



The Daily Dish

Bullseye on the Regulatory State

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As nicely laid out in Dan Goldbeck's [latest effort](#), President Trump issued two executive orders (EOs) that combine to shake the foundations of the regulatory state. The most recent, and at least to Eakinomics the most breathtaking, expands the remit of the Department of Government Efficiency to regulations. Entitled "[ENSURING LAWFUL GOVERNANCE AND IMPLEMENTING THE PRESIDENT'S 'DEPARTMENT OF GOVERNMENT EFFICIENCY' DEREGULATORY INITIATIVE](#)," it seeks to explicitly remove regulations. Potentially, a lot of regulations.

Specifically:

Agency heads shall, in coordination with their DOGE Team Leads and the Director of the Office of Management and Budget, initiate a process to review all regulations subject to their sole or joint jurisdiction for consistency with law and Administration policy. Within 60 days of the date of this order, agency heads shall, in consultation with the Attorney General as appropriate, identify the following classes of regulations:

- (i) unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;*
- (ii) regulations that are based on unlawful delegations of legislative power;*
- (iii) regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition;*
- (iv) regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;*
- (v) regulations that impose significant costs upon private parties that are not outweighed by public benefits;*
- (vi) regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response,*

inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and
(vii) regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.

Yes. All that.

In addition, as Goldbeck points out, this EO:

[E]stablishes a standing order for agencies to “preserve their limited enforcement resources by generally de-prioritizing actions to enforce regulations that are based on anything other than the best reading of a statute and de-prioritizing actions to enforce regulations that go beyond the powers vested in the Federal Government by the Constitution,” and to “determine whether ongoing enforcement of any regulations identified in their regulatory review is compliant with law and Administration policy.” In past instances of administrative deregulatory activity, agencies were still generally bound to enforce the rules in place until such initiatives officially removed them from the books. These provisions suggest a more novel assertion of enforcement discretion to effectively neuter regulatory requirements while the administration formally reviews their status.

In short, agencies should get rid of all the troublesome rules and only enforce those they love.

The second EO - “[ENSURING ACCOUNTABILITY FOR ALL AGENCIES](#)” - expands to scope of the regulatory regime to all independent agencies, notably:

The Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission [FCC], the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission [FTC], the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection [CFPB], the Office of Financial Research, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal

independent regulatory agency or commission.

(The Fed's monetary policy functions are explicitly exempted, but not its regulatory activities.) Goldbeck has a clear discussion of the implications of this EO. Eakinomics will simply note that this is a sea change for those agencies.

Everyone expected that the Trump Administration would repeat its success with regulatory budgets from his first term. This is an order of magnitude more aggressive.