

# Carrying Out a State Regulatory Program

A National State Auditors Association Best Practices Document



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# Best Practices in Carrying Out a State Regulatory Program

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## Purpose

The Performance Audit Committee of the National State Auditors Association developed this document as a tool for audit organizations and government agencies to use in identifying and evaluating best practices in carrying out a state regulatory program. Although the document was intended to address many of the best practices that could apply in these situations, it should not be considered all-inclusive. Further, the practices listed here may not be applicable in all situations, and other practices may accomplish the same things. However, this document can be extremely helpful as a starting point for both agency managers and auditors in deciding what types of practices are more likely to result in a well-designed regulatory program.

## Planning

State regulatory programs are designed to safeguard the public's health or welfare. They generally are established to protect the state's most vulnerable populations from harm (such as seniors in nursing homes or children in day care), to protect the public from unqualified or unscrupulous practitioners, or to safeguard the state's natural resources. Regulatory agencies usually are given the statutory authority and power to decide who can operate within the regulated industry, and what requirements they must adhere to. Having a well-designed regulatory program greatly increases the likelihood that the state's regulation will adequately protect its citizens and resources.

## Standard Setting

The regulatory agency needs to develop norms for acceptable qualifications, behaviors, and conditions within the regulated industry, based on the law. To do this, it should establish standard definitions, guidelines, criteria, qualifications, etc. for each type/level of person/entity to be regulated. These should address such things as:

1. What each person/entity being regulated is required to have or to do to be eligible **to get** a license or permit.
2. What each regulated person or entity is required to do—or is prohibited from doing— **after** getting a license or permit.
3. Any additional education/training/other requirements that must be met after getting a license or permit, and the timeframe for meeting them.

## Gatekeeping: Identifying the People/Entities To Be Regulated

Members of the regulated industry aren't always aware of the need to obtain or renew a license or permit to operate within that industry, or of the requirements they must adhere to. At the same time, some people/entities may be operating intentionally without getting the necessary licenses or permits. As part of its regulatory efforts, the agency should develop procedures that allow it to do the following:

1. Identify the people/entities required to have a new license or permit to operate (for example, through schools, professional organizations, and various lists or directories; through

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- consumer education regarding requirements imposed on the regulated industry; through complaints filed against people operating without a license; etc.).
2. Notify these people/entities of the requirements they must meet to operate within the regulated industry, the steps they must take to get a new license or permit, and the penalties for noncompliance.
  3. Before existing licenses or permits expire, notify people/entities of the need to renew them and of any requirements or fees that have changed.
  4. Make new and renewal applications and other needed materials available to them on a timely basis (by mail, on the agency's Web site, or through some other source).

### **Gatekeeping: the Licensing and Permitting Process**

Requiring people to get and maintain a current license or permit is one way the state can try to make certain only qualified individuals who meet certain standards are allowed to operate within the regulated industry. The agency should develop a systematic and fair process for issuing both new and renewal licenses/permits to qualified applicants. As part of a good licensing/permitting process, the agency would be expected to:

1. Require applicants to submit an application or renewal form, and any supporting documents needed to help determine whether the applicant is qualified.
2. Take reasonable steps for the initial application and subsequent renewals to ensure that the applicant meets all current requirements (could involve reviewing or verifying the information the applicant submitted, testing the applicant's knowledge, inspecting the applicant's facilities, investigating the applicant's background, etc.).
3. Issue licenses/permits on a timely basis and for a specified period of time to applicants who meet requirements, and collect any applicable fees.
4. Notify applicants who don't meet requirements that they've been denied, and make them aware of any appeals process.
5. Track and oversee the application process to ensure that applications are handled as intended and don't get lost, and that the amount of fees collected reconciles to the number of licenses and permits issued.
6. Maintain a record of the applications and supporting documents submitted, the screening process followed and its results, the licenses or permits held, etc.

### **Monitoring: the Inspection Process**

The agency should develop a systematic process for monitoring regulated people's/entities' activities to ensure that they are following applicable requirements and that the public is adequately protected. As part of a good inspection process, the agency would be expected to:

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1. Develop standard criteria or categories for the following:
  - a. The types of violations that may occur within the regulated industry.
  - b. How serious they are.
  - c. The types of corrective actions needed for each type of violation.
  - d. When those corrective actions must be taken.
  - e. The consequences of not taking corrective action as required.
  
2. In some situations, the monitoring process may begin with or be limited to receiving reports from licensees or permit-holders. In such cases, the agency should do the following:
  - a. Specify who should report, what they should report on, and how often.
  - b. Review that information and verify it as needed.
  - c. Follow-up as needed on any noncompliance or on any questionable or “bad” results reported.
  - d. Conduct periodic on-site reviews/inspections to verify what’s being reported, etc.
  
3. Set up a schedule for periodically inspecting regulated people/entities. Factors that are often considered in setting up a reasonable schedule:
  - a. They should be frequent enough to provide reasonable safeguards to the public.
  - b. They should be risk-based if possible.
  - c. They should comply with any legal/regulatory requirements.
  
4. Develop standardized checklists, guides, or other documents covering the areas of compliance/requirements to be checked during the inspection, and the level of reporting required. Some factors to be considered regarding these documents:
  - a. They should incorporate all significant statutory, regulatory, or agency requirements or standards related to the regulated industry.
  - b. They should provide inspectors with appropriate guidance for conducting the inspection, including how violations will be measured or detected (for example, to determine if there’s a violation, the inspector should be able to either observe (see) or test that it exists).
  - c. They should be designed so the inspector can demonstrate that he or she checked the licensee’s compliance with all applicable laws and requirements.
  - d. They should be easily understood, and any terms, classifications, procedures, etc., should be clearly defined.
  
5. Provide formal training to new inspectors and periodic training to all inspectors on how to use, interpret, and apply these standardized checklists or guides accurately, consistently, and fairly.
  
6. Require inspectors to periodically disclose any actual or perceived impairments they may have to carrying out their duties impartially (for example, relatives operating a regulated business within their region).

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7. Conduct inspections in a timely, efficient, and effective manner. Factors that are often indicative of efficient and effective inspections:
  - a. Having appropriate performance goals and measures for inspectors, such as the number of full inspections they are expected to conduct each year.
  - b. Assigning inspectors to regions within the state, and having them follow the most efficient routes in traveling between inspection sites.
  - c. Cross-training inspectors when agencies are responsible for different types of inspections within the same industry—or for inspections across multiple industries.
  - d. Using part-time staff when programs are seasonal in nature and don't operate year-round.
  - e. Rotating inspectors between regions to ensure they don't develop too cozy a relationship with the people they are regulating.
  - f. Conducting unscheduled inspections.
  - g. Conducting all required inspections.
  - h. Conducting inspections that are thorough and as complete and needed under the circumstances.
  - i. Allowing the regulated person/entity to correct minor problems while the inspector is on-site, and requiring immediate corrective action if the violations or problems found threaten life or health.
  - j. Providing inspectors with the equipment and technology they need to efficiently and effectively carry out their jobs.
  
8. Document the results of the inspection/investigation, including any violations found and how serious they are. Factors that are often considered to be important in recording these results:
  - a. Having inspectors record and discuss the violations they found and any preliminary conclusions or recommendations with the regulated person/entity while they are on-site
  - b. Allowing the regulated person/entity to provide additional information that may have a bearing on the inspector's findings.
  - c. Having a supervisor review the results of the inspector's work to ensure that it was conducted in a way that is consistent with applicable laws, regulations, and agency policies, and that any conclusions and recommendations are based on clear and sufficient evidence. (A supervisor should not be able to override an inspector's recommendations without management's review and approval, and a written record should be kept of any changes made and the rationale for each.)
  
9. Provide formal written notification to the person/entity that was inspected about the final results of the inspection, including any violations or other problems found, corrective actions that need to be taken, and timeframes.
  
10. Track the inspections conducted, violations found, and actions taken to ensure that they are being addressed appropriately and that things don't slip through the cracks. Depending on the industry being regulated and the severity of the problems found, this may entail one or more on-site re-inspections.
  
11. Maintain a record of the monitoring process and its results, and make those results available to inspectors for future inspections so they are aware of the licensee's inspection history and past violations.

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### Monitoring: the Complaint-Handling Process

Complaints are an important source of information for determining whether the people/entities operating within the regulated industry are in compliance with all applicable requirements and standards.

Complaints can be handled within the regulatory agency, or as part of an independent or centralized service. Wherever this process is located, there should be a systematic process for handling complaints. As part of a good complaint-handling process, the agency would be expected to:

1. Establish a method for receiving complaints that encourages valid complaints but discourages invalid ones. Depending on the industry being regulated, the types of factors to be considered in establishing a complaint-handling process can include:
  - a. Making information available on the agency's Web site or through some other source so members of the public will know that the complaint-handling process exists and how to use it. This information can include the requirements that exist for people operating within the regulated industry, a description of the agency's complain-handling process, and complaint forms, if applicable.
  - b. Allowing complaints to be submitted formally (i.e., in writing or electronically), or informally through a complaint-intake process (i.e., in person or over the phone).
  - c. Providing for complaints to be called in after regular business hours.
  - d. Collecting at least the minimum information needed to take the appropriate initial action on the complaint.
  - e. Taking anonymous complaints when there's a good reason to do so.
  - f. Screening out complaints that have no merit on their face or that the agency has no jurisdiction over. For valid complaints that are outside the agency's jurisdiction, procedures should be in place for referring them to or notifying the appropriate agency(ies).
2. Establish appropriate policies and procedures for maintaining the confidentiality of complaints and pending investigations.
3. Set guidelines/requirements for which complaints need action, and how quickly complaints should be handled (will depend on the type and severity of the problems alleged).
4. Screen complaints against these guidelines to identify those needing action, and assign them to someone to review or investigate.
5. Investigate complaints as needed to determine whether problems exist, and how serious they are. This could be accomplished through separate investigations, as part of the inspection process, or through other types of reviews.
6. When applicable, provide timely feedback to the person who submitted the complaint about the outcome of the complaint review or investigation.
7. Track and oversee complaints to ensure that they are being addressed appropriately and that things don't slip through the cracks.
8. Maintain a record of the complaints received, the investigation results, and any actions taken.

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### Enforcement Process

When people/entities operating within the regulated industry are found **not** to be in compliance with all requirements and standards and won't voluntarily come into compliance, the agency must take action to compel them to comply or to stop operating. The agency should develop a systematic, fair, and progressively stringent enforcement process to ensure that the public is adequately protected. As part of a good enforcement process, the agency would be expected to:

1. Establish a graduated and equitable system of sanctions (i.e., letters of non-compliance, increasing levels of fines, license suspension, license revocation, criminal punishment, etc.) that addresses any legal or regulatory requirements. The sanctions should be set sufficiently high to help achieve the desired results (compel the person or entity to comply or stop operating).
2. Specify the number or severity of violations or "occurrences" that should trigger each level of sanction, and any applicable timeframes. Again, immediate action should be taken if the violations or problems found threaten life or health.
3. Establish an administrative process for appealing these sanctions.
4. Track and flag people/entities that have not come into compliance after problems or violations were identified, including those operating without a required license or permit.
5. Formally notify these people/entities of the enforcement actions that are going to be applied, the basis for the enforcement action(s), the applicable timeframes, and their right to appeal.
6. Take appropriate, consistent, and timely enforcement actions that address the violations cited against these people/entities (including collecting any fines levied).
7. Follow-up as needed (i.e., through written reports, the inspection process, special investigations, etc.) to determine whether the problem has been corrected or whether additional enforcement action is needed.
8. Track and oversee the enforcement actions taken to ensure that they are being addressed appropriately and that things don't slip through the cracks.
9. Maintain a record of the enforcement actions taken.
10. Ensure that information about any disciplinary actions taken is readily available to the public.

### Management Analysis and Reporting Process

The regulatory agency should establish a systematic process for analyzing program-related information, making appropriate adjustments to improve the effectiveness and efficiency of the program, and reporting relevant summary information to the public and policy-makers about the results of the regulatory program. As part of this process, management would be expected to do the following types of things on a periodic basis:



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1. Monitor the regulated industry for changes that may impact the public's health, safety, or welfare, or that could otherwise affect the regulatory program.
2. Evaluate the nature and volume of complaints and of violations identified during inspections/investigations.
3. Evaluate the adequacy and consistency of inspections and enforcement actions, and their effectiveness in protecting the state's citizens and resources from harm.
4. Evaluate the extent to which program staff complied with agency policies and procedures in carrying out their responsibilities.
5. Evaluate the reliability of the program data compiled and maintained by the agency.
6. Evaluate how efficiently the agency is carrying out its responsibilities, including a review of any duplicative regulation that may be provided at different levels of government.
7. Propose or adopt needed changes in laws, regulations, standards, policies, processes, sanctions, fees, etc., to help ensure the regulatory program is operating as intended and accomplishing its purpose.
8. Periodically report to the public on its activities in regulating the industry, and on relevant trends and conditions within that industry.