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**EXECUTIVE ORDER NO. 001 - 2019**

**ESTABLISHMENT OF A PROCESS TO ENSURE A COHERENT AND EFFICIENT RULEMAKING SYSTEM EXISTS WITHIN THE EXECUTIVE BRANCH OF THE AMERICAN SAMOA GOVERNMENT THAT CAN CONTINUOUSLY OPERATE INTO THE FUTURE TO LOWER PUBLIC COSTS AND REGULATORY BURDENS ON THE PEOPLE OF AMERICAN SAMOA**

**Section 1: Authority.**

This executive order is hereby issued in accordance with the powers and authority granted to the Governor by Article IV, Sections 6 and 7 of the Revised Constitution of American Samoa, and the American Samoa Code Annotated, Section 4.0111(a).

**Section 2. Policy.**

The policy of the executive branch of the American Samoa Government (ASG) to alleviate unnecessary public costs and regulatory burdens placed on the American Samoan people is affirmed by this order.

**Section 3. Definitions.**

(a) The term “agency” shall mean those departments as set out at Section 4.0301 ASCA, the remaining statutorily created offices and agencies created by Title 4 ASCA, the semi-autonomous agencies of the government, and each board, commission, department or officer of the government, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.

(b) The term “rule” or “rules” shall mean each agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practical requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or intraagency memoranda.

**Section 4. Rule Reform Officers (RRO).**

(a) Within 30 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under Section 8 of this order, shall designate an agency employee, who must be a career service employee, to be the agency’s “Rule Reform Officer” (RRO). Each RRO shall oversee the implementation of agency rule reform initiatives and policies to ensure the agency effectively carries out rule reforms consistent with applicable law.

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**Section 5. RRO Duties.**

- a) Each RRO shall evaluate existing rules of its agency;
- b) and make recommendations to the agency head regarding the new creation, repeal, replacement, or modification, of their agency's rules consistent with applicable law. At a minimum, each RRO shall attempt to identify rules that:
- (i) are outdated, unnecessary, or ineffective;
  - (ii) impose costs that exceed benefits;
  - (iii) create a serious inconsistency or otherwise interfere with rule reform initiatives and policy;
  - (iv) in the event rules identified in (i) –(iii) of this section for which the agency is unable to take action to remedy by rulemaking without first repeal, amendment, replacement of a statutory provision or the creation of new statutory law, the RRO will make legislative recommendations to the agency head.
- b) If an agency vested with rulemaking authority by statute does not have an incumbent agency head the Governor shall designate the RRO for such agency. Said person shall report his or her recommendations directly to the Governor.
- c) All RROs may receive legal and/or technical expertise to assist them in their duties prescribed under this Executive Order to the extent local or federal funding sources are available.

**Section 6. Rule Reform Panel.**

- (a) A rule reform panel is established which shall be comprised of five persons who will represent each of the following agencies on the panel. The head of each of these agencies shall designate a representative to the panel within 30 days of the date of this order. Unless otherwise prohibited by law, nothing in this order precludes the agency heads of the below agencies from nominating themselves to the panel.
- (i) Department of Legal Affairs
  - (ii) Office of Program Planning and Budget
  - (iii) Department of Treasury
  - (iv) Office of the Administrative Law Judge
  - (v) Office of the Governor
- (b) The chair of the panel will be the representative of the Office of the Governor and the vice-chair shall be selected by the membership.
- (c) Meetings of the panel shall be informal and must be held at least once per month. Panel meetings maybe held by any means in addition to in person including: telephone, email, or other electronic means. The first meeting shall be held in person. Three persons present shall constitute a quorum for conducting panel business. Forty-eight hours or more advance notice shall constitute reasonable notice for the conduct of all panel meetings unless waived by all panel members.



(d) The panel shall be advisory only and shall hold meetings with the various RRO's, technical experts assisting them, agency heads and other authorized rulemaking authorities, to evaluate both draft and final recommendations regarding rule formulation, repeal, replacement, or modification, before such are put out for public notice and comment. At a minimum the panel shall provide advisement in identifying recommended rules that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies already in place or in this order;
- (v) derive from or implement Executive Orders or other Governor directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, and to expedite rule reform, the panel may invite the input of other agencies, community organizations, the American Samoa Bar Association, or other experts to comment on agency recommended rules before they proceed to public notice and comment.

(f) Commencing May 1, 2019, and continuing on a schedule to be determined by the panel, which schedules may vary from agency to agency, each RRO shall provide a report to the panel detailing the agency's progress toward the following goals:

- (i) improving implementation of rule reform initiatives and policies pursuant to this order;
- (ii) identifying rules for repeal, replacement, or modification;
- (iii) identifying recommendations to statutes pursuant to this order.

## **Section 7. Accountability.**

Consistent with the policy set forth in Section 2 of this order, each agency should measure its progress in performing the tasks outlined in Section 5 of this order.

(a) Agencies listed shall incorporate in their annual performance plans as required under Section 10.0505 .ASAC performance indicators that measure progress toward the goals listed in Section 5 of this order. Within 60 days of the date of this order, the Director of the Office of Program Planning and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the goals listed in Section 5 of this order in assessing the performance of the panel and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

**Section 8. Waiver.**

Upon the request of an agency head, the panel may waive compliance with this order if it determines that the agency generally issues very few or no regulations. The panel may revoke a waiver at any time.

**Section 9. General Provisions.**

(a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Program Planning and Budget relating to budgetary, administrative, or legislative proposals.


(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the American Samoa Government, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Section 10. Effective Date**

This order shall be effective upon date of execution.

Date: 1/21/2019

  
**LOLO M. MOLIGA**  
Governor of American Samoa