

INSIGHTS

President Trump Directs Federal Agencies to Solicit Input from the Manufacturing Sector on Streamlined Permitting and the Reduction of Regulatory Burdens

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In his first week in office, President Trump has signed several Presidential Memoranda and Executive Orders aimed at encouraging domestic infrastructure development. Many of these executive actions direct federal agencies to adhere to a pair of central tenets, i.e., expedited review for high priority infrastructure projects and the use of U.S. materials and equipment. The [“Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing”](#) signed on January 24, 2017, expands on these themes and directs federal agencies to undertake a notice and comment period, during which U.S. manufacturers can engage and share their thoughts on how the federal government can best support the expansion of domestic manufacturing.

The directive from President Trump is broad and covers all federal agencies that could impact the manufacturing sector. Companies in the manufacturing sector might consider developing a strategy for federal engagement and formulating comments on potentially burdensome federal regulatory programs, including, as just a few examples, the Clean Air Act’s New Source Review program, conservation programs administered by the Department of Energy, labeling requirements from the Food and Drug Administration, and Department of Labor programs.

60-Day Comment Period on Reducing the Federal Regulatory Burden

Section 2 of the Presidential Memo on Manufacturing directs the heads of all federal agencies to (1) expedite reviews and approvals for proposals to build new or expand existing manufacturing facilities; and (2) reduce regulatory burdens affecting domestic manufacturing. To accomplish this, President Trump has directed federal agencies to open a 60-day comment period, during which the manufacturing sector can offer thoughts on what federal actions can be undertaken to streamline permitting and reduce regulatory burdens for domestic manufacturers.

The notice and comment process will be directed through the Secretary of Commerce, and coordinated with the heads of the Department of Energy, the Environmental Protection Agency, the Office of Management and Budget, the Small Business Administration, and other agencies “as may be appropriate.” This sector-specific, federal agency-wide approach will allow those engaged in manufacturing to address the multitude of federal regulatory challenges faced

by the industry via one commenting process instead of the piecemeal, regulatory battle-by-battle approach.

Report Outlining a Plan for Streamlined Permitting and Regulatory Burden Reductions

Section 3 of the Presidential Memo on Manufacturing directs the Secretary of Commerce to consider the comments received under Section 2 and submit a report to the President within 60 days of completion of the public comment period. That report should:

1. set out a plan to streamline federal permitting processes for domestic manufacturing;
2. set out a plan to reduce regulatory burdens that affect domestic manufacturers;
3. identify priorities and recommended deadlines for completing actions;
4. include recommendations for any necessary changes to existing regulations or statutes, as well as actions to change policies, practices, or procedures that can be taken immediately under existing authority.

Recent Past Efforts at Regulatory Reform/Permit Streamlining

Regulatory reform is certainly not a new concept, although the success of past efforts is up for debate. Congress passed statutes in the 1980s (the Paperwork Reduction Act and the Regulatory Flexibility Act) and again in the 1990s (the Unfunded Mandates Reform Act and the Congressional Review Act) with the goal of putting in place structures to limit the pace of regulatory development. These statutes require additional coordination for certain information requests, cost-benefit analyses, and allow for the review (and potential disapproval) of major rules by Congress. However, these statutes are generally forward looking and currently baked into the federal rulemaking process. While they may augment consideration of new regulatory initiatives, they do nothing to address longstanding, burdensome regulatory programs.

More recent efforts at regulatory reform have been undertaken by Congress and focus on review (and potential repeal) of existing regulatory programs. For example, on January 7, 2017, the House passed the [**Searching for and Cutting Regulations that are Unnecessarily Burdensome \(SCRUB\) Act**](#), which would establish the Retrospective Regulatory Review Commission to conduct a review of all federal regulations to identify regulatory programs or individual rules that “implement a regulatory program that should be repealed to lower the cost of regulation.” Former President Obama also previously issued an [**Executive Order focused on improving permitting and review of infrastructure projects**](#).

During the Obama Administration, Congress also made attempts to pass legislation streamlining federal permitting, largely to no avail. Legislation either stalled or if passed, was limited to major infrastructure projects subject to National Environmental Policy Act (“NEPA”) review. For example, the Responsibly and Professionally Invigorating Development (RAPID) Act passed the House, but never came to a vote in the Senate. The Federal Permitting Improvement Act of 2015, bipartisan legislation aimed at improving federal permitting, was passed as Title XLI of the [**“Fixing America’s Surface Transportation Act” or the “FAST Act”**](#) but focused on projects that were subject to NEPA and required a total investment of more than \$200 million.

The current effort differs from previous attempts at reform in that it focuses on one specific sector of the economy the President seeks to bolster (manufacturing) and also sets up a formal process for that sector to share with the government its thoughts on how the federal regulatory knot can be unwound. The manufacturing sector covers a wide range of industries, e.g., chemical, products, oil-field equipment, pharmaceutical, textiles, just to name a few; each with unique regulatory challenges.

Subsector Example: Current Approval Burden for New Chemical Manufacturing Facility

As an example of the regulatory/permitting burden faced by just one subsector of the manufacturing industry – chemical manufacturing – it currently takes between three to five years to obtain all of the necessary permits and other governmental approvals necessary to break ground on a major new chemical plant. Between 50 and 60 separate permits and other authorizations issued by dozens of federal, state and local agencies must be secured, in a process that creates significant uncertainty and delay, challenging project proponents at every turn and severely testing investors' will to continue project funding. Many of the required authorizations have overlapping purposes, and agency deadlines, where they exist at all, are often extended multiple times to address issues that have little to no bearing on the concerns that a given approval was intended to address. Environmental authorizations alone typically make up half or more of the required approvals and can involve as many as 15 to 20 separate agencies commenting on each other's redundant requirements and engaging in jurisdictional battles with one another, all of which further contributes to delay and uncertainty. And while labor costs and other considerations also play a role, the inevitable result is that more and more projects end up being built overseas.

Next Steps for Manufacturers

President Trump has established a tight timeline for the public comment period and for the Secretary of Commerce to produce a plan to move forward. While it may be a significant effort to identify under that timeline the major federal regulatory burdens that impact your manufacturing business and articulate them to the government, the opportunity to share those concerns and potentially help craft a path forward is ripe.