

February 25, 2025

# President Trump Issues DOGE Executive Order on Rescinding Agency Regulations and Terminating Enforcement Proceedings

In the weeks following his inauguration, President Trump has taken a number of de-regulatory actions, including creating the United States Department of Government Efficiency (“DOGE”) Service—which has acted to cut costs and personnel across the federal government—and issuing executive orders freezing the promulgation of all new regulations and directing all agency heads to “identify at least 10 existing regulations to be repealed” whenever they seek to promulgate new regulations.<sup>1</sup> In line with this de-regulatory agenda, on February 19, 2025, President Trump issued an Executive Order (the “Order”) affirming that it is his Administration’s policy “to focus the executive branch’s limited enforcement resources on regulations squarely authorized by constitutional Federal statutes, and to commence the deconstruction of the overbearing and burdensome administrative state.”<sup>2</sup> The Order issues two principal mandates to agency heads, including the heads of independent agencies: 1) to review their existing regulations within 60 days to identify regulations falling into seven categories, which will then be slated for rescission or modification, as appropriate,<sup>3</sup> and 2) to review ongoing civil or criminal enforcement proceedings regarding any regulations identified in their regulatory review to determine whether enforcement “is compliant with the law and Administration policy,” and then, on a case-by-case basis, direct the termination of such proceedings.

We summarize the main components of the Order below. The Order creates the opportunity and a framework for companies, industry groups, and other stakeholders to highlight regulations to agency leadership, members of the DOGE team, and/or the Office of Management and Budget that, in their view, should be rescinded or modified in light of the categories set forth by the Order. The Order also provides an opportunity for parties to argue for the termination of civil or criminal enforcement proceedings that violate the Order’s principles. At the same time, some companies that benefit from certain regulations may consider whether they should advocate to protect those regulations from rescission or modification. Given the breadth of the

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<sup>1</sup> E.O. 14158, *Establishing and Implementing the President’s “Department of Government Efficiency”* (Jan. 20, 2025), available [here](#); Executive Order 14182, *Regulatory Freeze Pending Review* (Jan. 31, 2025), available [here](#); E.O. 14192, *Unleashing Prosperity Through Deregulation* (Jan. 31, 2025), available [here](#).

<sup>2</sup> Executive Order, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative* (Feb. 19, 2025), available [here](#).

<sup>3</sup> This part of the Order implements a program first detailed in a *Wall Street Journal* op-ed co-authored by Elon Musk, which discussed rescinding regulations that violated recent decisions by the Supreme Court limiting the power of the regulatory state. See Elon Musk & Vivek Ramaswamy, *The DOGE Plan to Reform Government*, WALL ST. J. (Nov. 20, 2024), available [here](#).

Order, it could result in efforts to rescind or curtail a wide range of regulations (including guidance documents) across the federal government—a potentially lengthy process that could provoke litigation.

### Scope of the Order

The Order applies to all “agencies” as defined in 44 U.S.C. § 3502, which is broad in scope and includes the independent agencies, including the federal banking agencies, the CFPB, the SEC, and the CFTC, among others.<sup>4</sup> The Order, however, exempts from “agencies” the Executive Office of the President or any of its components.

The Order does not apply to “any action related to a military, national security, homeland security, foreign affairs, or immigration-related function of the United States.” Also, the Order does not apply to “anything else exempted by the Director of the Office of Management and Budget.”

The Order provides that the Director of the Office of Management and Budget (OMB) shall issue implementation guidance, “as appropriate.”

### Rescission or Modification of Regulations

Section 2 of the Order directs agency heads, in consultation with their DOGE Team Leads and the OMB Director, to “initiate a process to review all regulations subject to their sole or joint jurisdiction for consistency with law and Administration policy.” Notably, the Order defines “regulation” to also include “guidance document” as defined in Executive Order 13422.

Within 60 days, agency heads are required—also in consultation with the Attorney General, as appropriate—to identify regulations that fall into the following seven categories, the first four of which relate to legal infirmities, while the remainder relate to policy or substantive defects. We have included certain explanatory parentheticals below:

1. 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;
2. regulations that are based on unlawful delegations of legislative power (this refers to regulations that violate the non-delegation doctrine, the scope of which remains unclear and has seen renewed interest by some members of the Supreme Court as seen in Justice Gorsuch’s dissent in *Gundy v. United States*);<sup>5</sup>
3. regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition (this refers to the overruling of the *Chevron Doctrine* by the Supreme Court’s decision last year in *Loper Bright Enterprises v. Raimondo*,<sup>6</sup> which generally requires courts to review the validity of regulations based on their best reading of the underlying statute and to not defer to reasonable agency interpretations);

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<sup>4</sup> The Order’s application to independent agencies is consistent with President Trump’s Executive Order of February 18, 2025, entitled “Ensuring Accountability for All Agencies,” available [here](#). That order states that independent regulatory agencies “currently exercise substantial executive authority without sufficient accountability to the President” and establishes President Trump’s policy to “ensure Presidential supervision and control of the entire executive branch.” The order requires a range of measures to increase presidential supervision of the independent agencies, including a requirement that they submit for review all proposed and final significant regulatory actions to OMB. See also *Fact Sheet: President Donald J. Trump Reins in Independent Agencies to Restore a Government that Answers to the American People* (Feb. 18, 2025), available [here](#).

<sup>5</sup> 588 U.S. 128 (2019).

<sup>6</sup> 603 U.S. 369 (2024).

4. regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority (this refers to the Supreme Court’s 2022 decision in *West Virginia v. Environmental Protection Agency*,<sup>7</sup> which codified the “major questions” doctrine);
5. regulations that impose significant costs upon private parties that are not outweighed by public benefits;
6. 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
7. regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.

Within 60 days, agency heads are required to provide to the Administrator of the Office of Information and Regulatory Affairs (OIRA), a component of OMB, a list of all identified regulations organized in terms of these seven categories. The head of OIRA is then required to consult with agency heads to develop a Unified Regulatory Agenda that “seeks to rescind or modify these regulations, as appropriate.” “Unified Regulatory Agenda” refers to the list of agencies’ intended rulemaking actions for the upcoming year (and the projected timeframe for each action), which is coordinated by OIRA and published twice per year.

Although not discussed in the Order, the Administrative Procedure Act (“APA”) governs agency rulemaking and is generally understood to require that agencies conduct notice-and-comment rulemaking proceedings in order to rescind or modify most existing regulations. These rescissions or modifications can be challenged in court under the APA, as happened on several occasions during the first Trump Administration. It is uncertain at this point how the Trump Administration will proceed in effectuating the rescissions or modifications it identifies. It is possible that agencies could take the position that a regulation’s legal infirmities (of the type identified in categories (i) through (iv) in section 2 of the Order) justifies a more streamlined rescission or modification process than full notice-and-comment rulemaking.

### **De-prioritization and Termination of Enforcement Proceedings**

Section 3(a) of the Order calls for agencies to de-prioritize the enforcement of certain regulations going forward. Specifically, it provides that, “[s]ubject to their paramount obligation to discharge their legal obligations, protect public safety, and advance the national interest, agencies shall 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.”

Section 3(b) provides that agency heads shall determine whether ongoing enforcement of any regulations identified in their regulatory review “is compliant with law and Administration policy,” and shall, in consultation with the OMB Director, on a “case-by-case basis and as appropriate and consistent with the law,” then direct the “termination” of all such enforcement proceedings that do not comply with “the Constitution, laws, or Administration policy.”

Notably, the order defines “Enforcement action” broadly to mean “all attempts, civil or criminal, by any agency to deprive a private party of life, liberty, or property or in any way affect a private party’s rights or obligations, regardless of the label placed on the action.”

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<sup>7</sup> 597 U.S. 697 (2022).

## Promulgation of New Regulations

Section 4 of the Order provides that agency heads shall consult with their DOGE Team Leads and the Administrator of OIRA on potential new regulations “as soon as practicable” and that these actors shall consider the factors set forth in section 2 of the Order.

## Paul, Weiss Will Continue to Monitor Developments

In this period of significant and accelerated regulatory change, Paul, Weiss is closely monitoring new executive actions to help our clients navigate the rapidly changing regulatory environment.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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