
President Trump Signs Executive Order Setting Guidelines for Identifying Regulations for Repeal, Replacement, or Modification

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On February 24, 2017, President Trump signed an Executive Order setting forth guidelines pursuant to which the Trump administration will implement and enforce its regulatory reform initiatives and identify regulations for repeal, replacement, or modification.¹ This Executive Order follows President Trump's January 30, 2017 Executive Order in which he required that whenever an agency publicly proposes or promulgates a new regulation, it must identify at least two existing regulations to be repealed. These Executive Orders, which do not themselves effect any changes to existing regulations, nevertheless indicate a real commitment to regulatory reform by the Trump administration.

The February 24 Executive Order requires the head of each agency, unless that agency receives a waiver from the Director of the Office of Management and Budget, to designate an agency official as a Regulatory Reform Officer (RRO), who is tasked with overseeing the implementation of various regulatory reform initiatives and policies, including President Trump's prior Executive Order requiring that two regulations be revoked for every regulation enacted. In addition to requiring each agency to designate an RRO, President Trump's Executive Order also requires each agency to establish a Regulatory Reform Task Force that will evaluate and make recommendations regarding the repeal, replacement, or modification of existing regulations.

Specifically, the Executive Order requires each Regulatory Reform Task Force to attempt to identify regulations that: (1) "eliminate jobs, or inhibit job creation"; (2) "are outdated, unnecessary, or ineffective"; (3) "impose costs that exceed benefits"; (4) "create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies"; (5) "rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility"; or (6) "derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified." In performing this evaluation, each Regulatory Reform Task Force is required to seek input from entities significantly affected by federal regulations, "including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations." The Executive Order further provides that agency heads should prioritize regulations identified by the

Regulatory Reform Task Forces as outdated, unnecessary, or ineffective when implementing President Trump's prior Executive Order requiring that two regulations be revoked for every regulation enacted.

The Executive Order also requires each agency to measure its progress toward the two goals of implementing regulatory reform initiatives and identifying regulations for repeal, replacement, or modification. Within 90 days of the date of the Executive Order, each Regulatory Reform Task Force is required to provide a report to the head of each agency detailing the agency's progress toward these goals. And, certain identified agencies are required to incorporate into their annual performance plans performance indicators measuring progress toward these two goals, subject to future guidance from the Director of the Office of Management and Budget.

Although the Executive Order does not identify or change any specific rules or regulations, we believe that the procedures established by the Executive Order indicate that the Trump administration is committed to identifying ways to reduce the federal regulatory burden and will lead to significant rule changes in the future. We will continue monitoring the Trump administration's efforts in this area for further developments. In the meantime, companies in regulated industries should feel free to contact WilmerHale to discuss regulations in their industries that might meet the standards for repeal, replacement, or modification outlined above.

¹ [Presidential Executive Order on Enforcing the Regulatory Reform Agenda](#) (Feb. 24, 2017).