

Environmental Protection Agency Regulatory Reform Task Force 90-Day Progress Report Under Executive Order 13777 – Enforcing the Regulatory Reform Agenda

On February 24, 2017, President Trump signed Executive Order 13777 on “Enforcing the Regulatory Reform Agenda,” which established a national policy to alleviate unnecessary regulatory burdens on the American people. In order to identify such burdens, the EO directs federal agencies to create a Regulatory Reform Task Force to “evaluate existing regulations...and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.”¹ Among other requirements, the EO calls for the Task Force to provide a 90-day progress report on steps taken to 1) implement the regulatory reform initiatives and priorities identified in the EO, and 2) identify regulations that are candidates for repeal, replacement, or modification. This report provides the required 90-day status update regarding progress toward those two goals.

While 90 days is a relatively short period of time, the U.S. Environmental Protection Agency has made substantial progress in implementing the EO, including: (1) designating a Regulatory Reform Officer; (2) establishing a Regulatory Reform Task Force; (3) initiating review and/or reconsideration of more than a dozen actions; (4) reviewing information pertinent to EPA’s regulatory actions from comments received by the Department of Commerce on permit streamlining; and, (5) running an open and transparent public outreach process, including public meetings and establishing a public comment period, to solicit input on regulatory actions to reconsider.

This report provides an overview of the directives and deliverables required by the order, the progress the EPA has made to date in implementing the order, preliminary recommended actions for consideration, and suggested next steps.

I. Overview of EO 13777 Directives and Deliverables

The overall policy goal of EO 13777 is to lessen or alleviate unnecessary regulatory burdens placed on the American people by implementing and enforcing the regulatory reform agenda. Section 2 of the EO provides certain initiatives and policies as part of the President’s regulatory reform agenda. These initiatives and policies include:

- Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs, regarding offsetting the number and cost of new regulations, which is otherwise known as the “2 for 1” EO, issued January 30, 2017;
- Executive Order 12866 – Regulatory Planning and Review, regarding Administration-wide regulatory planning and review, which provides the framework for cost-benefit analysis underpinning regulatory actions, issued September 30, 1993 and subsequently amended;

¹ EO 13777, Section 3(d).

- Executive Order 13563 – Improving Regulation and Regulatory Review, regarding (as per Section 6) retrospective review of existing regulations, issued January 18, 2011; and
- The termination of programs and activities that derive from or implement directives that have been rescinded, such as Executive Orders, guidance documents, policy memoranda, rule interpretations and similar documents.

To oversee the implementation of EO 13777, each agency was asked to name a Regulatory Reform Officer who is tasked with periodically reporting to the agency head and regularly consulting with agency leadership. Additionally, each agency was to establish a Regulatory Reform Task Force to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification.

Section 3(d) of the EO provides the Task Force with a targeted set of criteria on which to focus their evaluation and recommendations, including regulations that: “(i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with [the Information Quality Guidelines]; or, derive from Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.” In order to help identify such regulations, Section 3(e) of the EO directs the Task Force 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.”

Section 3(f) of the EO also directs each agency to prioritize regulations that the Task Force has identified as outdated, unnecessary, or ineffective, as part of its implementation of the regulatory offsets required under EO 13771.

Last, Section 3(g) of the EO provides that within 90 days of its issuance, the Task Force is required to report to the agency head detailing the agency’s progress toward implementing the regulatory reform initiatives and policies identified above and identifying regulations for repeal, replacement, or modification. The EO also provides that future status updates be provided on a schedule to be determined by the agency head.

II. Progress to Date

Pursuant to EO 13777, the EPA Administrator designated a RRO and established a Regulatory Reform Task Force, which was memorialized in a March 27, 2017, agency-wide memorandum. Samantha Dravis, Senior Counsel and Associate Administrator for Policy, was designated to serve as EPA's RRO. Ryan Jackson, Chief of Staff, was designated to serve as the Chair of the Task Force. Additional members of the Task Force include Byron Brown and Brittany Bolen, Deputy Chief of Staff for Policy and Deputy Associate Administrator for Policy, respectively.

In order to fulfill the EO's requirement for stakeholder input, the March 27, 2017, agency-wide memorandum included a request for program and regional offices to conduct public meetings or teleconferences on opportunities for regulatory reform. Program and regional offices were asked to provide the Task Force feedback from this outreach by May 15, 2017. In April and May, these offices conducted 11 public outreach meetings and provided feedback to the Task Force, as requested. Information on these meetings and program office feedback is detailed below.

The Agency also initiated an open and transparent process to seek public input on EPA's regulations. On April 11, 2017, EPA issued a request for public comment to an online docket, which was published in the Federal Register (83 Fed. Reg. 17793, April 13, 2017). The public comment period closed May 15, 2017, with over 190,000 comments filed.

Notably, the Task Force has been committed to increase transparency and public engagement throughout this effort. On April 11, 2017, the Agency launched a new website dedicated to providing the public information regarding its regulatory reform efforts, located at <https://www.epa.gov/laws-regulations/regulatory-reform>. Access to public comments and program office feedback to the Task Force is also available through the online docket at <https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190>.

The Task Force has made further progress by coordinating its efforts with the EPA's Office of Policy and key program and regional offices to identify regulations captured by previous reviews and other current Trump Administration EOs and directives. Key Trump Administration initiatives that complement the Task Force's work under EO 13777 review include:

- Presidential Memorandum regarding Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017;
- EO 13771 – Reducing Regulation and Controlling Regulatory Costs, issued January 30, 2017;
- EO 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, issued on February 28, 2017;
- EO 13783 – Promoting Energy Independence and Economic Growth, issued March 28, 2017; and
- EO 13790 – Promoting Agriculture and Rural Prosperity in America, issued April 25, 2017.

The following sections describe these steps in further detail and identify specific actions the Agency has already taken to review or reconsider regulations, key actions pursuant to the Trump Administration directives listed above, and input received at public meetings on regulatory reform held by EPA program offices.

A. Agency Actions Under Review or Reconsideration

As outlined below, the Agency has already taken action to initiate the review or reconsideration of specific regulations and the withdrawal of proposed actions.

Review of the Waters of the United States Rule – EO 13778 – Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, issued February 28, 2017, directed the EPA and the U.S. Army Corp of Engineers to review the WOTUS rule. EPA has initiated its review of the rule.

- *WOTUS* - “Clean Water Rule: Definition of ‘Waters of the United States,’” (80 Fed. Reg. 37054; June 29, 2015). On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on March 6, 2017. (82 Fed. Reg. 12532.) On May 2, 2017, EPA submitted a proposed withdrawal of the final rule to the Office of Management and Budget for EO 12866 interagency review.

Withdrawal of Methane ICR – In 2016, EPA sent an information collection request to more than 15,000 owners and operators in the oil and gas industry, requiring them to provide information on equipment inventories and methane emissions. On March 2, 2017, EPA withdrew this information collection request (82 Fed. Reg. 12817; March 7, 2017). The agency expects this will lead to cost savings of approximately \$37,000,000.

Risk Management Plans – Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, published on January 13, 2017 (82 Fed. Reg. 4594), is under review. On April 3, 2017, EPA published a proposed rule to delay the effective date of the RMP rule amendments until February 19, 2019 (82 Fed. Reg. 16146). This action will allow EPA to consider several petitions for reconsideration of the RMP rule amendments and take further regulatory action on the RMP rule.

Light-duty Mid-Term Evaluation – “Final Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation,” signed January 12, 2017, is under review. On March 15, 2017, EPA and DOT announced that EPA intends to reconsider the final determination that recommended no change to the greenhouse gas standards for light duty vehicles for model years 2022- 2025 (82 Fed. Reg. 14671; March 22, 2017).

Review of Clean Power Plan and Related Actions – EO 13783, “Promoting Energy Independence and Economic Growth,” signed March 28, 2017, directed the EPA to review the Clean Power Plan and related rules. EPA initiated a review of two of the identified final rules and withdrew one proposed rule:

- *Clean Power Plan* – “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (80 Fed. Reg. 64661; October 23, 2015) is

under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16329).

- *NSPS for GHGs at Electric Generating Units* – “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units” (80 Fed. Reg. 64509; October 23, 2015) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16330).
- *Federal Plan/Trading Rule/Framework Amendments* – “Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule” (80 Fed. Reg. 64966; October 23, 2015) were withdrawn. On the day the EO was signed, Administrator Pruitt signed a notice withdrawing this proposed rule. The notice was published in the Federal Register on April 3, 2017 (82 Fed. Reg. 16141).

Review of Methane Oil and Gas Rule – EO 13783, “Promoting Energy Independence and Economic Growth,” signed March 28, 2017, directed the EPA to review the methane NSPS for the oil and gas sector. EPA initiated a review of the rule and has submitted a proposed extension of compliance deadlines to the Office of Management and Budget for review.

- *Methane Oil & Gas Rule* – “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources” (81 Fed. Reg. 35824; June 3, 2016) is under review. On the day the EO was signed, Administrator Pruitt signed a notice to review this final rule. The notice was published in the Federal Register on April 4, 2017 (82 Fed. Reg. 16331). On May 24, 2017, EPA submitted a proposed 2-year extension of the compliance deadlines for the rule to OMB for interagency review.

Review of Steam Electric ELG – “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category,” (80 Fed. Reg. 67838; November 3, 2015). On April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule and to postpone compliance dates that have not yet passed (82 Fed. Reg. 19005; April 25, 2017). On May 25, 2017, EPA issued a proposed postponement of the rule’s compliance deadlines for publication in the Federal Register.

Review of Landfill Methane Rules – “Standards of Performance for Municipal Solid Waste Landfills,” (81 Fed. Reg. 59332) and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” (81 Fed. Reg. 59276), both published August 29, 2016. On May 5, 2017, EPA convened a proceeding for reconsideration of the final rules and issued a 90-day stay of the effectiveness of these final rules limiting methane emissions from municipal solid waste landfills. On May 23, 2017, EPA announced a 90-day administrative stay for the final rules and a proposal to stay both rules until March 13, 2020.

Certified Pesticide Applicators Rule – On May 15, 2017, EPA solicited public comments on extending the effective date of this rule 12 months to May 22, 2018 (82 Fed. Reg. 22294). Comments were due by May 19, 2017. To provide time to consider those public comments, EPA provided a third interim extension of the effective date from May 22, 2017 until June 5, 2017 (82 Fed. Reg. 23148) EPA has initiated a review of the rule.

Formaldehyde Emission Standards for Composite Wood Products – On May 24, 2017, EPA issued a direct final rule and parallel proposed rule to extend compliance dates in the final rule (82 Fed. Reg. 23735 and 82 Fed. Reg. 23769, respectively).

B. Department of Commerce Request for Information as per Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, issued January 24, 2017

As directed by the President's January 24, 2017, Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, the Department of Commerce issued a formal request for information on the impact of Federal permitting requirements and on regulations that adversely impact domestic manufacturers. DOC received 170 public comments in response to the RFI. Based on the comments, DOC identified key areas for EPA to review, mostly focused on air permitting programs, including:

- New Source Review (NNSR and PSD) permits;
- Title V Operating Permits;
- National Emissions Standards for Hazardous Air Pollutants;
- Start-up, Shutdown and Malfunctions;
- National Ambient Air Quality Standards;
- Waters of the United States Rule; and
- Section 404 and NPDES permits.

EPA has further screened the 170 comments for those relevant to the Agency. Commenters included many actions already subject to EPA review, reconsideration, or extensions including the Clean Power Plan and related rules, WOTUS, Risk Management Plans, and the Certified Pesticides Applicators rule. Beyond those rules, commenters identified specific concerns with existing regulations in nearly every major EPA program, including most prominently:

Office of Air and Radiation:

- Ozone NAAQS Implementation
- Leak Detection and Repair Rules
- Once-in-Always-in Policy for major sources in the hazardous air program
- Renewable Fuels Standard Program

Office of Chemical Safety and Pollution Prevention:

- Worker Protection Standards
- Formaldehyde Emission Standards for Composite Wood Products
- Lead Renovation, Repair, and Painting Rule
- Nanoscale Reporting Rule

Office of Land and Emergency Management:

- Hazardous Waste Generator Requirements
- Spill Prevention, Control, and Countermeasure program
- CERCLA §108(b) Financial Responsibility

Office of Water:

- Water Quality Criteria
- Storm Water Management program requirements
- Wastewater Treatment – pretreatment program and Effluent Limitation Guidelines

C. EPA's Outreach and Public Meetings as per EO 13777

As indicated above, EPA opened a 30-day public comment period and key program offices held 11 public meetings to receive input that could inform the Task Force's regulatory review. More than 200,000 stakeholders were independently invited by the program offices to participate in teleconferences and public meetings, and over 190,000 comments have been received in the public comment docket.

Specifically, the following program office meetings were held:

- The Office of Air and Radiation held a public meeting via teleconference on April 24, 2017.
- The Office of International and Tribal Affairs hosted an outreach call with tribal representatives on April 24, 2017.
- The Office of Small and Disadvantaged Business Utilization held a meeting on April 25, 2017.
- The Office of Congressional and Intergovernmental Relations hosted a meeting with intergovernmental representatives on April 26, 2017.
- The Office of Chemical Safety and Pollution Prevention hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to the Toxic Substance Control Act (TSCA) Subchapters I (Control of Toxic Substances), II (Asbestos Hazard Emergency Response) and VI (Formaldehyde Standards for Composite Wood Products) rules as well as EPCRA Subchapter II §11023 (Toxic Release Inventory program) rules.

- OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to TSCA Subchapter IV (Lead Exposure Reduction) rules.
- The Office of Water hosted a virtual listening session for the public on May 2, 2017.
- OCSPP held a public meeting with the Pesticide Program Dialogue Committee on May 4, 2017.
- The Office of Land and Emergency Management hosted a public meeting on May 9, 2017.

Program offices were asked to provide the Task Force with initial high-level summaries of the input they received from these meetings, as well as preliminary recommendations regarding specific rules that should be considered for repeal, replacement, or modification by May 15, 2017. Information on these summaries and recommendations are provided in the following section.

III. Preliminary Recommendations for Consideration

Based on an initial review of issues raised in public outreach meetings, the Department of Commerce’s permit streamlining initiative, and EPA program offices’ submissions to the Task Force, the Task Force offers preliminary recommendations for actions to consider reviewing as listed by program office, below.

It is important to note that these preliminary ideas are not yet informed by the extensive written comments received in the agency-wide public docket that closed May 15, 2017. Those comments are still being compiled and summarized. As discussed in the next section, the Task Force, the Office of Policy, and the program offices will continue to evaluate all public input and conduct additional internal analysis to better refine the list of regulations for consideration, and ensure proper coordination with all regulatory reform initiatives.

OAR:

- **“Once In, Always In” Policy:** EPA’s long-standing policy (originating in a 1995 guidance memo) states that once a source becomes subject to a hazardous air pollutant standard it must always remain subject to that standard, notwithstanding the subsequent reduction in emissions below major source thresholds. States and many industry stakeholders have long expressed concerns about this 1995 policy.
- **Mobile Source Fuels Regulations:** Substantial opportunities exist to streamline EPA’s existing regulations regarding gasoline, diesel, and other fuels. Doing so would reduce burden and compliance costs for industry, and improve compliance assurance while maintaining environmental performance.
- **Exceptional Events Guidance:** Exceptional events are unusual or naturally occurring events that can affect air quality episodes that are beyond the control of state, tribal or local air agencies. Exceptional events include wildfires, stratospheric ozone intrusions and volcanic and seismic activities. The tightened ozone and PM2.5 standards increased the impact of exceptional events on attainment status and design value, as a result the

Exceptional Events Guidance has become more important to states struggling to meet the standard. States and industry have many outstanding concerns about the process for excluding air quality data from consideration in regulatory decisions.

- **NAAQS Implementation:** Each new or revised NAAQS requires a host of supporting rules, guidance, and technical support documents to be used by Federal, state, local, and tribal regulators and planners, as well as by business and industry. The increased frequency of NAAQS revisions results in overlapping requirements to be implemented in short time spans. Regulators are confronted with obstacles to implementing the rules, planned and permitted facilities are subject to much uncertainty, making it difficult to appropriately plan for the preservation of air quality along with needed economic growth.

OCSPP:

- **Worker Protection Standard Rules:** In 2005, EPA updated the Agricultural Worker Protection Program with revisions to the Worker Protection Standards Rule providing training, information and safety requirements, as well as extending protections to families of pesticide workers and establishing a minimum age for handlers and workers performing early entry activities
- **Pesticide Registration Data Driven Decisions:** Commenters have asked EPA to reduce the need for new or extraneous data when sufficient data exists to make regulatory decisions. EPA was also asked to group similar crops or use other countries' data for tolerance setting, and to exclude certain biotechnology pesticides from data requirements. Commenters also suggest EPA allow for self-certification on product chemistry.
- **Nanomaterials Reporting under TSCA §8(a):** On January 12, 2017, EPA issued a rule requiring the reporting for certain existing nanoscale materials, as well as for new nanoscale materials, before manufacture is commenced. Commenters have said the one-time reporting requirements need to be revised to lower burden on small businesses. Several definitions in the rule are unclear and need to be revised.
- **TSCA:** TSCA was recently amended by the Lautenberg Chemical Safety Act. The new and revised requirement raise numerous regulatory and implementation issues.

OLEM:

- **Coal Combustion Residuals Rule:** The CCR Rule establishes minimum national criteria under Subtitle D of RCRA for coal combustion residuals landfills and surface impoundments at active coal fired power plants. Commenters have noted that that 2015 rule is overly restrictive and does not provide states needed flexibility to identify risks. Portions of the rule have been remanded.
- **CERCLA §108(b) Financial Responsibility:** CERCLA §108(b) directs EPA to develop regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. On December 1, 2016, EPA proposed regulations for the hardrock mining industry.

Commenters stated they believed the rule is unnecessary and duplicative of other Federal requirements.

- **Hazardous Waste Generator Improvement Rule:** On November 28, 2016, EPA revised the condition for exemption under RCRA's hazardous waste generator program that pose additional requirement for large and small generators (particularly retailers) that result in overly burdensome recordkeeping beyond what is currently required to demonstrate exemption.

OW:

- **Stormwater Management:** The NPDES stormwater program regulates some stormwater discharges from three potential sources: municipal separate storm sewer systems, construction activities, and industrial activities. Commenters noted a lack of flexibility in EPA rules and permits, as well as duplicative requirements with other Agency rules. The Combined Sewer Overflow policy was noted specifically by commenters.
- **Water Quality Criteria:** Commenters are concerned that EPA's national criteria and policy decisions require states to adopt stringent water quality standards that have high compliance cost (or are unattainable) and result in no additional human health protection.

IV. Recommended Next Steps

Given that the public comment period ended on May 15, 2017, the Task Force, OP, and the program offices have not yet had the opportunity to review and evaluate the tens of thousands of public comments received. The Task Force will request that each major program office continue to analyze the public comments and submissions, and use that information to identify and notify the Task Force of existing regulations that could be repealed, replaced, or modified consistent with the criteria in EO 13777:

- The regulation is outdated, unnecessary, or ineffective.
- The regulation eliminates jobs, or inhibits job creation.
- The regulation imposes costs that exceed benefits.
- The regulation is inconsistent with regulatory reform initiatives or policies.
- The regulation is inconsistent with the Information Quality Guidelines.
- The regulation derives from Executive Orders or other Presidential directives that have been subsequently rescinded.

The Task Force will work with program offices to prioritize the identified regulations based on strategic factors such as the following:

- The timing and urgency of the needed regulatory relief. Offices should consider the compliance deadlines of actions, and whether delay of such deadlines could significant reduce burdens while the action is under review.

- The associated costs and employment impacts. Offices should consider the estimated costs and employment losses associated with an action, including the original EPA estimates on impacted parties. Actions deemed economically significant (i.e. estimated impact of \$100 million or more per year) should be prioritized for review.
- Associated with a Presidential directive or initiative. As indicated above, there are several executive orders and memoranda that are part of the President's regulatory reform agenda. Actions associated with the President's agenda should be prioritized (e.g., action may impact domestic energy resources or could reduce burdens on domestic manufacturers).
- Review would be swift and simple. Actions that could be repealed, replaced, or modified in a swift and simple fashion should be considered. These actions may include those that are non-controversial (e.g. viable for a direct final rule) or non-regulatory (e.g. a non-significant guidance document or an information collection request).

The Task Force will provide program offices with further, specific guidance on the information requirements and format to use when identifying priority reform opportunities. Program offices should work with the Office of Policy to assemble, review, and submit this information to the Task Force for their review by August 25, 2017.

The Task Force will review these program office submissions and approve or modify them. The Task Force will report back to the Administrator with additional recommendations and progress by November 24, 2017.

V. Conclusion

The Task Force believes EO 13777 offers an important and unique opportunity for EPA to revisit its regulations and identify and remedy those that are outdated or impose unnecessary burdens, that inhibit job growth, and those that impose costs that exceed benefits. The information provided so far by EPA offices and the public has provided valuable insights on which the Task Force will build firm recommendations.

EO 13777 has provided EPA an important spur to strengthen its institutionalization of regulatory reform initiatives and processes. There is much opportunity to reduce burden while maintaining a healthy environment based on the preliminary input the agency has already received. Regulatory reform should be a natural way of doing business for EPA, continually looking for ways to improve regulations and remove unneeded and counterproductive obstacles to fulfilling the Agency's critical mission.