

Can The White House Really Make Business Regulations “Smarter?”

by Dan Brecher on April 10, 2012

The Obama Administration recently issued a new guidance designed to ease the regulatory burden on New York and New Jersey businesses by making regulations “smarter” and more cost-effective. It directs federal agencies to take active steps to consider the cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules.

The guidance is the latest effort by the Obama Administration to overhaul existing federal regulations. On January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review,” which mandated all federal agencies to take account of the cumulative effects of new and existing rules and to identify opportunities to eliminate redundancy and confusion.

Executive Order 13563 emphasizes that some “sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping.” The White House has also acknowledged that the cumulative burdens can create special challenges for small businesses and startups.

As described in the most recent White House directive, federal agencies are instructed to take the following steps:

- Early consultation with, advance notice to, and close engagement with affected stakeholders to discuss potential interactions between rulemakings under consideration and existing regulations as well as other anticipated regulatory requirements;
- Early engagement with state, tribal, and local regulatory agencies to identify opportunities for harmonizing regulatory requirements, reducing administrative costs, avoiding unnecessary or inconsistent requirements, and otherwise improving regulatory outcomes;
- Use of Requests for Information and Advance Notices of Proposed Rulemaking to obtain public input on potentially overlapping rulemakings and on rulemakings that may have significant cumulative effects;
- Specific consideration of the cumulative effects of regulations on small businesses and start-ups;
- Identification of opportunities to increase the net benefits of regulations and to reduce administrative and other costs, while meeting policy goals and legal requirements;
- Careful consideration, in the analysis of costs and benefits, of the relationship between new regulations and regulations that are already in effect;

- Identification of opportunities to integrate and simplify the requirements of new and existing rules, so as to eliminate inconsistency and redundancy;
- Coordination of timing, content, and requirements of multiple rulemakings that are contemplated for a particular industry or sector, so as to increase net benefits; and
- Consideration of the interactive and cumulative effects of multiple regulations affecting individual sectors as part of agencies' retrospective analysis of existing rules, consistent with Executive Order 13563.

The new guidance has been met with both praise and skepticism in the business community. While most businesses applaud the effort to ease the regulatory burden on the private sector, others have questioned whether the initiative is simply an election year ploy to appeal to the business community.

For small business owners looking for practical solutions to regulatory red tape today, we encourage you to consult with one of our experienced New York and New Jersey business attorneys.