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POLITICAL CLIMATE CHANGE: EPA POLICY AND PRIORITIES IN THE TRUMP ERA

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PART 1

GENERAL ADMINISTRATIVE DEVELOPMENTS

“One In Two Out”: the EO

- Executive order 13,771 requires agencies to “identify at least two existing regulations to be repealed” for every new proposed regulation.
 - The cost of new regulations must also be “offset” by the elimination of costs in existing regulations.
 - Total incremental costs in FY 2017 must be zero
- Open questions:
 - What is a regulation?
 - What is a repeal?
 - What about statutorily required regulations?



Federal Register / Vol. 82, No. 22 / Friday, February 3, 2017 / Presidential Documents

9339

Presidential Documents

Executive Order 13771 of January 30, 2017

Reducing Regulation and Controlling Regulatory Costs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1104 et seq.), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Purpose. It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources, in addition to the management of the direct expenditures of taxpayer dollars through the budgeting process. It is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every new rule regulation issued at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

Sec. 2. Regulatory Gap for Fiscal Year 2017. (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for review and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and existing regulations; standards for determining the costs of existing regulations that are candidates for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or at different agencies; and emergency and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

Sec. 3. Annual Regulatory Cost Submissions to the Office of Management and Budget. (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

“One In Two Out”: OIRA Guidance

- OIRA guidance clarifies EO 13771.
 - A “regulatory action” includes “significant” regulatory actions *and* certain guidance documents that impose costs
 - These include actions that have annual costs of \$100 million or more or are otherwise novel or impactful
 - A “deregulatory action” is one that has total costs less than zero
 - The EO does not apply to actions that are: (1) statutorily or judicially required; (2) emergency; (3) exempt (e.g. national security); or (4) *de minimis*
 - The EO does not apply to independent regulatory agencies

“One In Two Out”: EPA Deregulatory Actions

- EPA currently has a list of 24 completed deregulatory actions and 41 pending deregulatory actions
- High profile deregulatory actions include the repeal of the “WOTUS” rule and the Clean Power Plan
- Many deregulatory actions have been delays or extensions of compliance deadlines



“One In Two Out”: Litigation

- Environmental and public interest groups are challenging EO 13,771 in *Public Citizen v. Trump*, No. 1:17-cv-00253 (D.D.C.).
- Plaintiffs were recently allowed to amend their complaint, which raises constitutional issues
- The amended complaint alleges specific withdrawals and delays of agency rules
 - For example, the Department of Energy is alleged to have delayed energy efficiency standards based on the EO
 - The Department of Transportation allegedly withdrew a proposed rule regarding baggage fee disclosures, explicitly citing the EO

DOJ Memo: Agency Guidance Not Enforceable

- A January 2018 Department of Justice memo prohibits DOJ from relying on guidance from any agency in civil enforcement actions
 - DOJ may not “use noncompliance with guidance documents as a basis for proving violations of applicable law”
 - DOJ cannot otherwise “use its enforcement authority to effectively convert agency guidance documents into binding rules.”



DOJ Memo: Agency Guidance Not Enforceable

- EPA guidance documents are frequently relied upon in environmental law
 - CERCLA
 - Clean Air Act
 - Clean Water Act
- Regulated entities will no longer be subject to civil enforcement based on non-compliance with guidance
- *But:* guidance could still be used in EPA administrative enforcement actions or in settlement discussions
- A regulated entity could still cite guidance in its defense

PART 2

EPA PRIORITIES AND FUNDING

“Back-to-Basics Agenda”

- **Environment:** Protecting the environment
- **Economy:** Sensible regulations that allow economic growth
- **Engagement:** Engaging with state and local partners



FY 2018-2022 EPA Strategic Plan

- **Core Mission:** Deliver real results to provide Americans with clean air, land, and water, and ensure chemical safety.
- **Cooperative Federalism:** Rebalance the power between Washington and the states to create tangible environmental results for the American people.
- **Rule of Law and Process:** Administer the law, as Congress intended, to refocus the Agency on its statutory obligations under the law.

National Enforcement Initiatives

- Cutting Hazardous Air Pollutants (expanded for FY17-19)
- Reducing Risks of Accidental Release at Industrial and Chemical Facilities (new for FY17-19)
- Reducing Hazardous Air Emissions at Hazardous Waste Facilities (new for FY17-19)
- Keeping Industrial Pollutants Out of the Nation's Waters (new for FY17-19)

FY 2019 Budget Proposal

- The Administration's 2019 budget proposal included a 23% cut to EPA funding
- Notable cuts:
 - Climate change initiatives
 - Research and technology
 - Water quality in the Gulf of Mexico, Chesapeake Bay, and Great Lakes
- Increased funding:
 - Superfund
 - Water infrastructure projects

Congressional Direction: FY 2018 Funding

- EPA funding kept at current level in Omnibus (\$8.1 billion)
- Rejected many cuts in the administration's proposed budget
- Biggest budget increases:
 - Drinking water state funds (\$600 million)
 - Superfund (\$66 million)



PART 3

FOCUS ON SUPERFUND

Superfund: A Top Priority

- A “key objective” of the Agency is “revitalizing land, to return it back to local communities so they can enjoy it.”
- Administrator Pruitt established a “Superfund Task Force” to:
 - “restructure the cleanup process,”
 - “realign incentives of all involved parties to promote expeditious remediation”
 - “reduce the burden on cooperating parties,”
 - “incentivize parties to remediate sites”
 - “encourage private investment in cleanups and sites” and
 - “promote the revitalization of properties across the country.”
- Task Force was given 30 days to complete its mission.

The Task Force Report

- Released on July 25, 2017, identifies five goals:
 - Expediting cleanups and remediation
 - Reinvigorating responsible party cleanup and reuse
 - Encouraging private investment
 - Promoting redevelopment and Community revitalization
 - Engaging partners and stakeholders
- Identifies 42 recommendations to achieve those goals without legislative changes.
- “[I]s not final Agency action,” and notes that modification of policy statements, amendment of regulations, or legislative amendments may be appropriate.

Implementation

- Superfund Human Exposure Dashboard
- Sites Targeted for Immediate, Intense Action
- Superfund Redevelopment Focus List
- Deletion of Seven NPL Sites in 2017
- Task Force Quarterly Report: First Quarter 2018
- Task Force Outreach

Questions?



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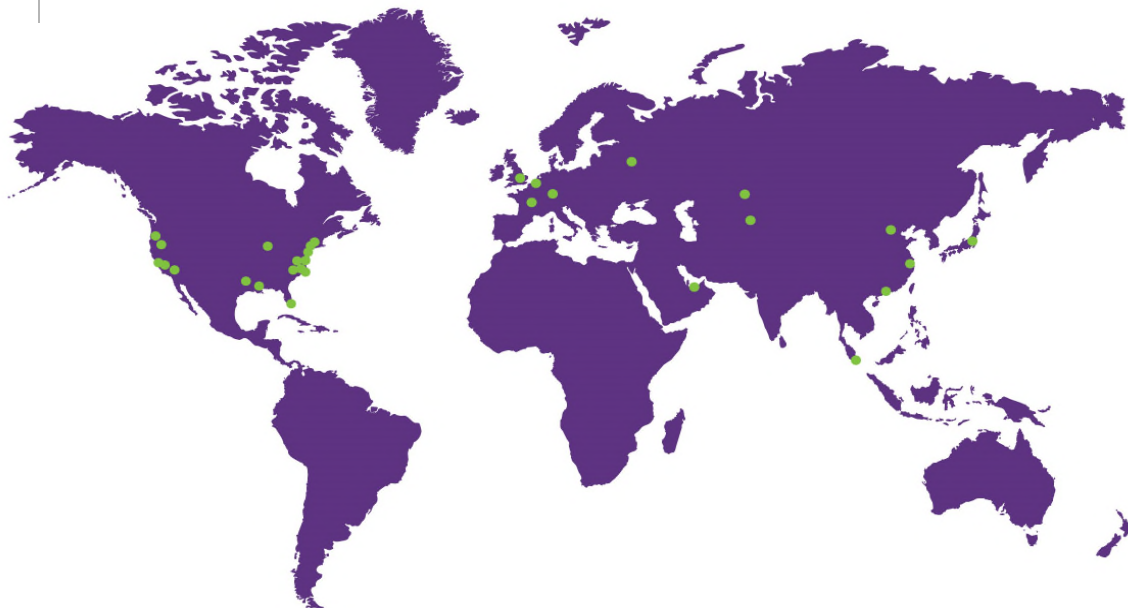
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