



Deregulation Nation: Legal Perspectives on the Changing Rules

Overview of Executive Orders and Agency Deregulation | May 22, 2025



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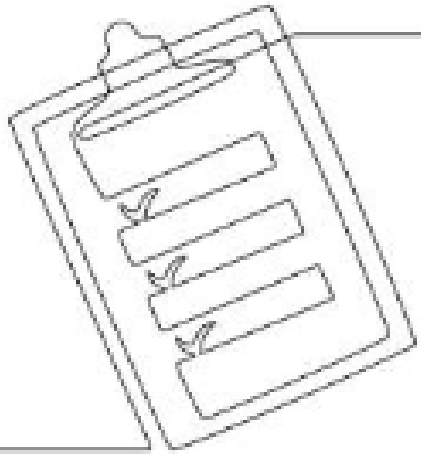
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Agenda



1. Overview of key executive orders and actions directing deregulation
2. Available mechanisms for repeal and revision
3. Legal risks and potential challenges to current deregulatory approach
4. Key takeaways for regulated businesses and organizations

Background: Executive Orders

Executive Orders

1. Initial rescissions of Biden-era executive orders and regulatory freeze
2. 10-for-1 deregulation requirement
3. Rescission of unlawful regulations
4. Sector-specific deregulation overview

Executive Orders: Initial Freeze and Rescissions

- “Regulatory Freeze Pending Review” (Jan. 20)
 - Froze all new and in-progress regulations – standard process
- “Initial Rescissions of Harmful Executive Orders and Actions,” EO 14148 (Jan. 20), rescinded 78 Biden-era executive actions
 - Raft of policies implicated, but primarily focused on diversity, equity, and inclusion (DEI), immigration, and climate policy
 - Directed agencies to end DEI programs and directed further review
- “Additional Rescissions,” EO 14236 (Mar. 14), following further review, revoked 18 additional Biden-era executive actions

Executive Orders: 10-for-1 Deregulation

- “Unleashing Prosperity Through Deregulation,” EO 14192 (Jan. 31)
 - For every new regulation proposed, agencies must identify at least ten to repeal (10-for-1 rule)
 - For FY 2025, total incremental cost of all new regulations \leq \$0
 - Rescinds Biden-era update to Office of Management and Budget on cost/benefit analysis
- Aims to reduce regulatory burdens on businesses and individuals and spark economic growth

Executive Orders: Rescission of Unlawful Regulations

- **Part 1:** “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative”
EO 14219 (Feb. 19).
- Directs agency heads to create a list of regulations that:
 - are unconstitutional or raise “constitutional difficulties”
 - are unlawful delegations or not the “best reading” of authority
 - impose costs on private businesses not outweighed by benefits
 - harm national interests (e.g., technological/economic development)
 - impose undue burdens on small and private businesses
- Develops an agenda to rescind or modify the identified regulations

Executive Orders: Rescission of Unlawful Regulations

- **Part 2:** Presidential Memo “Directing the Repeal of Unlawful Regulations” (Apr. 9) → implements EO 14219
- Directs agencies to focus “review-and-repeal” on regulations that are unlawful under specified Supreme Court cases, including:
 - *Loper Bright Enters. v. Raimondo* (overruling *Chevron*)
 - *West Virginia v. EPA* (major questions doctrine)
 - *Michigan v. EPA* and *Ohio v. EPA* (agency cost/benefit analysis)
 - and cases relating to affirmative action, agency adjudications, the Clean Water Act, and the Free Exercise Clause
- Consider “good cause” exception to repeal without notice-and-comment

Executive Orders: Sector-Specific Repeals

- Specific areas of focus include:
 - Energy production → promote domestic energy development
 - Environment regulations → reduce regulations aimed at climate protections and greenhouse gas emissions
 - Healthcare → reduce prescription drug prices, provide states with more flexibility in providing health insurance; potential increase in some food and drug regulations
 - Education → dismantle student loan relief
 - Independent agencies → increase Executive control
 - Federal workforce → decrease civil service protections

Mechanisms for Repeal and Revision

Mechanisms for Repeal and Revision

- **Potential first step:** Requests for Information (RFIs)
 - Initial step for agencies to seek public input
 - Regulations.gov homepage soliciting “deregulatory ideas”
- Example RFIs on 10-for-1 and repeal of unlawful regulations:
 - Office of Management and Budget (OMB) solicited ideas for deregulation across federal agencies; 30-day comment period received 76,865 comments
 - Department of Health and Human Services issued an RFI in support of its “largest deregulatory effort in its history”

Mechanisms for Repeal and Revision

Notice-and-comment rulemaking

- Administrative Procedure Act (APA) (5 U.S.C. § 553) process:
 - Agency publishes a notice of proposed rulemaking
 - Opportunity for public comment (usually 30-60 days)
 - Agency considers all significant, timely comments
 - Agency develops and publishes a final rule
- Designed to account for public comment; time-consuming
- Notice and comment generally required to rescind or alter a notice-and-comment rulemaking, unless an exception applies

Mechanisms for Repeal and Revision

Exceptions to notice-and-comment rulemaking

1. Interpretive rules, statements of policy, procedural rules
 2. “[A]gency for **good cause** finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest”
 - (1) emergencies (e.g., public safety)
 - (2) inconsequential to industry and the public or
 - (3) notice would harm the public or subvert statutory purpose
- Statutory language – “good cause” – arguably broader than judicial interpretation of the limitations

Mechanisms for Repeal and Revision

Where “good cause” exists

Interim Final Rule (IFR)

- Published immediately as a final rule, without public comment *prior* to publication, but generally solicits comments
- May be replaced with a non-interim final rule after considering *post*-publication comments
- Key word is not “interim,” but “**final**”

Note: An IFR is different from a “direct to final” rule, which is clerical and where notice-and-comment is unnecessary

Mechanisms for Repeal and Revision

Vacatur through litigation

- Courts can vacate agency rules that have been challenged in litigation
- Judicial process is separate from any agency process to revisit the rules
- One strategy agencies might employ is to continue litigating, with expectation that the courts will invalidate the rulemaking
 - May require continued defense of a disfavored rulemaking
 - May require a court of appeals determination

Legal Risks and Potential Challenges

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Option 1: Rescission through notice-and-comment rulemaking

- Pros:
 - Allows for public comment, policy adjustments, predictability
 - Likely safe from litigation challenge on procedural grounds
 - Agency establishes an evidentiary record, may be harder for a new administration to revisit the rulemaking
- Cons:
 - Time-consuming, years-long, resource-intensive process
 - Potential for challenge as inconsistent with statutory mandates
 - Does not immediately accomplish policy goals

Legal Risks and Potential Challenges

Option 2: Rescission through IFR, without notice and comment

- Pros:
 - Agency can move quickly to rescind disfavored rule
 - Requires fewer agency resources
 - Complies with EOs and Administration directives
- Cons:
 - Lack of public input before rule becomes final, uncertainty
 - Significant risk of challenge in litigation, including to interpretation of “good cause” standard

Legal Risks and Potential Challenges

Who might challenge regulatory rollbacks?

- Public interest groups (e.g., environmental groups)
- Nonprofit legal organizations
- Consumer or investor advocacy groups
- State governments
- Businesses or trade associations adversely impacted
- Individuals

What to Expect Moving Forward

Deregulation: What to Expect

1. Continued focus on deregulation in high-priority areas
2. Agency announcements of regulations targeted for rescission
3. Agency rescissions:
 - Some through notice-and-comment rulemaking
 - Some through IFR process, consistent with EOs
4. Lawsuits challenging agency action
 - Cases interpreting “good cause” standard
 - Potential open door for less regulatory certainty moving forward

THE END

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