



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

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MEMORANDUM FOR: REGULATORY POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF COMMISSIONS AND BOARDS

FROM: Neomi Rao, Administrator *Neomi Rao*
Office of Information and Regulatory Affairs

SUBJECT: Compliance with Section 3(c) of Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs*

This Memorandum provides further guidance to agencies regarding how to issue a regulatory action that was not included on the most recent version of the Unified Agenda of Regulatory and Deregulatory Actions. Section 3(c) of Executive Order (EO) 13771, *Reducing Regulation and Controlling Regulatory Costs*, states:

Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

With the release of the 2017 Fall Unified Regulatory Agenda, this condition is now in place.

Agencies have long been required, under Section 6(a)(3)(A) of EO 12866, to provide the Office of Information and Regulatory Affairs (OIRA) with a list of their planned regulatory actions in order for OIRA to determine which of those actions are significant and therefore subject to review. In order to facilitate compliance with Section 3(c) of EO 13771, agencies should use the standard significance determination process to identify whether each potential regulatory action was an Active or Long Term Action on the most recent version of the Unified Agenda, was on the latest version of the Inactive list, or was not included in any of these publications.

OIRA expects that an agency should rarely need to proceed with a rulemaking that has not been identified as an Active Action. We recognize, however, that agencies often face unforeseen circumstances, such as new statutes that require the issuance of specific regulations

or judicial decisions requiring regulatory action. For all potential proposed or final regulatory actions that were not included as Active Actions in the latest version of the Unified Agenda, agencies should provide a brief explanation, endorsed by a senior policy official of the agency, why the Director should waive the requirement under Section 3(c), which should generally include why the rulemaking is a priority and needs to proceed. This explanation should include whether the rulemaking is required by a specific date established by law or court order.

Agencies should continue to comply with all applicable laws and requirements, as noted in both EO 13771 and OMB's implementing guidance (M-17-21, Implementing EO 13771 (April 5, 2017)). In order to provide the public with adequate notice, however, agencies should still make best efforts to include on the Unified Agenda regulations required by a specific date established by law or court order.

As part of the standard significance determination process, OIRA will endeavor to promptly flag whether the agency should provide more information or further discuss the issue with OIRA before the agency proceeds with the issuance of rules which were not identified as Active Actions in the most recent Unified Agenda. We expect to minimize the issuance of significant and other notable regulations recently identified to the public as Inactive, or actions for which no prior public notice has been given.

For additional information regarding your agency's significance determination process, please contact your OIRA desk officer.