



## How U.S. EPA Is Implementing President Trump's Regulatory Reform Agenda

### I. BACKGROUND

Notable highlights from a March 30 U.S. Chamber of Commerce [new report](#), *Taming the Administrative State: Identifying Regulations that That Impact Jobs and the Economy*:

- The U.S. Environmental Protection Agency (EPA) puts out the most regulations
  - EPA rules were the largest category in the 2015 *Code of Federal Regulations* (Environmental Protection, Wildlife and Fisheries, Navigable Waters, Mineral Resources, and Public Lands accounted for 25% of all CFR pages)
- EPA issued the costliest rules of any agency, from 2008 to 2016, by a wide margin
  - 36 of the 140 “economically significant” rules, that accounted for 56% of the total cost of the \$100 million-plus (per year) rules issued during that timeframe
  - 13 of the 28 rules that have an annual cost of \$1 billion or more

### II. EXECUTIVE ORDERS

President Trump has spent his first 100 days in office working to fulfill his campaign pledge of rolling back regulations. On the campaign trail, Trump said that as many as 70 percent of federal agency regulations could be eliminated by his administration. In the last three months, Trump has issued the following executive orders aimed at curbing regulations and helping businesses:

#### **Executive Order (EO) Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects (Jan. 24)**

<https://www.whitehouse.gov/the-press-office/2017/01/24/executive-order-expediting-environmental-reviews-and-approvals-high>

- Identify high priority projects for expedited permitting, NEPA review

#### **Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (Jan. 24)**

<https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-streamlining-permitting-and-reducing-regulatory>

- Expedite reviews of, and approvals for, proposals to construct or expand manufacturing facilities
- Reduce burdens affecting domestic manufacturing, including the construction of manufacturing facilities
- The Associated General Contractors of America (AGC) responded March 31 to a Dept. of Commerce request for information on how to achieve order's goals

#### **EO Reducing Regulation and Controlling Regulatory Costs (Jan. 30)**

<https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>

- For any new regulation proposed or issued, agencies are required to “identify” at least two existing regulations for repeal (2-for-1)
- Any new incremental costs associated with a new rule must be offset by the elimination of existing costs associated with at least two prior regulations

- Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) issued final guidance April 5 - <https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation>
  - Limits application to "economically significant" rules (annual cost of \$100 million or more) + various waivers (regs needed for health, safety, or financial matters)
  - Agencies still need to issue – or keep – regulations as required by statute (and those mandated by courts resolving judicial challenges) and must adhere to rulemaking requirements under the Administrative Procedure Act and EO 12866 on [Regulatory Planning and Review](#)

#### **EO Enforcing the Regulatory Reform Agenda (Feb. 24)**

<https://www.gpo.gov/fdsys/pkg/FR-2017-03-01/pdf/2017-04107.pdf>

- Designate regulatory reform officers and establish regulatory reform task forces
- Each task force will evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement or modification
- Focus on eliminating costly and unnecessary regulations

#### **EO Restoring the Rule of Law, Federalism, and Economic Growth BY REVIEWING the "Waters of the United States" (WOTUS) Rule (Feb. 28)**

<https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>

- The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) required to review Obama WOTUS rule
- Definition of "Navigable Waters" at 33 U.S.C. 1362(7) – The agencies "shall consider interpreting the term 'navigable waters' . . . in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*"
  - Scalia's opinion indicates CWA jurisdiction includes *relatively permanent* waters/wetlands with a *continuous surface connection* to relatively permanent waters
  - Agencies are consulting with state/local govt's as work to develop new definition
- Directs the agencies to notify the U.S. Attorney General re: review of the WOTUS rule so he may take appropriate action concerning any pending litigation related

#### **EO Comprehensive Plan for Reorganizing the Executive Branch (March 13)**

<https://www.whitehouse.gov/the-press-office/2017/03/13/presidential-executive-order-comprehensive-plan-reorganizing-executive>

- Merge duplicative agencies and eliminate unnecessary agencies
- OMB issued guidance April 12 - <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>
  - Recommends how agencies can reduce federal workforce size, restructure missions, and evaluate performance (i.e., planning for funding levels in the President's FY 2018 Budget Blueprint – see below)
  - Stops federal hiring freeze

#### **EO Promoting Energy Independence and Economic Growth (March 28)**

<https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economy-1>

- Directly revokes, rescinds, or directs the review of climate and energy-related regulations, policies and programs administered by a variety of agencies
- Implementation of the measures outlined in the Executive Order will likely take significant additional time and process to fully implement and will almost certainly be challenged in the courts

- By May 12, all executive agencies must submit their plans for reviewing regulations affecting domestic energy production to OMB
- By July 26, each agency must present a draft report recommending how to ease the regulatory burden on domestic energy production; agencies must finalize reports by September 24

Of specific note, regarding March 28 EO:

1. Directs EPA to immediately review the Clean Power Plan - promulgated pursuant to section 111(d) of the Clean Air Act and intended to limit GHG from existing power plants
  - a. Clean Power Plan is currently subject to challenge in the D.C. Circuit and has been stayed by the Supreme Court
2. Directs the Council on Environmental Quality (CEQ) to rescind its [final guidance](#) encouraging federal agencies to consider impacts from GHG emissions and climate change in environmental reviews pursuant to the National Environmental Policy Act (NEPA)
3. Rescinds the Interagency Social Cost of Carbon Guidance (a metric for quantifying the costs of greenhouse gas emissions and the benefits of policies that reduce greenhouse gas emissions)
  - a. Agencies will rely on long-standing cost-benefit analysis guidance outlined in OMB Circular A-4; directs agencies to primarily evaluate a rule's costs/benefits only as it impacts the United States
4. Directly revokes the following Executive Orders and Presidential Memoranda:
  - a. Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment
    - i. directed agencies to more fully develop and implement requirements for the mitigation of adverse impacts from development and other activities on land, water, wildlife, and other ecological resources
    - ii. established a mitigation hierarchy (avoid, minimize, then compensate); set a "net benefit goal" or, at a minimum, a no net loss goal for natural resources
    - iii. emphasized large-scale or landscape-level planning and mitigation; and directed several agencies to take certain, specified actions to strengthen mitigation policies
  - b. Presidential Memorandum on Power Sector Carbon Pollution Standards
    - i. directed EPA regulate greenhouse gas emissions from the power sector
  - c. Memorandum on Climate Change and National Security
    - i. established a framework and directed agencies to take actions to ensure that climate change-related impacts are factored into the development of national security doctrine, policies, and plans
  - d. EO 13653 - Preparing the United States for the Impacts of Climate Change
    - i. directed federal agencies to take steps to prepare for climate change impacts and to support state and local resilience efforts, and established a State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience
  - e. Rescinds the Obama administration's Climate Action Plan

### III. ENVIRONMENTAL REGULATIONS AND POLICIES TARGETED BY TRUMP

#### EPA and the Corps to repeal and replace WOTUS with two separate rulemaking processes

The agencies issued a [notice of intent](#) to review/revise the WOTUS rule. The rule is presently stayed by the courts and the Trump administration has directed it to be reviewed, revised or repealed. The agencies have decided to undertake a two-step process, using one rule to repeal the Obama administration's 2015 WOTUS rule, and a second to set its own definition of which streams and wetlands are protected under the Clean Water Act, in line with the principles that Justice Scalia outlined in the *Rapanos* opinion.

#### EPA announced review of Clean Power Plan

[EPA announced](#) that it is initiating review of the [Clean Power Plan](#), which establishes “emission guidelines for state plans to limit carbon dioxide emissions from existing fossil fuel-fired power plants.” Following review, EPA may initiate proceedings to suspend, revise, or rescind the Clean Power Plan.

#### CEQ withdraws guidance on GHGs in NEPA reviews

The Council on Environmental Quality (CEQ) has [withdrawn for further consideration](#) its August 2016 [guidance](#), which provided federal agencies with a framework for considering the effects of greenhouse gas (GHG) emissions and climate change in National Environmental Policy Act (NEPA) reviews.

#### DOI revokes, reconsiders mitigation policies and practices

[The U.S. Department of Interior \(DOI\) revoked](#) Secretarial Order 3330 - Improving Mitigation Policies and Practices of the Department of the Interior, dated October 13, 2013, and directed review of U.S. Fish and Wildlife Service’s recent Mitigation Policy, dated Nov. 21, 2016, and Endangered Species Act Compensatory Mitigation Policy, dated Dec. 27, 2016. These policies may be modified or rescinded.

*The convergence of these many developments has presented a seemingly overwhelming mass of opportunities – and may prove to be a substantial challenge for the regulated community to navigate and for agencies to manage.*

## IV. US EPA LAUNCHES REGULATORY REVIEW

On March 24, 2017, EPA Administrator Scott Pruitt established a Regulatory Reform Task Force charged with recommending **existing regulations** that can be **repealed, replaced, or modified** to make them **less burdensome**. Administrator Pruitt established the Task Force to implement President Trump’s government-wide February Executive Order on Enforcing the Regulatory Agenda and the January Executive Order that requires agencies to “identify” for future repeal two existing regulations for every new rule proposed or promulgated (new EPA rules found to increase costs must be balanced by cutting existing rules with equal or greater compliance burdens).

Pruitt has directed various EPA headquarters and regional offices including air, water, chemicals, and waste programs to [consult with stakeholders and hold dedicated public meetings](#) to listen and learn directly from those impacted before making recommendations.

On April 13, EPA published a notice in the [Federal Register](#) directing the public to submit written comments by May 15. [Click here](#) to access the online docket at regulations.gov (ID No. EPA-HQ-OA-2017-0190).

## V. HOW IS COST/BENEFIT CALCULATED?

The OIRA Guidance issued April 5, 2017, (see above) provides some detail on how cost “savings” will be counted for purposes of EO 13771 and other regulatory reform programs. Except where noted that guidance, costs should be estimated using the methods and concepts appearing in the following:

- EO 12866 - Regulatory Planning and Review (1993)  
[https://www.reginfo.gov/public/jsp/Utilities/EO\\_12866.pdf](https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf)
- OMB Circular A-4, Regulatory Analysis  
<https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf>
- Regulatory Flexibility Act of 1980 – EPA and OSHA are required to consult with small business prior to developing a proposed rule that would have a significant effect on small businesses  
[https://www.sba.gov/sites/default/files/advocacy/RFA\\_in\\_a\\_Nutshell2010.pdf](https://www.sba.gov/sites/default/files/advocacy/RFA_in_a_Nutshell2010.pdf)
- Paperwork Reduction Act  
<https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act>
- Information Quality Guidelines  
<https://www.epa.gov/quality/epa-information-quality-guidelines>

## VI. THE PRESIDENT'S FY 2018 BUDGET

President Trump's March 16, 2017, "[Budget Blueprint](#)" (his request to Congress for Fiscal Year (FY) 2018 appropriations) identifies the Trump administration's priorities for the next fiscal year. This budget outline seeks to significantly cut EPA's FY 2018 budget as well as the agency's workforce. See AGC's article for more details: <https://www.agc.org/news/2017/04/03/trump-releases-fy-2018-budget-outline>

Cut EPA's budget by 31%

- Current: \$8.1 billion
- Proposed: \$5.7 billion

Cut EPA's workforce by 19%

- Current: Approx. 15,300 (full-time employees) FTEs, per agency's [2017 budget review](#)
- Proposed: 11,5000 FTE ceiling

*EPA is already short of staff and resources, and the proposed federal budget signals that things will only get tougher.*

## VII. US EPA PLAN – STAFFING & PROGRAMS

Most political positions remain unfilled at EPA. There have not been any presidential nominations at EPA beyond the agency's administrator, Scott Pruitt.

Currently 79 political appointee positions

- 14 require Senate confirmation, including Administrator, Deputy Administrator, the Assistant Administrators (AA) and the Inspector General
- Regional Administrators (RA) do not require Senate confirmation

EPA's strategy on how it would meet FY 2018 budget cuts is laid out in a March 21, 2017, memo from EPA Acting Chief Financial Officer David A. Bloom, which was leaked to the public. It outlines a plan to lay off 25 percent of EPA employees and provides a detailed listing of program-specific budget cuts:

- Eliminate Climate Protection, EnergySTAR, WaterSense, Chesapeake Bay Program, Underground Storage Tanks grant program, diesel grants, RCRA Waste Minimization and Recycling program, and the federal Lead Risk Reduction Program ... plus others
- Notably, the Environmental Justice department would be removed
- The brownfields grant program would also be significantly reduced

## VIII. AGC Efforts

With so many initiatives under way, what is AGC doing to move its top agenda items to the front of the line?

- AGC continues to take action on the regulatory front and has published detailed updates and analyses on major regulations and executive orders impacting (or potentially impacting) the construction industry. For the latest on the 2017 Regulatory Road Ahead, [click here](#). For the latest on President Trump's Executive Actions/Orders, [click here](#).
- In addition, AGC has compiled and widely circulated [a lengthy list](#) of rules that the Association believes should be rescinded or revised to:
  - Reduce Paperwork and Red Tape Burdens (e.g., mandatory reporting, recordkeeping, and disclosure; excessively complex or rigid requirements)
  - Streamline Permitting Requirements
  - Modify Overlapping, Duplicative, and Conflicting Rules
  - Eliminate Outdated Rules
- On March 1, the House passed three [AGC-backed regulatory reforms](#) that will help eliminate regulations that are obsolete, ineffective, overly burdensome or duplicative. These reforms bills come on the heels of several others that [passed](#) the House in January with AGC support.
- AGC responded on March 31 to a U.S. Dept. of Commerce request for information on how to achieve the goals of President Trump's Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (Jan. 24). The Federal Register notice can be viewed [here](#). All responses to the request are published on [www.regulations.gov](http://www.regulations.gov) (Docket DOC-2017-0001 – search for "AGC").
- [AGC testified](#) at a March 29 U.S. House of Representatives Small Business Committee Hearing on how to reduce the paperwork burden on small business – presented reforms that would save money by avoiding duplication.
- AGC recently presented the White House, Congress and the regulatory agencies with a "paper" of recommendations/reforms aimed at streamlining the environmental review and permitting process for infrastructure projects.

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