ALERT

Presidential Memo Directs Immediate Repeal of Regulations Without Public Notice and Comment

The memorandum directs federal agencies to reassess and potentially rescind regulations deemed inconsistent with 10 recent Supreme Court rulings.

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TAKEAWAYS

The memorandum instructs federal agencies to review, revise or repeal regulations that the administration views as inconsistent with 10 recent U.S. Supreme Court decisions—without using the standard notice-and-comment rulemaking process.

The directive relies on the APA's "good cause" exception, a procedural carveout that permits agencies to bypass public input when notice and comment would be impracticable, unnecessary or contrary to the public interest.

Among the regulations targeted are those that rely on the now-overturned *Chevron* doctrine, were issued without sufficient cost-benefit analysis, or are inconsistent with the definition of "waters of the United States" expressed in *Sackett*.

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Continuing with the Trump administration's deregulatory agenda, the White House issued a Presidential Memorandum on April 9 titled **Directing the Appeal of Unlawful Regulations**. It instructs executive agencies to repeal regulations that, in the administration's view, are "unlawful" in light of 10 recent U.S. Supreme Court decisions. The directive builds on **Executive Order 14219** and the broader "Department of Government Efficiency" initiative and calls for a sweeping review and repeal process.

Most notably, the memorandum encourages agencies to invoke the "good cause" exception under the Administrative Procedure Act (APA) to bypass notice-and-comment rulemaking, stating that public participation is "unnecessary" or "contrary to the public interest" where repeal is compelled by the cited Supreme Court precedent.

Ten Supreme Court Decisions at the Core

The memorandum and accompanying **fact sheet** identify 10 recent Supreme Court decisions that have effectuated material shifts in administrative or constitutional law as the basis for repealing existing regulations. The fact sheet directs agencies to repeal or revise existing regulations in accordance with these cases:

Case	Holding	Fact Sheet Directive
Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024)	Overrules *Chevron*, eliminating deference to agency interpretations of ambiguous statutes.	"[R]epeal any regulation that is not consonant with the 'single, best meaning' of the statute authorizing it" and "any regulation that was promulgated in reliance on the Chevron doctrine and that could be defended only by relying on *Chevron* deference."
West Virginia v. EPA, 597 U.S. 697 (2022)	Applies the Major Questions Doctrine, requiring clear congressional authorization for significant regulatory actions.	"[R]epeal any regulation promulgated in violation of the Major Questions Doctrine."

Case	Holding	Fact Sheet Directive
SEC v. Jarkesy, 603 U.S. 109 (2024)	Holds that adjudicating common-law fraud in agency tribunals violates the Seventh Amendment.	"[R]epeal any regulation authorizing enforcement proceedings that enable the agency's courts to impose judgments or penalties that can only be obtained via jury trial in Article III Courts."
Michigan v. EPA, 576 U.S. 743 (2015)	Requires cost-benefit analysis in rulemaking under the Clean Air Act.	"[R]epeal any regulation where the costs imposed are not justified by the public benefits, or where such an analysis was never conducted to begin with."
Sackett v. EPA, 598 U.S. 651 (2023)	Narrows the definition of "waters of the United States" under the Clean Water Act.	"[R]epeal any regulation inconsistent with a properly bounded interpretation of 'waters of the United States.'"
Ohio v. EPA, 603 U.S. 279 (2024)	Blocks enforcement of EPA's Good Neighbor Plan under the Clean Air Act because the EPA could not provide a reasoned response to concerns regarding the plan's applicability after upwind states were no subject to the plan.	"[R]epeal any regulation that does not sufficiently account for the costs it imposes, or for which foundational assumptions have changed and are no longer defensible."
Cedar Point Nursery v. Hassid, 594 U.S. 139 (2021)	Strikes down a regulation granting union organizers access to private agricultural property as a *per se* physical taking under the Fifth Amendment.	"[R]epeal any regulation inconsistent with a proper understanding of the Takings Clause, which protects far more than just real estate from being taken by the government without compensation."
Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023)	Declares race-based affirmative action unconstitutional under the Equal Protection Clause.	"[R]epeal any regulation that imposes racially discriminatory rules or preferences."
Carson v. Makin, 596 U.S. 767 (2022)	Holds that Maine's exclusion of religious schools from its tuition assistance program violated the Free Exercise Clause of the First Amendment.	"[R]eview their regulations to ensure equal treatment of religious institutions vis-à-vis secular institutions for purposes of funding and access to public benefits."
Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020)	Finds that stricter pandemic restrictions on religious gatherings violated the Free Exercise Clause.	"[R]eview its regulations to ensure at least equal treatment of religious institutions vis-à-vis secular institutions for regulatory purposes."

APA Rulemaking Requirements and the "Good Cause" Exception

The APA generally requires agencies to follow notice-and-comment procedures for substantive regulatory changes, including repeals. This process is a cornerstone of administrative law, promoting transparency and allowing the public to participate in shaping federal regulations. Notice-and-comment rulemaking typically begins with the publication of a proposed rule in the **Federal Register**, followed by a public comment period during which individuals, organizations and other stakeholders may submit input. The agency then reviews the comments, makes any necessary revisions and publishes a final rule.

The APA permits agencies to bypass these procedures when the "good cause" exception applies, i.e., when public input is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B). Federal courts have long held that this exception must be "narrowly construed and only reluctantly countenanced." *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). In practice, courts have applied the exception in few circumstances:

- **"Impracticable"**
  - **Emergencies:** National security threats or public health crises requiring immediate action.

  - **Deadlines:** Where notice and comment would prevent compliance with a statutory or judicial deadline.

- **"Unnecessary"**
  - **Technical Corrections:** Non-substantive changes unlikely to draw public concern.
  - **No Discretion:** Where the agency is executing a clear statutory mandate with no policymaking judgment.
- **"Contrary to the Public Interest"**
  - **Harm from Delay:** Where time lost to comment periods would cause significant public harm.
  - **Preventing Circumvention:** Avoiding preemptive regulatory evasion.
  - **Market Disruption:** Preventing economic manipulation or instability resulting from advance notice.

The April 9 memorandum contends that the good-cause standard is categorically met for regulations deemed "facially unlawful" under the cited Supreme Court cases, making public comment both unnecessary and contrary to the public interest.

Implications and Legal Risks

It remains to be seen how executive agencies, including the EPA, plan to implement the executive memorandum. On its face, it opens the door for sweeping agency actions aimed at deregulation, especially given the enumeration of the *Loper Bright* decision as one of the core Supreme Court cases. The issue of deference to Agency interpretations of the law is raised in an overwhelming majority of APA rulemaking challenges. From an environmental standpoint, this stands to enable EPA to overturn a range of controversial recent regulations, including, among others, the recent hazardous substance designations and maximum contaminant levels established for PFAS.

If agencies implement the memo's direction and repeal regulations without public input, litigation is virtually assured. Advocacy groups have already announced plans to challenge the approach. Critics argue that the administration may be overreaching—particularly by attempting to apply decisions like *Loper Bright* retroactively, citing the Supreme Court's express statement that its holding is prospective.

Litigation may not proceed uniformly, given the lack of consensus among federal courts on how to evaluate good-cause claims:

- The D.C. and Second Circuits apply de novo review, independently determining whether the statutory criteria are satisfied.
- The Fifth, Eighth and Eleventh Circuits apply arbitrary and capricious review, deferring to agency reasoning if it appears reasonable and supported by the record.
- The First, Third, Fourth, Sixth, Seventh, Ninth and Tenth Circuits have not adopted a clear or consistent standard, often applying mixed or fact-specific approaches.

This divergence increases the risk of inconsistent outcomes across jurisdictions. However, if challenges to the same regulatory repeal are filed in multiple circuits, the Judicial Panel on Multidistrict Litigation may consolidate them—potentially assigning the matter to the D.C. Circuit, where de novo review would apply.

Conclusion

Agencies are being directed to swiftly repeal a broad portfolio of regulations the Trump administration deems inconsistent with recent Supreme Court rulings without following the APA's notice-and-comment process on the basis that "good cause" obviates it. Whether and to what extent that approach will withstand judicial scrutiny will almost certainly be tested and remains to be seen. Given a varying patchwork of "good cause" jurisprudence, the results may well be mixed.

This area of administrative law—and its implications for environmental regulation—is evolving quickly and is likely to remain a focus for courts, agencies and regulated entities in the coming months. Pillsbury attorneys will continue to closely monitor these developments and provide updates as they unfold.

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