

presidential documents

Title 3—The President

[3195-01]

Executive Order 12044

March 23, 1978

Improving Government Regulations

As President of the United States of America, I direct each Executive Agency to adopt procedures to improve existing and future regulations.

SECTION 1. Policy. Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

To achieve these objectives, regulations shall be developed through a process which ensures that:

- (a) the need for and purposes of the regulation are clearly established;
- (b) heads of agencies and policy officials exercise effective oversight;
- (c) opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;
- (d) meaningful alternatives are considered and analyzed before the regulation is issued; and
- (e) compliance costs, paperwork and other burdens on the public are minimized.

SEC. 2. Reform of the Process for Developing Significant Regulations. Agencies shall review and revise their procedures for developing regulations to be consistent with the policies of this Order and in a manner that minimizes paperwork.

Agencies' procedures should fit their own needs but, at a minimum, these procedures shall include the following:

- (a) *Semiannual Agenda of Regulations.* To give the public adequate notice, agencies shall publish at least semiannually an agenda of significant regulations under development or review. On the first Monday in October, each agency shall publish in the **FEDERAL REGISTER** a schedule showing the times during the coming fiscal year when the agency's semiannual agenda will be published. Supplements to the agenda may be published at other times during the year if necessary, but the semiannual agendas shall be as complete as possible. The head of each agency shall approve the agenda before it is published.

At a minimum, each published agenda shall describe the regulations being considered by the agency, the need for and the legal basis for the action being taken, and the status of regulations previously listed on the agenda.

Each item on the agenda shall also include the name and telephone number of a knowledgeable agency official and, if possible, state

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whether or not a regulatory analysis will be required. The agenda shall also include existing regulations scheduled to be reviewed in accordance with Section 4 of this Order.

(b) *Agency Head Oversight.* Before an agency proceeds to develop significant new regulations, the agency head shall have reviewed the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation.

(c) *Opportunity for Public Participation.* Agencies shall give the public an early and meaningful opportunity to participate in the development of agency regulations. They shall consider a variety of ways to provide this opportunity, including (1) publishing an advance notice of proposed rulemaking; (2) holding open conferences or public hearings; (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly.

Agencies shall give the public at least 60 days to comment on proposed significant regulations. In the few instances where agencies determine this is not possible, the regulation shall be accompanied by a brief statement of the reasons for a shorter time period.

(d) *Approval of Significant Regulations.* The head of each agency, or the designated official with statutory responsibility, shall approve significant regulations before they are published for public comment in the FEDERAL REGISTER. At a minimum, this official should determine that:

- (1) the proposed regulation is needed;
- (2) the direct and indirect effects of the regulation have been adequately considered;
- (3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;
- (4) public comments have been considered and an adequate response has been prepared;
- (5) the regulation is written in plain English and is understandable to those who must comply with it;
- (6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;
- (7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and
- (8) a plan for evaluating the regulation after its issuance has been developed.

(e) *Criteria for Determining Significant Regulations.* Agencies shall establish criteria for identifying which regulations are significant. Agencies shall consider among other things: (1) the type and number of individuals, businesses, organizations, State and local governments affected; (2) the compliance and reporting requirements likely to be involved; (3) direct and indirect effects of the regulation including the effect on competition; and (4) the relationship of the regulations to those of other programs and agencies. Regulations that do not meet an agency's criteria for determining significance shall be accompanied by a statement to that effect at the time the regulation is proposed.

SEC. 3. Regulatory Analysis. Some of the regulations identified as significant may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government. For these regulations, agencies shall prepare a regulatory analysis. Such an analysis shall involve a careful examination of alternative approaches early in the decision-making process.

The following requirements shall govern the preparation of regulatory analyses:

- (a) *Criteria.* Agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall:
 - (1) ensure that regulatory analyses are performed for all regulations which will result in (a) an annual effect on the economy of \$100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions; and
 - (2) provide that in the agency head's discretion, regulatory analysis may be completed on any proposed regulation.
- (b) *Procedures.* Agency heads shall establish procedures for developing the regulatory analysis and obtaining public comment.
 - (1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.
 - (2) Agencies shall include in their public notice of proposed rules an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included.
 - (3) Agencies shall prepare a final regulatory analysis to be made available when the final regulations are published.

Regulatory analyses shall not be required in rulemaking proceedings pending at the time this Order is issued if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949.

SEC. 4. Review of Existing Regulations. Agencies shall periodically review their existing regulations to determine whether they are achieving the policy goals of this Order. This review will follow the same procedural steps outlined for the development of new regulations.

In selecting regulations to be reviewed, agencies shall consider such criteria as:

- (a) the continued need for the regulation;
- (b) the type and number of complaints or suggestions received;
- (c) the burdens imposed on those directly or indirectly affected by the regulations;
- (d) the need to simplify or clarify language;
- (e) the need to eliminate overlapping and duplicative regulations; and
- (f) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

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Agencies shall develop their selection criteria and a listing of possible regulations for initial review. The criteria and listing shall be published for comment as required in Section 5. Subsequently, regulations selected for review shall be included in the semiannual agency agendas.

SEC. 5. Implementation.

- (a) Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review. This report shall be published in the **FEDERAL REGISTER** for public comment. A copy of this report shall be sent to the Office of Management and Budget.
- (b) After receiving public comment, agencies shall submit their revised report to the Office of Management and Budget for approval before final publication in the **FEDERAL REGISTER**.
- (c) The Office of Management and Budget shall assure the effective implementation of this Order. OMB shall report at least semiannually to the President on the effectiveness of the Order and agency compliance with its provisions. By May 1, 1980, OMB shall recommend to the President whether or not there is a continued need for the Order and any further steps or actions necessary to achieve its purposes.

SEC. 6. Coverage.

- (a) As used in this Order, the term regulation means both rules and regulations issued by agencies including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.
- (b) This Order does not apply to:
 - (1) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);
 - (2) regulations issued with respect to a military or foreign affairs function of the United States;
 - (3) matters related to agency management or personnel;
 - (4) regulations related to Federal Government procurement;
 - (5) regulations issued by the independent regulatory agencies; or
 - (6) regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the agency shall publish in the **FEDERAL REGISTER** a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of this Order. Such a statement shall include the name of the policy official responsible for this determination.

SEC. 7. This Order is intended to improve the quality of Executive Agency regulatory practices. It is not intended to create delay in the process