

Executive Order 13979—Ensuring Democratic Accountability in Agency Rulemaking

January 18, 2021

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. American democracy operates on the principle of the consent of the governed. Regular elections for the Congress and the President and Vice President of the United States are designed to ensure that the officials responsible for making and executing the law are held accountable to the American people. The President chooses Federal agency heads who exercise executive authority and implement his regulatory agenda. The American people, in electing the President, thereby have a role in choosing the individuals who govern them.

However, some agencies have chosen to blur these lines of democratic accountability by allowing career officials to authorize, approve, and serve as the final word on regulations. This practice transfers the power to set rules governing Americans' daily lives from the President, acting through his executive subordinates, to officials insulated from the accountability that national elections bring. This practice undermines the power of the American people to choose who governs them and I am directing steps to end it.

Sec. 2. Rulemaking by Senior Appointees. (a) To the extent permitted by law, the head of each agency shall:

(i) require that agency rules promulgated under section 553 of title 5, United States Code (section 553), must be signed by a senior appointee; and

(ii) require that only senior appointees may initiate the rulemaking process for agency rules promulgated under section 553 or may approve the agency's regulatory agenda.

(b) Subsection (a) of this section shall not apply if the agency head:

(i) determines that compliance with this section would impede public safety or security; and

(ii) submits to the Administrator of the Office of Information and Regulatory Affairs (Administrator) within the Office of Management and Budget a notification disclosing the reasons for the exemption and publishes such notification, consistent with public safety, security, and privacy interests, in the *Federal Register*.

(c) An agency head may not delegate authority to make the determination allowed by subsection (b) of this section.

(d) The head of each agency shall ensure that the issuance of future agency rules promulgated under section 553 adheres to the requirements of this section.

Sec. 3. Review of Existing Delegations of Rulemaking Authority. Within 180 days of the date of this order, the head of each agency shall, to the extent permitted by law:

(a) review delegations of authority regarding rulemaking and make any revisions necessary to ensure that such delegations are consistent with section 2 of this order; and

(b) amend agency regulations governing agency management and procedure to incorporate the requirements of section 2 of this order.

Sec. 4. Review of Existing Rules. (a) Within 90 days of the date of this order, the head of each agency shall review all significant rules the agency has issued over the last 12 years, and any other rules identified by the Administrator, to determine whether the rule was issued by a senior appointee. For good cause shown, the Administrator may authorize an extension of the period within which an agency shall conduct such review.

(b) Within 120 days of the date of this order, the head of each agency shall provide a report to the President, through the Administrator, summarizing the findings of the review. For good cause shown, the Administrator may authorize an extension of the deadline to provide such report.

Sec. 5. Definitions. For the purposes of this order, the term:

(a) "agency" has the meaning given that term in section 3(b) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, or any successor order; except that for purposes of this order:

(i) the term shall include the Consumer Financial Protection Bureau; and

(ii) the term shall not include the Federal Bureau of Prisons of the Department of Justice;

(b) "senior appointee" means an individual appointed by the President, or performing the functions and duties of an office that requires appointment by the President, or a non career member of the Senior Executive Service (or equivalent agency system);

(c) "significant rule" means any rule that is also a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, as amended, or any successor order; and

(d) "rule" has the meaning given that term in section 551(4) of title 5, United States Code, except that such term does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Sec. 6. Implementation. The Administrator shall provide guidance on the implementation of this order and shall monitor agency compliance with the order.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

The White House,
January 18, 2021.

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NOTE: This Executive order was published in the *Federal Register* on January 22.

Categories: Executive Orders : Democratic accountability in agency rulemaking, efforts to ensure.

Subjects: Government organization and employees : Accountability and transparency, strengthening efforts.

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