

March 7, 2017

Regulatory Update

Trump Administration Executive Order on “Enforcing the Regulatory Reform Agenda”

Overview

On February 24, 2017, President Trump signed an [Executive Order](#) entitled “Enforcing the Regulatory Reform Agenda”. The Executive Order establishes mechanisms intended to reduce regulations, including by implementing the President’s January 30, 2017 Executive Order which calls for agencies to eliminate two regulations for each new regulation they promulgate. Among the requirements of this latest Executive Order are mandates for federal agencies to appoint “Regulatory Reform Officers” and establish “Regulatory Reform Task Forces”. As described in a White House [press release](#), the Executive Order directs each agency’s Regulatory Reform Task Force to: “evaluate existing regulations and identify candidates for repeal or modification”; and “focus on eliminating costly and unnecessary regulations.”

Regulatory Reform Officers

Section 2 of the Executive Order requires each federal agency head to designate a Regulatory Reform Officer who will “oversee the implementation of regulatory reform initiatives and policies to ensure that agencies carry out regulatory reforms...” The Executive Order specifies that these initiatives and policies include implementation of:

- [Executive Order 13771](#), signed by President Trump on January 30, 2017, which is intended to ensure that “for every one new regulation issued, at least two prior regulations be identified for elimination”. A White House [memorandum](#) issued on February 3, 2017 provided additional details on the implementation of this Executive Order.
- [Executive Order 12866](#), signed by President Clinton on September 30, 1993, which was intended: “to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.”
- Section 6 of [Executive Order 13563](#), signed by President Obama on January 18, 2011, which directed federal agencies to “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them...”

Regulatory Reform Task Forces

Section 3 of the Executive Order requires each federal “agency to establish a Regulatory Reform Task Force”, which will include the Regulatory Reform Officer, the agency’s Regulatory Policy Officer, and “a representative from the agency’s central policy office or equivalent central office”. The Regulatory Reform Task Forces of the cabinet departments, the Environmental Protection Agency (EPA) and the National Aeronautics and Space Administration (NASA) must also include “three additional agency officials as determined by the agency head.”¹

The Executive Order directs each Regulatory Reform Task Force to “evaluate existing regulations...and make recommendations to the agency head regarding their repeal, replacement, or modification...” The Regulatory Reform Task Forces are instructed to identify regulations that:

- “...eliminate jobs, or inhibit job creation;”
- “...are outdated, unnecessary, or ineffective;”
- “...impose costs that exceed benefits;”
- “...create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;...”
- conflict with statutory requirements governing the quality of data disseminated by federal agencies;² and
- “derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.”

The Executive Order also requires each Regulatory Reform Task Force to:

- Solicit “input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including, State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations”;
- “...[P]rioritize, to the extent permitted by law,...regulations...identified as being outdated, unnecessary, or ineffective...” for repeal in implementing the regulatory repeal requirements of the January 30, 2017 Executive Order;
- Report to the agency head within 90 days, and on set schedule thereafter, “the agency’s progress...[in]...improving implementation of regulatory reform initiatives and policies...[and] identifying regulations for repeal, replacement, or modification.”

¹ The Executive Order states that the requirement to appoint “three additional agency officials” to the Regulatory Reform Task Force applies to agencies listed in [31 U.S.C. 901\(b\)\(1\)](#): the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs, as well as the EPA and NASA.

² Section 3(d)(v) of the Executive Order cites “section 515 of the Treasury and General Government Appropriations Act, 2001 ([44 U.S.C. 3516 note](#))”, which directs the “...Director of the Office of Management and Budget...by not later than September 30, 2001, and with public and Federal agency involvement, [to] issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.”

Accountability

Section 4 establishes requirements for agencies to measure progress in implementing the Executive Order. Cabinet departments, the EPA, and NASA must “incorporate in their annual performance plans...performance indicators that measure progress toward the two goals listed in section 3(g) of this order” (“improving implementation of regulatory reform initiatives and policies...[and] identifying regulations for repeal, replacement, or modification.”)

The Director of the Office of Management and Budget (OMB) is required to “issue guidance regarding implementation of this subsection” within 60 days. This guidance “may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.” This suggests that, as with President Trump’s Executive Order 13771, this Executive Order does not require action by independent agencies. The February 3, 2017, White House memorandum providing implementation guidance for Executive Order 13771 stated that agencies that are not “required to submit significant regulatory actions to [the Office of Information and Regulatory Affairs (OIRA)] for review under EO 12866”³ are not subject to the order’s requirements.

Waivers

Section 5 permits the OMB Director to exempt an agency from complying with the Executive Order if “that agency generally issues very few or no regulations.”

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³ Executive Order 12866 cites the statutory definition of “independent agency” set forth at [44 U.S.C. 3502](#), which states: “the term ‘independent regulatory agency’ means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission”.