

White House Memo Calling for Halt to Midnight Regulations Published in Federal Register

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[Notices]

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EXECUTIVE OFFICE OF THE PRESIDENT

The White House Office

Memorandum for the Heads of Executive Departments and Agencies

January 20, 2009, Washington, DC.

From: Rahm Emanuel, Assistant to the President and Chief of Staff

Subject: Regulatory Review

President Obama has asked me to communicate to each of you his plan for managing the Federal regulatory process at the beginning of his Administration. It is important that President Obama's appointees and designees have the opportunity to review and approve any new or pending regulations. Therefore, at the direction of the President, I am requesting that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency situations or other urgent circumstances relating to health, safety, environmental, financial, or national security matters, or otherwise, no proposed or final regulation should be sent to the Office of the Federal Register (the "OFR") for publication unless and until it has been reviewed and approved by a department or agency head appointed or designated by the President after noon on January 20, 2009, or in the case of the Department of Defense, the Secretary of Defense. The department or agency head may delegate this review and approval power to any other person so appointed or designated by the President, consistent with applicable law.

2. Withdraw from the OFR all proposed or final regulations that have not been published in the Federal Register so that they can be reviewed and approved by a department or agency head as

described in paragraph 1. This withdrawal is subject to the exceptions described in paragraph 1 and must be conducted consistent with OFR procedures.

3. Consider extending for 60 days the effective date of regulations that have been published in the Federal Register but not yet taken effect, subject to the exceptions described in paragraph 1, for the purpose of reviewing questions of law and policy raised by those

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regulations. Where such an extension is made for this purpose, you should immediately reopen the notice-and-comment period for 30 days to allow interested parties to provide comments about issues of law and policy raised by those rules. Following the 60-day extension:

a. For those rules that raise no substantial questions of law or policy, no further action needs to be taken; and

b. For those rules that raise substantial questions of law or policy, agencies should notify the OMB Director and take appropriate further action.

4. The requested actions set forth in paragraphs 1-3 do not apply to any regulations subject to statutory or judicial deadlines. Please immediately notify the OMB Director of any such regulations.

5. Notify the OMB Director promptly of any regulations that you believe should not be subject to the directives in paragraphs 1-3 because they affect critical health, safety, environmental, financial, or national security functions of the department or agency, or for some other reason. The OMB Director will review all such notifications and determine whether an exception is appropriate.

6. Continue in all instances to comply with any applicable Executive Orders concerning regulatory management.

As used in this memorandum, "regulation" has the meaning set forth in section 3(e) of Executive Order 12866 of September 30, 1993, as amended; this memorandum covers "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking."

This regulatory review will be implemented by the OMB Director, and communications regarding any matters pertaining to this review should be addressed to that official.

The OMB Director is authorized and directed to publish this memorandum in the Federal Register.

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