

Federal Regulatory Freeze: January 20th White House Memorandum

Arkansas Environmental, Energy, and Water Law Blog



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The White House issued a January 20th Memorandum to the Heads of Executive Departments and Agencies imposing a regulatory freeze on the federal regulatory process.

Assistant to the President and Chief of Staff, Reince Priebus, authored the Memorandum.

The Memorandum prohibits and/or requires certain actions in regards to federal regulations that are in different stages of the administrative process.

1. Regulations that have not been sent to the Office of Federal Register

The Memorandum prohibits sending any regulation to the Office of Federal Register (“OFR”) until a department or agency head appointed or designated by the President after noon on January 20, 2017, reviews and approves the regulation. Exceptions to this prohibition are provided for “emergency situations or other urgent circumstances relating to health, safety, financial, or national security matters, or otherwise.”

2. Regulations sent to OFR but not Published

Regulations that have been sent to the OFR but not published in the Federal Register must be immediately withdrawn from the OFR for review and approval as described in paragraph 1. The exceptions described in paragraph 1 are also applicable to these rules.

3. Regulations Published in the OFR but have not Taken Effect.

Finally, the Memorandum addresses regulations that have been published in the OFR but not taken effect. Such regulations are to have their effective date temporarily postponed for 60 days from the date of the Memorandum (as permitted by law). The exceptions described in paragraph 1 are also applicable to these regulations. Where appropriate (and as permitted by applicable law) consideration is to be given to proposing for notice and comment a rule to delay the effective date for regulations beyond the 60-day period. Further, in cases where the effective date has been delayed in order to review questions of fact, law, or policy, potentially proposing further notice-and-comment rulemaking is requested. After the delay and effective date, the Memorandum notes:

- a. for those regulations that raise no substantial questions of law or policy, no further action needs to be taken; and
- b. for those regulations that raise substantial questions of law or policy, agencies should notify the OMB Director and take further appropriate action in consultation with the OMB Director.

4. Additional Requirements

The Memorandum excludes from the actions requested in paragraphs 1 through 3 regulations subject to statutory or judicial deadlines. However, such exclusions should be identified for the OMB Director as soon as possible. The OMB Director is also to be promptly notified of any regulations that in the agency's view should be excluded from the directives in paragraphs 1 through 3 because those regulations affect critical health, safety, financial, or national security matters, or for some other reason. Once identified for the OMB Director, they will be reviewed for determination whether such exclusion is appropriate under the circumstances. Finally, the agency is required to "continue in all circumstances to comply with any applicable Executive Orders concerning regulatory management."

The provisions of this Memorandum are obviously not applicable to state regulations. As a result, rulemakings underway at the Arkansas Department of Environmental Quality or other Arkansas agencies are not directly affected. Of course, many rules and regulations promulgated by the United States Environmental Protection Agency and other federal agencies do in turn sometimes trigger a requirement that program delegated states develop corresponding regulatory requirements. As a result, this Memorandum will likely have an indirect effect on rulemakings in Arkansas and other states in the future.

[A copy of the Memorandum can be downloaded here.](#)