

APRIL 28, 2025 | NEWS

Client Alert: The Trump Administration Issues Guidance to Repeal Regulations

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On April 9, 2025, the Trump Administration issued guidance that calls for the massive repeal of regulations throughout federal agencies. The guidance cites multiple Supreme Court decisions, including *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which limited agency deference on regulatory actions interpreting ambiguous statutes.

Under the Administrative Procedure Act (APA), agencies can enact or repeal rules subject to notice and comment. This provides interested parties the ability to comment on regulations published in the Federal Register and, if necessary, challenge those regulations in court. This is an important aspect of the regulatory process because it allows entities affected by these regulations to provide input.

Prior to *Loper*, agencies were afforded significant deference under *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984). Under *Chevron*, if a statute was ambiguous as to Congress' intent, the Court granted the agency deference in interpreting statutes while promulgating regulations. *Chevron* was the most cited Supreme Court case, which eventually drew skepticism for its far-reaching agency deference. This has now changed and will shape agency action moving forward.

The new guidance provides a 60-day review for each agency to identify "unlawful and potentially unlawful regulations." However, rather than allowing the normal comment period, the guidance suggests that agencies can repeal laws through the "good cause" exemption of the APA. The "good cause" exemption "permits agencies to forgo Section 553's notice and comment requirement if 'the agency for good cause finds' that compliance would be 'impracticable, unnecessary, or contrary to the public interest' and bypass its 30-day publication requirement if good cause exists." [1] Thus, the Trump Administration aims to repeal regulations without public input.

Under the "good cause" exemption, is there any legal recourse for repeal of regulations? The answer is yes. There can be legal recourse against an agency's use of the "good cause" exemption under the APA. While the good cause exemption allows agencies to bypass standard rulemaking procedures under certain circumstances, it's not a free pass. If an agency's justification for using the exemption is deemed insufficient or arbitrary, a court can invalidate the rule and remand it to the agency for proper rulemaking.

The lack of agency deference arising out of the Supreme Court’s decision in *Loper* could make it more difficult for agencies to justify their deregulatory rulemaking actions regarding what is “impractical, unnecessary, or contrary to the public interest.” Courts can review an agency’s “good cause” determination, and if they find the agency’s reasoning insufficient or arbitrary, the rule can be overturned. Agencies are required to provide a brief statement of reasons for invoking the “good cause” exemption, and the courts will scrutinize the validity of those reasons.

The executive order requiring this review was signed on February 19, 2025. Thus, the 60-day period expired on April 20, 2025. According to the guidance, all agencies will have 30 days to submit those regulations that are found to be “unlawful or potentially unlawful” for review to be repealed.

While an aggressive stance, this guidance and the attempt to conduct massive deregulation —like many of Trump’s recent policy attempts—will likely meet legal backlash. Thus, in looking at the future regulatory climate, it is most likely that any regulated entity should embrace the status quo.

If you have questions or need more information, please contact Cheri Budzynski.

[1] The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action, Congressional Research Service, <https://crsreports.congress.gov> R44356 (Updated January 29, 2016).