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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Cass R. Sunstein
Administrator

SUBJECT: Cumulative Effects of Regulations

On January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review,” which states that to the extent permitted by law, each agency must take into account “among other things, and to the extent practicable, the costs of cumulative regulations.” 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,” and it directs agencies to promote “coordination, simplification, and harmonization.” Executive Order 13563 also states that to the extent permitted by law, each agency shall “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs.”

Executive Order 13563 directs that regulations “shall be adopted through a process that involves public participation,” including an “open exchange of information and perspectives.” Public participation can and should be used to evaluate the cumulative effects of regulations, for example through active engagement with affected stakeholders well before the issuance of notices of proposed rulemaking. The President’s Council on Jobs and Competitiveness has emphasized the need for a smart and efficient regulatory system and has drawn particular attention to the cumulative effects of regulation. Cumulative burdens can create special challenges for small businesses and startups.

Consistent with Executive Order 13563, and to the extent permitted by law, agencies should take active steps to take account of the cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules. The goals of this effort should be to simplify requirements on the public and private sectors; to ensure against unjustified, redundant, or excessive requirements; and ultimately to increase the net benefits of regulations.

To promote consideration of cumulative effects, and to reduce redundant, overlapping, and inconsistent requirements, agencies should carefully consider the following steps, where appropriate and feasible, and to the extent permitted by law:

- 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.

Where appropriate and feasible, agencies should consider cumulative effects and opportunities for regulatory harmonization as part of their analysis of particular rules, and should carefully assess the appropriate content and timing of rules in light of those effects and opportunities. Consideration of cumulative effects and of opportunities to reduce burdens and to increase net benefits should be part of the assessment of costs and benefits, consistent with the requirement of Executive Order 13563 that, to the extent permitted by law, agencies must “select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.” Agencies should avoid unintentional burdens that could result from an exclusive focus on the most recent regulatory activities. As noted, the cumulative effects on small businesses and start-ups deserve particular attention.

This guidance is effective immediately.