

A guide to federal regulations

Following the federal rulemaking process and the capabilities of executive action

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PRODUCER
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Roadmap

- **Rule making process**
- Executive order process

Congress grants agencies the power to create regulations

FEDERAL RULES

- The Administrative Procedure Act (APA) of 1946 states that rules or regulations are “the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy”
- Executive agencies utilize rules to carry out statutes passed by Congress
- Congress authorized agencies to form and monitor regulations enabling dedicated experts to implement the policies passed on the legislative body
- Congress still holds checks over the rulemaking process and required the opportunity for public comment on proposed rules in the APA

CHECKS TO REGULATIONS

- **Congress:** Congress can pass laws that overturn existing regulations or provide detailed outlines of certain rules that agencies will need to create. It can also use the Congressional Review Act to overturn actions taken by federal agencies
- **Judicial:** Outlined in the APA, the courts have judicial review over agency rules, regulations, and other actions to determine their legality



The **Office of Information and Regulatory Affairs (OIRA)**, within the Office of Management and Budget (OMB), reviews all federal rule proposals

Russ Vought, Director of OMB



The **attorney general** provides legal representation to the agencies creating the rules, should they be challenged in the courts

Pam Bondi, Attorney General

Outlining the rulemaking process

THE RULEMAKING PROCESS



1 Initiating event

Congress passes a law prompting an agency create a regulation

1



2 Agency drafts regulation

The agency drafts a proposal to accomplish goals set forth in the law passed by Congress

2



3 OIRA involvement

The agency sends a rule proposal to OIRA for approval on behalf of the President

3



4 Federal Register

The US government's official publication disseminates the proposed rule

4



5 Public comment

The rule is available for public comment for several weeks

5



6 Agency reviews

The agency reviews comments and makes necessary changes for the final draft

6



7 Here comes OIRA

OIRA receives the final draft of the regulation and gives the executive an opportunity to review

7



8 Rule is published

The agency publishes the final rule in the Federal Register, outlining when and how the rule goes into effect

8

Loper Bright Enterprises v. Raimondo recently changed the regulatory landscape

BACKGROUND

- Decided in 1984, the *Chevron* ruling forced federal courts to defer to the federal agency in question when a statute that the agency administered over was unclear or ambiguous, unless the interpretation is “arbitrary, capricious, or manifestly contrary to the statute”
- The Chevron deference gave federal agencies with more power to interpret the law, but by overturning it, agency regulations will be easier to challenge and given less authority

Loper Bright v. Raimondo

- **DECIDED:** By a 6-3 decision, the Court overruled Chevron, therefore allowing agency interpretations of statutes to be the responsibility of the court system



Chief Justice John Roberts

“Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.”



Roberts



Kavanaugh



Thomas



Barrett



Gorsuch



Alito



Kagan



Sotomayor



Jackson

IMPLICATIONS

- **Now, courts interpret ambiguous statutes independently**, and agencies must strictly adhere to judicial interpretations
- Agencies will likely face more scrutiny as courts evaluate their previous interpretations on rules and regulations, challenging the authority of agencies more often
- Congress must be more precise to grant certain regulatory power to agencies when passing legislation
- The Environmental Protection Agency relied on *Chevron’s* deference to enforce parts of the Clean Air Act

The Trump administration has opposed federal regulations

Gauging Trump administration interest in deregulation

> Energy industry

One of the first executive orders Trump issued in his second term, “Unleashing American Energy” (EO 14154) mandates an internal review on all policies that may hinder domestic energy development

> Environment

EO 14154 also rescinds electric vehicle mandates, the American Climate Corps, and EO 14072 which contained policy to strengthen national forests

> Finance

Trump utilized executive orders to reduce regulations digital assets, and he believes that reduced regulations on the energy and manufacturing sectors will catalyze the domestic economy

> Technology

Trump repealed a Biden-era executive order that established required disclosures of certain AI safety tests to gauge potential threats to US national security

“It is the policy of my Administration to significantly reduce the private expenditures required to comply with Federal regulations to secure America’s economic prosperity and national security and the highest possible quality of life for each citizen. To that end, it is important that for each new regulation issued, at least 10 prior regulations be identified for elimination.”

– Unleashing Prosperity Through Deregulation, Executive Order 14192, signed by Donald Trump on January 31, 2025



Roadmap

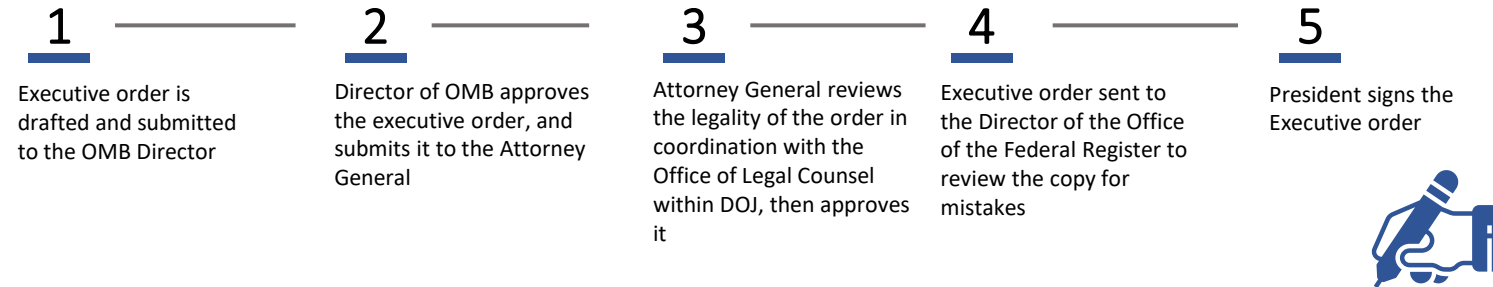
- Rule making process
- **Executive order process**

Executive orders can shape policy by administering guidance and issuing directives

BACKGROUND

- Executive orders can have similar legal authority as federal law but do not require approval from Congress; however, orders are not permanent and can be overturned by consequent administrations
- Although the Constitution does not specifically mention executive orders, Article II grants the President executive powers to “take care that the laws be faithfully executed”
- While there is a process for signing executive orders, there are no requirements to abide by them

Process for issuing executive orders



Orders **must** be published in the Federal Register to take effect; otherwise, the directive cannot be called an executive order



Orders **must** be based on Article II authority or congressional delegation to have full legal effect

What executive orders can and cannot accomplish

Executive orders are typically utilized as a mechanism for administrative reforms or a way to circumvent policies that face a partisan standstill in Congress



Executive orders ARE able to:

- Direct agencies on how to implement laws and allocate resources
- Create committees, agencies, and task forces
- Change the administrative structure of committees, agencies, and task forces
- Activate emergency power under national emergencies
- Address military operations and matters of foreign affairs



Executive orders are NOT able to:

- Alter the Constitution
- Direct federal spending outside of congressional approval
- Overturn Supreme Court rulings
- Nullify existing congressional legislation
- Alter the balance of power between Congress and the Judiciary
- Bypass the legislative process by creating a new law

Congress and the judiciary have some authority to push back against executive orders

JUDICIAL REVIEW

- Courts can call into question whether an executive order is accurately based on constitutional powers or congressional delegation
- The court can challenge executive orders based on statutory, constitutional, or “reasonableness review” from the Due Process Clause

Courts can determine

- Whether a President has the power to act
- Whether the order exceeds the scope of Congress’s delegation
- The underlying scope and impact of the order

Notable cases

- **1952:** The Supreme Court nullifies Truman’s emergency order to seize steel mills
- **2018:** The Ninth Circuit determined Trump’s order to withhold funding from sanctuary cities did not have power delegated from Congress

CONGRESSIONAL REVIEW

- If the president utilizes the congressional delegation to issue an order, Congress has the authority to repeal or modify the order through the traditional route of enacting legislation; however, the president can veto said legislation, making this a rarity
- Congress can additionally codify a previously issued order

How Congress could limit executive action

- Congress can use its appropriations authority to limit or deny federal funding to prevent or diminish the effectiveness of an executive order
- Some regulations, such as the National Emergencies Act, seek to rollback presidential power in general rather than specific executive orders; Congress has unsuccessfully attempted over time to introduce legislation that would further separate executive and legislative powers