

Dominic J. Mancini, Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
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Washington, DC 20503  
reducingregulation@-omb.eop.gov

Re: Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs.”

Dear Acting Administrator:

On behalf of the groups listed below, we submit these comments on the Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled “Reducing Regulation and Controlling Regulatory Costs.”

As the interim guidance implements the January 30, 2017 Executive Order, the authority to issue the interim guidance depends on the validity of the Executive Order. In the Executive Order, the President directs federal agencies to identify at least two existing regulations to be repealed for every new existing regulation promulgated. For fiscal year 2017, the Executive Order directs federal agencies to ensure that the total incremental costs from all new and repealed regulations is no greater than \$0. For subsequent fiscal years, the Executive Order directs the Director of the Office of Management and Budget (OMB) to place a dollar cap on incremental costs allowed for each agency in issuing new and repealing existing regulations. The Interim Guidance is directed at Section 2 of the Executive Order, the provisions that apply to the current fiscal year.

OMB should revoke the Interim Guidance because OMB lacks the authority to implement or impose any requirements pursuant to the Executive Order. OMB derives its legal authority from Congress or the President. Congress has not enacted legislation imposing regulatory budgets and essentially a regulatory cost trading program on federal agencies. While the President has issued the Executive Order purporting to do so, he lacks the constitutional authority to adopt such program.

Federal agencies issue regulations that have the effect of law pursuant to congressional delegation of authority. In the statutes delegating such authority, Congress has established goals such as providing health care for millions of Americans, protecting workers, fighting hunger, defending civil rights and voting rights, safeguarding our environment, ensuring the safety of food, drinking water, and medicine, promoting the integrity of financial institutions, and supporting public education. Moreover, it has set out the criteria to be applied by the agencies in adopting rules. Congress has also enacted the Administrative Procedure Act establishing rulemaking procedures that insist on transparency, opportunities for public input, and reasoned,

evidence-based decision-making. Agencies must adopt regulations based on the laws and rulemaking record for each regulation.

No statute authorizes agencies to trade one rule for one or more others based on costs to the private sector. In fact, where agencies consider costs, Congress has prescribed how costs may be considered and, where costs may be considered, balanced decision-making prohibits consideration of economic costs to the regulated industry without considering the public and economic benefits of the regulation.

The Executive Order superimposes a new rulemaking system onto all federal rulemaking. This system elevates costs to the regulated industry, indeed focuses solely on such costs, even though Congress made protecting people paramount in laws like the Occupational Safety and Health Act, the Food Quality Protection Act, and the Clean Air Act, and sought to further national goals of providing health coverage to millions of previously uninsured Americans in the Affordable Care Act and preventing abuse of women in the Violence Against Women Act.

Under the Constitution, the President lacks the authority to direct federal agencies to exceed their authority and violate the laws that give them their powers. Nor can the President unilaterally amend or override such laws or the laws that require fair, transparent, and reasoned rulemaking decisions. Amending laws is the purview of Congress under our constitutional system. The Executive Order is therefore in excess of the President's authority and unlawful.

The Interim Guidance similarly exceeds the President's and Executive Branch's authority. It provides direction to agencies to apply the Executive Order's requirements to their rulemakings this fiscal year. It identifies the applicable timeframe and which regulations are prohibited unless they offset costs by repealing two other regulations. It provides instructions on how to estimate regulatory costs and that which may be used to offset costs, and it directs agencies to "[f]ully offset the total incremental costs of such new significant regulatory action as of September 30, 2017." Interim Guidance at 2.

By issuing the Interim Guidance, OMB is taking steps to put in place a regulatory cost trading system overseen by OMB. This system will unlawfully impose extensive burdens and costs on federal agencies. Beyond wasting taxpayer dollars, it will inexcusably delay, weaken, and jettison regulations that have been adopted to protect the public from toxic chemicals, harmful pollution, workplace hazards, consumer fraud, and safety hazards on our highways and railroads.

Like the Executive Order, the Interim Guidance exceeds presidential authority and is unconstitutional. As an officer of the United States, the Director of OMB has taken an oath to "support and defend the Constitution" and to faithfully discharge the duties of his office. *See* 5 U.S.C. § 3331. We ask you to uphold your solemn oath and withdraw the Interim Guidance.

Sincerely,

AFL-CIO  
AJ Rosen & Associates LLC  
Alaska Wilderness League  
American Association for Justice

American Association of University Women  
American Family Voices  
American Federation of State, County and Municipal Employees  
American Federation of Teachers  
American Sustainable Business Council  
American Veterans  
American-Arab Anti-Discrimination Committee  
Americans for Financial Reform  
Amigos Bravos  
And All Her Ways Are Peace  
Apostolic Faith Center  
Association of Asian Pacific Community Health Organizations  
Bend the Arc Jewish Action  
BlueGreen Alliance  
Bluestem Communications  
Brazilian Worker Center  
California Kids IAQ  
Center for Biological Diversity  
Center for Digital Democracy  
Center for Food Safety  
Center for Medicare Advocacy, Inc.  
Center for Progressive Reform  
Center for Responsible Lending  
Clean Water Action  
Coalition for a Safe Environment  
Coalition on Human Needs  
Communities for a Better Environment  
Community Dreams  
Connecticut Fair Housing Center  
Consumer Action  
Consumer Federation of America  
Consumers for Auto Reliability and Safety  
Daily Kos  
Earthjustice  
Earthworks  
Ecology Center  
Economic Policy Institute  
EMERGE  
Endangered Habitat League  
Endangered Species Coalition  
Environmental Working Group  
Equal Justice Society  
Family Equality Council  
Farmworker Justice  
Food & Water Watch  
Free Press

Freshwater for Life Action Coalition  
Friends of the Earth  
Health Professionals and Allied Employees, AFT/AFL-CIO  
Homeowners Against Deficient Dwellings  
Human Rights Campaign  
Idaho Conservation League  
Institute for Agriculture and Trade Policy  
Institute for Science and Human Values  
International Alliance for Nurses for Healthy Environments  
International Fund for Animal Welfare  
Iowa Environmental Council  
Labadie Environmental Organization  
Labor & Employment Committee of National Lawyers Guild  
League of Conservation Voters  
League of United Latin American Citizens  
League of Women Voters of the United States  
Legal Aid At Work  
Main Street Alliance  
Massachusetts Coalition for Occupational Safety & Health  
Maurice & Jane Sugar Law Center for Economic & Social Justice  
Milwaukee Riverkeeper  
NAACP  
NAACP San Pedro-Wilmington Branch # 1069  
National Association for College Admission Counseling  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Coalition Against Domestic Violence  
National Consumer Law Center  
National Consumers League  
National Education Association  
National Employment Law Project  
National Employment Lawyers Association  
National Law Center on Homelessness & Poverty  
National LGBTQ Task Force  
National Organization for Women  
National Parks Conservation Association  
National Partnership for Women & Families  
National Women's Law Center  
Natural Resources Defense Council  
NETWORK Lobby for Catholic Social Justice  
Occupational Safety & Health Law Project  
Ohio Citizen Action  
Parents for Nontoxic Alternatives  
Pesticide Action Network  
Physicians for Social Responsibility  
Poverty & Race Research Action Council

Prairie Rivers Network  
Public Citizen  
Public Justice Center  
San Pedro & Peninsula Homeowners Coalition  
Sargent Shriver National Center on Poverty Law  
SEIU  
Sierra Club  
SouthWings  
St. Philomena Social Justice Ministry  
The Public Interest Law Center  
The Wilderness Society  
Trustees for Alaska  
Turtle Island Restoration Network  
Union of Concerned Scientists  
United We Dream  
Water Alliance  
Water You Fighting For  
Waterkeeper Alliance  
Western Watersheds Project  
Whitman-Walker Health  
Wildlands Network  
Wilmington Improvement Network  
Women's Voices for the Earth  
Woodstock Institute  
Workers' Center of Central New York  
Worksafe