News & Insights

Weathering the Freeze: The CPSC's Response to the White House's New Regulatory Restrictions

Alert

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By Michelle Corrigan

We have heard much over the last few weeks about the new executive orders issued by the White House at the outset of the Trump Administration. One order that is not garnering as much attention as others, but could have a significant and lasting impact on the rulemaking abilities of government agencies. Effective January 23, 2017, the White House initiated a freeze of the federal regulatory process "to ensure that the President's appointees or designees have the opportunity to review any new or pending regulations…" *See*, Memorandum for the Heads of Executive Departments and Agencies, Reince Priebus, January 20, 2017. Essentially, the regulatory freeze directs the following, subject to the exceptions discussed below:

- No regulation shall be sent to the Office of the Federal Register (OFR) until a department or agency head appointed or designated by the President reviews and approves the regulation.
- Regulations sent to the OFR but not yet published in the Federal Register shall be immediately withdrawn.
- The effective dates of regulations that have been published in the OFR but have not yet taken effect are temporarily postponed for 60 days, until at least March 21, 2017, for the purpose of reviewing "questions of fact, law, and policy they raise."

Any exceptions to these directives fall within the hands of the Director or Acting Director of the Office of Management and Budget (OMB). Specifically, the OMB Director may allow exemptions to the regulatory freeze for "emergency situations or other urgent circumstances relating to health, safety, financial, or national security matters, or otherwise…" Further, agencies are to notify the OMB Director of any regulations that, "in [their] view," should be excluded from these directives because those regulations "affect critical health, safety, financial, or national security matters, or for some other reason." The OMB Director is then tasked with reviewing any such agency notifications to determine whether an exclusion for the particular regulation at issue is appropriate.

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Typically, independent agencies like the Consumer Products Safety Commission (CPSC) operate autonomously from the President and Congress. In fact, the CPSC has historically been deemed exempt from similar directives of the executive branch. For this reason, coupled with the exception to the current regulatory freeze that may be allowable for regulations affecting the health and safety of the public, it is not surprising that the CPSC has maintained a "business as usual" approach following issuance of the White House's current directive. The CPSC has continued to communicate through Twitter, Facebook and Instagram, and has continued to update its website with the latest product recall information. Several proposed rules of the CPSC are still open for comment. On January 25, the CPSC voted to publish its Notice of Proposed Rulemaking (NPR) on fireworks.[1] This week, the CPSC continued its efforts to regulate carbon monoxide emissions from portable generators, and announced that it will hear oral commentary on its NPR on the issue on March 8, 2017.

Currently, there is no indication if and when the federal regulatory freeze will be lifted, or how it may impact rulemaking by the CPSC and other government agencies in the future. To date, however, it appears that the CPSC is not halting its efforts to regulate consumer products.

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1. CPSC Commissioners Ann Marie Buerkle and Joseph Mohorovic abstained from voting.

For more information about the Federal regulatory freeze and the impact it may have on the CPSC and other government agencies, please contact Michelle Corrigan or Julie Scheipeter or the Stinson Leonard Street attorney with whom you regularly work.

CONTACTS

Michelle Corrigan Erikson

Julie C. Scheipeter

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