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Sweeping Executive Order on Deregulation Seeks to Spur Post-Pandemic Economy

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President Trump signed an Executive Order (Order) this week directing the alteration or elimination of regulations that the Administration maintains hamper economic recovery as the nation emerges from the COVID-19 pandemic.

The [Regulatory Relief to Support Economic Recovery](#) Order calls on agencies across the federal government to use emergency authorities provided under the Administrative Procedure Act to swiftly rescind, modify, waive or provide exemptions from regulations and other requirements that inhibit job creation and economic growth. It further calls on agencies to consider permanently rescinding or modifying any regulations that were temporarily halted in response to COVID-19. The Order notes that it does not change agencies' statutory obligations.

The Order also directs enforcement discretion by agencies for businesses that make good-faith attempts to follow agency guidance and regulations during the pandemic. It establishes the following "principles of fairness" that are to be followed in enforcement and adjudication:

- The Government should bear the burden of proving an alleged violation of law; the subject of enforcement should not bear the burden of proving compliance.
- Administrative enforcement should be prompt and fair.
- Administrative adjudicators should be independent of enforcement staff.
- Consistent with any executive branch confidentiality interests, the Government should provide favorable relevant evidence in possession of the agency to the subject of an administrative enforcement action.
- All rules of evidence and procedure should be public, clear, and effective.
- Penalties should be proportionate, transparent, and imposed in adherence to consistent standards and only as authorized by law.
- Administrative enforcement should be free of improper Government coercion.
- Liability should be imposed only for violations of statutes or duly issued regulations, after notice and an opportunity to respond.
- Administrative enforcement should be free of unfair surprise.
- Agencies must be accountable for their administrative enforcement decisions.

Finally, the Order instructs agencies to provide pre-enforcement rulings, permitting businesses to ask an agency for a determination on whether some proposed conduct in the business's response to COVID-19 is allowable.

IMPLICATIONS AND OUTLOOK

The Order is consistent with the longstanding stated desire by the Administration to reduce regulatory burdens. It has the potential to alter the regulatory landscape across a wide array of industries. The directives in the Order could impact virtually any regulation from the numerous government agencies that promulgate rules, including financial regulations, environmental protections, and agricultural production and distribution guidelines, among many others.

In addition to ordering agencies to rescind or modify current regulations that impede economic expansion, the White House is calling on agencies to speed up the rulemaking process, including moving proposed rulemakings to interim final rules with immediate effect. This will likely draw resistance and possibly litigation from organizations that have already opposed the Administration's approach on regulatory reforms.

The Order's provisions on pre-enforcement rulings supersedes the provisions contained in Section 6 of [Executive Order 13892](#), which establishes principles for using guidance in civil administrative enforcement, in an effort to provide faster compliance feedback to companies looking to reopen so they can proceed with the confidence that doing so will not trigger violations of governing laws or regulations.

The "principles of fairness" detailed above seek to provide another level of legal cover for regulated entities. However, the extent to which the Order would provide protection for businesses against pandemic-related liability would be limited. This has been a particularly challenging issue among lawmakers as the next legislative response package is developed. While Senate Majority Leader Mitch McConnell (R-KY) has stated that liability protections for business must be included in the next relief bill, House Speaker Nancy Pelosi (D-CA) opposes such provisions.

Although it remains to be seen how agencies will respond to the Order, it is likely that they will look to the businesses and industries they regulate to assist them in identifying regulations that should be rescinded or modified.

FOR MORE INFORMATION

Please reach out to any member of our [Government Relations](#) team if you have any questions on the Order, would like additional information on its implications, or are interested in learning more about engaging with Federal agencies as they determine next steps.

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