



President Trump Executive Order: No Net Increase in Regulatory Burdens February 2017

On January 30, President Trump signed an unprecedented limitation on federal rulemaking by requiring no net increase in costs associated with new federal regulations. New regulatory costs will have to be offset by removing existing regulatory burdens and/or costs. The Executive Order (“EO”) may also apply to agency guidance and policy statements.

The Order also indicates that for each new rule, two existing rules should “be identified for elimination.” Rules (or provisions thereof) to be eliminated in order to offset new rulemaking cost impacts have to be removed through rulemaking. The EO on its face is unclear whether the requirement is to (1) offset costs or (2) offset costs and eliminate two existing rules for each new one. We think it is more likely that the former is intended. Certain regulations will be exempt (military, national security, foreign affairs) from the off-setting requirements and the Director of OMB can make additional discretionary exceptions.

This EO follows similar requirements taken in several European communities, including Great Britain. Canada has long imposed a requirement to remove an existing rule for each new rule to be adopted.

Based on an initial assessment of the Executive Order, this may mean a months-long halt to federal rulemaking outside of rules required by court order on congressional mandate, and, after the halt, a longer and more complicated federal rulemaking process as a new rule or requirement will have to be coupled with rule changes that offset any increased regulatory burden in the new rule. We may also see non-governmental groups resorting to litigation to force federal agencies to adopt new, more stringent rules. We will keep Members apprised over the next several months as the implementation and effect of it become clearer.