office of regulatory reform, the head of which shall be the director of the office of regulatory reform. The executive director of the department of regulatory agencies shall appoint, pursuant to section 13 of article XII of the state constitution, the director of the office of regulatory reform and such other personnel as may be necessary for the effective operation of the office.

(2) The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the office created by this part 9.

24-34-904. Powers and duties - repeal. (1) The office has the following powers and duties:

(a) To provide comprehensive information on the federal, state, and local requirements necessary to begin a business and to make this information available to the public;

(b) To develop master application procedures to expedite the permitting process;

(c) To assist applicants in obtaining timely permit review;

(d) To consolidate required hearings when feasible and advantageous;

(e) To convene preapplication conferences during the early stages of the applicant's business planning;

(f) To encourage and facilitate the participation of federal, state, and local government agencies in permit coordination;

(g) To hold hearings, or to have the advisory committee hold hearings, to elicit public comment on business regulation;

(h) To conduct reviews of permit requirements and of the need by the state to require such permits and to use such reviews to prepare recommendations for appropriate agencies;

(i) To conduct reviews of business paperwork requirements and to eliminate unnecessary forms, combine duplicate forms, and simplify language therein;

(j) To annually report to the general assembly on the cost-effectiveness of the office and to make recommendations to the general assembly and the governor concerning:

(I) The elimination of unnecessary and antiquated permit requirements;

(II) The consolidation of duplicative permit requirements;

(III) The simplification of permit application procedures;

(IV) The expedition of time-consuming agency reviews and approval procedures;

and

(V) Other improvements in the permitting process;

(k) To undertake, with respect to rules affecting small business, such duties as are prescribed in section 24-34-913;

(l) (I) To appoint an advisory committee to assist in the performance of its duties.

(II) (A) This paragraph (l) is repealed, effective July 1, 1997.

(B) Prior to said repeal, the office of regulatory reform advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

(m) To provide and coordinate environmental information and regulatory assistance in conjunction with the Colorado joint review process, created by article 10 of title 34, C.R.S.

(n) Before any bill is introduced in the general assembly which contains a mandatory continuing education requirement for any profession or occupation, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office. The office shall impartially review such evidence, analyze and evaluate the proposal, and report in writing to the general assembly whether mandatory continuing education would likely protect the public served by the practitioners. Proposals may include, but need not be limited to: Information which shows that the knowledge base for the profession or occupation is changing; that mandatory continuing education of this profession or occupation is required in other states; if applicable, that any independent studies have shown that mandatory continuing education is effective in assuring the competency of practitioners. The proposal may also include any assessment tool that shows the effectiveness of mandatory continuing education and recommendations about sanctions that should be included for noncompliance with the requirement of mandatory continuing education. The provisions of this paragraph (n) shall not be applicable to:

(I) Any profession or occupation which, as of July 1, 1991, has mandatory continuing education requirements in place;

(II) Any bill which is introduced as a result of a legislative interim committee and which as introduced in the general assembly includes a mandatory continuing education requirement.

(o) To provide assistance to small businesses in the implementation of the federal "Clean Air Act Amendments of 1990", P.L. No. 101-549, including but not limited to the following:

(I) In conjunction with assistance provided pursuant to paragraph (a) of this subsection (1), disseminate information to small businesses and other interested parties about the federal "Clean Air Act Amendments of 1990", P.L. No. 101-549, including responding to inquiries through a telephone hotline and making referrals to the air pollution control division in the division of administration of the department of public health and environment for technical assistance;

(II) In conjunction with hearings sponsored pursuant to paragraph (g) of this subsection (1), participate in and sponsor meetings and conferences;

(III) In conjunction with requirements to review the need for permit requirements pursuant to paragraph (h) of this subsection (1), periodically review with trade associations and small business representatives the work and services provided by the state small business technical and environmental compliance program;

(IV) Periodically report to the general assembly concerning Title V of the federal "Clean Air Act" and its impact on small businesses and conduct studies to evaluate the impact of said Title V on the state's economy, local economies, and small businesses and report the findings and recommendations to the United States environmental protection agency and the state and local air pollution control authorities;

(V) In conjunction with the provisions of section 24-4-103.5 and pursuant to paragraph (k) of this subsection (1), facilitate and promote the participation of small businesses in the development of rules and regulations for the federal "Clean Air Act" and rules and regulations for the "Colorado Air Quality Control Act";

(VI) In conjunction with the requirements of section 24-34-908, investigate and facilitate the resolution of complaints and disputes concerning permit program issues from small businesses against state and local air pollution control authorities;

(VII) Contract with a private vendor to conduct a study to determine the best way to market the assistance which is available for small businesses in this program and other related programs;

(VIII) Serve as ex officio representative to the state compliance advisory panel appointed pursuant to section 25-7-109.2, C.R.S.;

(IX) Conduct periodic independent reviews and evaluations of the small business stationary source technical and environmental compliance assistance program, created in section 25-7-109.2, C.R.S.;

(X) Arrange for and assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program, and ensure that the language is readily understandable by the lay person;

(XI) Work with trade associations and small businesses to bring about voluntary compliance with regulations under the "Clean Air Act".

(p) Beginning in the year 2000, to conduct, every five years, in coordination with the air pollution control division in the department of public health and environment after public comment and review, cumulative economic analyses of all air pollution control measures on stationary sources, pursuant to section 25-7-110.5 (4), C.R.S.

24-34-905. Assistance of others. (1) To effectuate the purposes of this part 9, the office may request from any federal, state, or local agency such assistance, services, facilities, and data as will enable the office to carry out its powers and duties.

(2) The office shall have the authority to accept and expend moneys from sources other than the state of Colorado for the purpose of performing specific projects, studies, or procedures, or to provide assistance. Such projects, studies, procedures, or assistance shall be reviewed and approved by the office of regulatory reform advisory committee and the executive director of the department of regulatory agencies. Such projects, studies, procedures, or assistance shall be consistent with the duties, authority, and purposes of the office as established in this part 9. Any receipt and expenditure of funds shall be reported to the general assembly as part of the office's annual budget request.

24-34-906. Master application - development and applicability. (Repealed)
Repealed, L. 87, p. 1012, 8, effective April 16, 1987.

24-34-907. General permit information - availability to public. (1) The office shall provide information, upon request, on the permit information, coordination, and assistance services of the office and shall make the information available to applicants and the public at the office and appropriate local government offices.

(2) The services rendered by the office shall be made available without charge; except that the applicant shall not be relieved from any part of the fees or charges established for the review and approval of specific permit applications, from any of the apportioned costs of a consolidated hearing conducted under section 24-34-910, or from the costs of any contracted services as authorized by the applicant under section 24-34-911.

(3) Any person who provides information developed by the office and charges any fee for such information shall disclose in at least ten-point type, before any obligation is incurred, that such information is available at no cost from the office. Any person who knowingly fails to make the disclosure required by this subsection (3) commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

24-34-908. Permit coordination and assistance to applicants. (1) Any applicant may confer with the office to obtain assistance in the prompt and efficient processing and review of specific applications.

(2) The office shall, so far as possible, render such assistance and may perform any acts necessary to expedite the permit process of affected agencies, including, but not limited to, the following:

(a) Assisting the applicant in making contact with affected agencies responsible for processing and reviewing permit applications;

(b) Arranging informal conferences to clarify the interest and requirements of any such affected agency with respect to permit applications;

(c) Encouraging affected agencies to consolidate hearings and data required of the applicant and to render assistance to affected agencies for such purpose;

(d) Assisting the applicant in the resolution of outstanding issues identified by affected agencies, including delays experienced in permit review; and

(e) Coordinating federal, state, and local permit review actions to the extent practicable.

24-34-909. Informal conferences. The office, on its own motion or upon the request of the applicant or any affected agency, may conduct, at any time, an informal conference, in which the affected agencies shall clarify the nature and scope of their interest, to determine the permits which the affected agencies will require and the standards and conditions which need to be met in order to obtain such permits, to provide guidance to the applicant in relation to permit application review processes, and to coordinate agency actions and data compilation or submission regarding permit requirements.

24-34-910. Consolidated hearings. (1) Upon request of the applicant or any affected agency for a consolidation of public hearings concerning a business project, the office shall encourage the consolidation of any or all hearings otherwise permitted or required by law for each of the affected agencies.

(2) A consolidated hearing shall be conducted in a manner consistent with the "State Administrative Procedure Act", article 4 of this title.

(3) The costs incurred by the office for conducting a consolidated hearing shall be reimbursed by each affected agency participating in the hearing according to the agency's proportionate share of the costs associated with the hearing, including costs of notices, prehearing conferences, preparing a record or transcript, and any other functions necessary or appropriate to the consolidated hearing. Such costs shall be paid or credited to the office within sixty days after the consolidated hearing.

24-34-911. Contracted services. (1) Any affected agency which determines that it is unable to process an applicant's permit application in a timely fashion because of a lack of staff, facilities, or equipment or because of a backlog of other work or permit applications may immediately request an informal conference with the applicant and the office for consideration of such circumstances and the possibility of the agency contracting for services relating to the processing of the application.

(2) Any such contracting for services shall be authorized by the head of the affected agency and by the applicant. The applicant shall be charged the full costs of such contracted services, less any fees paid to the agency for such services, and the applicable permit shall not be issued until the applicant has made such payment in full.

24-34-912. Permit authority retained. Each affected agency having jurisdiction to approve or deny a permit shall continue to have all the substantive power vested in it by law. The provisions of this part 9 shall not lessen or reduce such powers and shall modify the procedures followed in carrying out such powers only to the extent provided in this part 9 and the regulations promulgated pursuant thereto.

24-34-913. Rules affecting small business. (1) Upon notice by an agency of proposed rule-making affecting small business, the office shall notify affected small businesses of the proposed rule through business or trade organizations. Such notice shall include the substance of the proposed rule and the time, place, and manner in which interested parties may present their views and comments on the proposed rule.

(2) The office may coordinate between agencies to consolidate and simplify rules, compliance requirements, and reporting requirements which affect small businesses.

(3) The office may recommend the elimination, consolidation, or amendment of existing rules which have a disproportionately adverse effect on small businesses.

(4) The office shall comment at the public hearing pursuant to section 24-4-103 upon the effect on small businesses of rules submitted to it pursuant to section 24-4-103.5 (1).

(4.5) Repealed.

(5) For the purposes of this section, "small business" means a commercial concern, including its affiliates, which is independently owned and operated and which either employs fewer than twenty full-time employees or an equivalent number of part-time employees or has gross annual sales of less than two million dollars.

24-34-914. Review of unnecessary administrative rules and regulations - report to legislative sunrise and sunset review committee. The office shall notify the joint legislative sunrise and sunset review committee of any proposed rules which the office believes are unnecessary for the administrative functions of a particular agency. The committee shall have the authority to review such rules and to introduce legislation which rescinds or deletes the rules or portions of such rules which the committee believes to be unnecessary for the administrative functions of a particular agency. Only that portion of any rule specifically disapproved by act of the general assembly shall no longer be in effect, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. The joint legislative sunrise and sunset review committee shall notify the secretary of state whenever a rule published in the Code of Colorado Regulations is rescinded or a portion thereof is deleted, and the secretary of state shall direct the removal from the code of material so deleted or rescinded. It is the intent of the general assembly that rules deleted or rescinded pursuant to this section shall not be substantive in nature.

24-34-915. Repeal of part. This part 9 is repealed, effective July 1, 1997.

24-4-103.5. Rule-making affecting small business - procedure. (1) Not less than ten days before publication of notice of proposed rule-making pursuant to section 24-4-103, the agency making a rule which will affect small businesses shall submit such proposed rule to the office of regulatory reform created in part 9 of article 34 of this title for comment on compliance flexibility for small businesses. In no event will lack of comment from the office of regulatory reform affect the validity of the rule.

(2) The office of regulatory reform shall notify affected small businesses of the proposed rule through business or trade organizations. Such notice shall include the substance of the proposed rule and the time, place, and manner in which interested parties may present their views and comments on the proposed rule.

(3) For the purposes of this section, "small business" means a commercial concern, including its affiliates, which is independently owned and operated and which either employs fewer than twenty full-time employees or an equivalent number of part-time employees or has gross annual sales of less than two million dollars.

25-7-109.2. Small business stationary source technical and environmental compliance assistance program. (1) The commission shall promulgate such rules, regulations, and procedures as are necessary to establish and administer the Colorado small business stationary source technical and environmental compliance assistance program consistent with the requirements of the federal act.

(2) There is hereby created a compliance advisory panel which shall:

(a) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, degree of enforcement, and severity of penalties;

(b) Make periodic reports to the governor and the administrator of the United States environmental protection agency;

(c) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(d) Oversee the small business stationary source technical and environmental compliance assistance program, which shall serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(3) The panel shall consist of:

(a) Two members who are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) Two members who are owners or who represent owners of small business stationary sources, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives;

(c) Two members who are owners or who represent owners of small business stationary sources, one appointed by the president of the senate and one appointed by the minority leader of the senate; and

(d) One member appointed by the executive director of the department of public health and environment to represent such department.

(4) The terms of those members of the panel initially appointed by the governor, the speaker of the house of representatives, and the minority leader of the house of representatives shall expire on January 31, 1994. The terms of those members initially appointed by the president of the senate, the minority leader of the senate, and the executive director of the department of public health and environment shall expire on January 31, 1995. Thereafter, members of the panel shall serve for terms of two years, such terms to commence on February 1 of the year of appointment. Vacancies occurring during the term of office of any member of the panel shall be filled for the unexpired portion of the regular term in the same manner as for the original appointment.

(5) In furtherance of the small business stationary source technical and environmental compliance assistance program established as provided in subsection (1) of this section, the office of regulatory reform, created pursuant to section 24-34-903, C.R.S., shall serve as ombudsman for small business stationary sources.

(6) The general assembly finds, determines, and declares that this section is enacted for purposes of compliance with the provisions of section 507 of the federal act. For purposes of complying with the provisions for the legislative review of advisory committees of state government contained in section 2-3-1203 (1), C.R.S., subsections (2), (3), and (4) of this section and this subsection (6) are repealed, effective July 1, 1998. Prior to said repeal, the compliance advisory panel shall be reviewed by the joint sunrise and sunset review committee of the general assembly as provided in section 2-3-1203, C.R.S.

24-113-105. State agency competition - complaints - advisory board. (1) (a)

Any person who believes that a state agency has violated any provision of this article may file a written complaint with the advisory committee to the office of regulatory reform stating the grounds for such complaint. The committee shall receive such written complaints and shall transmit such complaints to the state agency which is alleged in the complaint to be in violation.

(b) The state agency named in the complaint shall respond to the committee in writing within forty-five days after receipt of a complaint. The state agency shall either admit or deny the allegations made in the complaint, and it shall indicate whether remedial action will be taken.

(c) A majority of the committee may determine whether to hold public hearings on complaints, and the majority shall determine whether the state agency is in violation of the provisions of this article.

(d) Within sixty days after the response, the committee shall issue a report of its findings to the complainant and the state agency.

(2) The committee shall provide information and guidance and shall transmit an annual report of its activities in January of each year to the governor, the general assembly, and the state auditor.

(3) The state auditor shall provide performance audit information to the committee. Any person providing information or staff support pursuant to this subsection (3) shall not sit with the committee in its review of specific complaints.

(4) The activities of the committee shall be subject to existing state and federal law and any regulations promulgated pursuant thereto.