

Introduction to the Fall 2017 Regulatory Plan

Following statutory directions, the Executive Branch implements many federal policies through regulatory action in areas as diverse as homeland security, environmental protection, energy policy, transportation, federal land management, education, and commerce. Over many decades, federal agencies have imposed countless regulatory requirements on individuals, businesses, landowners, and state and local governments. Some of these regulations serve important public purposes. Other regulations, however, are outdated, duplicative, or unnecessary, yet they continue to impose costly burdens. President Trump has committed to reducing the regulatory burden on the American public in order to promote economic growth, job creation, and innovation.

This Fall 2017 Regulatory Plan reflects a fundamental shift. The Trump Administration recognizes that excessive and unnecessary federal regulations limit individual freedom and suppress the innovation and entrepreneurship that make America great. Starting with confidence in private markets and individual choices, this Administration is reassessing existing regulatory burdens. In the 2017 Plan, Agencies have identified regulatory actions ripe for reform and are working to eliminate or modify them. This Administration also approaches the imposition of new regulatory requirements with caution to ensure that regulations are consistent with law, necessary to correct a substantial market failure, and net beneficial to the public. Furthermore, the Plan, along with the Unified Agenda of Regulatory and Deregulatory Actions (“Agenda”), identifies the Administration’s priorities in manner that is transparent and accessible to the public.

Our regulatory philosophy and approach emphasize the connection between limited government intervention and individual liberty. Regulatory policy should serve the American people by staying within legal limits and administering the law with respect for due process and fair notice. The 2017 Plan sets forth the Administration’s roadmap for a more limited, effective, and accountable regulatory policy.

Federal Regulatory Policy

The 2017 Plan both sets a new direction in regulatory policy and preserves many longstanding regulatory best practices. Stressing that “it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations,” President Trump directed all federal agencies to eliminate two regulations for each new one implemented and to reduce new regulatory costs to zero in Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs,” January 30, 2017). He also created regulatory reform officers and regulatory reform taskforces in each agency in Executive Order 13777 (“Enforcing the Regulatory Reform Agenda,” February 24, 2017). Within the Office of Management and Budget, the Office of Information and Regulatory Affairs (“OIRA”) implements federal regulatory policy and has led efforts to implement these presidential directives, working with agencies to identify deregulatory actions and eliminate regulatory burdens.

OIRA also continues to respect and pursue longstanding principles and practices of centralized regulatory review. These principles, set out in President Clinton’s Executive Order 12866, emphasize that agencies should regulate only when necessary, when consistent with law, and

in a manner that produces real net benefits for the American people. The Administration also takes seriously retrospective review and the imperative to evaluate the actual costs and benefits of existing regulations. The President's two-for-one directive and the creation of a regulatory cap requires that agencies eliminate unnecessary or excessively burdensome rules as part of their regulatory planning.

OIRA works with agencies to promote sound science and economic analysis. Agencies should develop improved regulatory impact analyses of the costs and benefits of their actions, relying on reasonable assumptions and public input. In some instances, analysis will require revisiting previous regulatory impact assessments to ensure that they reflect the best possible estimate of costs and benefits. Moving forward, it requires rigor and fairness in assessing the actual impacts of new regulatory and deregulatory policies.

This Administration's regulatory philosophy also emphasizes the rule of law, including constitutional, statutory, and procedural limits on administrative action. For instance, OIRA requires agencies to indicate the legal authority for regulatory actions, whether from a statute or judicial order. We look closely at planned regulatory and deregulatory actions to ensure that they follow the law and the correct administrative procedures.

Moreover, the Administration has reinforced the importance of fair notice and due process. In particular, this means agencies should closely examine their use of sub-regulatory actions, such as guidance documents, enforcement manuals, interpretive rules, "FAQs," and the like. Such documents can serve an important role in explaining existing statutory or regulatory requirements; however, they should not be used to impose new or additional legal obligations or requirements. Accordingly, this Administration has encouraged agencies to take a close look at existing guidance documents to assess whether some of them should be withdrawn or modified, or whether their requirements should go through a process of notice and comment rulemaking. Limiting guidance to its intended purpose of clarifying existing law rather than making new law will provide greater transparency about the regulatory process and ensure that regulated entities and the public have notice and an opportunity to comment on significant changes in regulatory requirements.

These specific policies rest on foundational principles of the proper role of the Executive Branch in our constitutional system of separation of powers. Agencies should administer the law found in statutes, not make new law, and they should respect the judicial role in enforcing limits on administrative power. Moreover, faithful execution of the laws requires the Administration be directly accountable for its regulatory policies and ensure that regulations and their enforcement benefit the American people.

2018 Regulatory Priorities

Reducing regulatory burdens. One of the primary priorities reflected in the 2017 Regulatory Plan is the reduction of regulatory burdens. Accordingly, in 2018, across the Administration agencies anticipate eliminating and streamlining approximately three regulations for each new one imposed. Moreover, agencies are set to substantially reduce overall regulatory costs. This Regulatory Plan reflects a new direction that recognizes the costs of accumulated regulatory burdens and looks for ways to reduce those burdens by modifying or eliminating regulations; revising or eliminating guidance documents; and streamlining information collections.

Agencies have taken several approaches to identifying burdens that can be minimized or eliminated. Regulatory reform task forces have brought together political leadership and career staff to review and revise existing regulations. Agencies have sought extensive public comments, both through written submissions and public listening sessions. Other agencies have studied specific problems of overregulation and drafted comprehensive reports evaluating existing regulations. Based on extensive experience across administrations, OIRA has also worked with the agencies to identify potential areas for reform. These efforts by the agencies, in consultation with the public and OIRA, have yielded notable progress, as reflected in the agency Regulatory Plans that follow.

Efficacious new regulations. Agencies have also planned new regulatory initiatives required by law or by a compelling public need. These actions should be guided by good regulatory practices, which include regulating only when necessary, carefully studying lawful alternatives, and engaging with the public and affected parties. Moreover, when proceeding with regulations, agencies should rely on sound science and thorough cost-benefit analysis. Unless specifically required by law, agencies should regulate only when the benefits substantially outweigh the costs, and OIRA will carefully examine each proposed regulation to ensure that it is the least burdensome regulatory approach that meets the relevant statutory standards.

Transparency and public access. This Administration remains committed to transparency in the regulatory process, public access to information about regulatory policy, and public participation in proposed rules. OIRA is working with agencies to ensure that items listed on the Plan and Agenda reflect carefully considered and current policy priorities. In addition, with this Regulatory Plan and Fall Agenda, OIRA has taken a number of steps to improve transparency. For instance, we have published the “Inactive List,” a list of regulations agencies might pursue in the future. Although maintained for many years, the Inactive list was not previously available to the public. Publishing the Inactive List online allows the public a more complete picture of anticipated agency actions.

OIRA has also implemented enhanced categorization and online search capabilities for the Agenda, so the public can identify actions anticipated to be regulatory or deregulatory and other detailed information. We hope these enhancements will further public understanding of proposed regulatory actions and encourage participation in the regulatory process.

Conclusion

The agency plans that follow push against the inertia of steadily expanding regulatory burdens and represent this Administration’s commitment to reducing regulations that no longer benefit our society. The plans also send a clear message that the public can invest and plan for the future without the looming threat of burdensome and unnecessary new regulations. OIRA looks forward to working with the agencies and all interested stakeholders to deliver meaningful regulatory reform to the American people.

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