On February 24, 2017, President Trump issued Executive Order (EO) 13777, “Enforcing the Regulatory Reform Agenda.” Issuance of the EO, and the subsequent measures undertaken by U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt offer unique opportunities for chemical stakeholders. This memorandum summarizes EPA’s efforts to date in this regard, and identifies opportunities that stakeholders may wish to pursue to eliminate or amend regulatory initiatives that have outlived their utility or were ill-conceived from the get-go. As noted below, comments are due May 15, 2017; EPA’s public meeting on Toxic Substances Control Act (TSCA)-related issues is May 1, 2017, and the public meeting on pesticide-related issues is May 4, 2017.

EO 13777 and EPA’s Implementation of It
EO 13777 is intended to reduce the burdens that agencies impose through regulatory initiatives, and directs federal agencies to undertake activities to further this goal. The scope of the EO is unusually broad, and applies to regulations and rules that are defined under the Administrative Procedure Act as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” This definition is broader than the definition of a rule or regulation in other EOs involving regulatory review. Existing EOs exclude “formal” rules, or rules that are the result of trial-like administrative procedures that require more process than standard notice and comment-type rulemaking initiatives. The EO excludes regulations issued with respect to military, national security, or foreign affairs functions of the U.S., regulations related largely to agency organizational or management functions, and regulations exempted by the Office of Management and Budget (OMB).

On March 24, 2017, EPA Administrator Pruitt issued a memorandum “Improved Management of Regulatory Actions,” intended to expand and improve EPA’s internal mechanisms for information sharing and to comply with the EO. It requires that EPA’s programs and regional offices “report all regulatory actions in the agency’s regulatory management system and adopt such reporting as common practice moving forward.” Those actions required to be reported include “those related to any statutory or judicial deadlines, petitions, pesticide tolerances, significant new use rules, national priority listings or de-listings, permits, federal implementation plans and state implementation plans.” Officials entering the information must certify its accuracy. This new directive will ensure that few, if any, regulatory decisions escape the scrutiny of EPA’s political appointees. It is intended to ensure that these appointees are able to identify any and all regulations that can be repealed, replaced, or modified to make them less “burdensome.”

Also on March 24, 2017, Mr. Pruitt issued another memorandum “Executive Order 13777: Enforcing the Regulatory Reform Agenda” (EO memorandum), that tasked Samantha Dravis, Senior Counsel and Associate Administrator for the Office of Policy, to serve as EPA’s Regulatory Reform Officer (RRO). The memorandum also assigns Ryan Jackson, Mr. Pruitt’s Chief of Staff, to chair the Regulatory Reform Task Force (RRTF) that EPA is required to establish, as are all federal agencies, under the EO.

The RRTF charge is broad and its work product could have a significant impact. It is to evaluate existing regulations and recommend “those that can be repealed, replaced or modified to make them less burdensome.” As a first step, the EO memorandum states that by May 15, 2017, “the Offices of Air and Radiation, Land and Emergency Management, Chemical Safety and Pollution Prevention, Water, Environmental Information, Congressional and Intergovernmental Relations and Small and Disadvantaged Business Utilization should provide the Task Force with recommendations regarding specific rules that should be considered for repeal, replacement or modification.”

Under the EO, EPA’s RRTF is required to seek input from entities significantly affected by EPA’s regulations -- regulations that are potential candidates for repeal, replacement, or modification. The EO memorandum goes further and directs EPA’s
offices to hold public meetings to seek input directly from affected stakeholders. We urge potentially impacted parties to use these opportunities to reach out to EPA, and to provide input on the suite of programs that may be negatively affected.

**Advocacy Opportunities**

Not surprisingly given its leadership, EPA has wasted no time in giving meaningful expression to the EO. For those of us in the chemical product space, several initiatives are underway and merit your consideration.

OCSPP has announced several public meetings and opportunities for comment:

- **Public Meeting on TSCA** -- On May 1, 2017, EPA will convene a public meeting on TSCA Subchapters I (Control of Toxic Substances), II (Asbestos Hazard Emergency Response), and VI (Formaldehyde Standards for Composite Wood Products). Registration for this meeting closes on April 27, 2017.

- **Public Meeting on Lead Abatement** -- Also on May 1, 2017, EPA will convene a public meeting on TSCA Subchapter IV (Lead Exposure Reduction) rules. Registration for this meeting closes on April 27, 2017.

- **Public Docket** -- On April 13, 2017, EPA requested comment on regulations that many be “appropriate for repeal, replacement, or modification.” 82 Fed. Reg. 17793. This broad request seeks any and all comment on regulations that should be revisited to give expression to the underlying objectives of EO 13777. Comments are due by May 15, 2017.

- **PPDC Meeting** -- EPA’s Office of Pesticide Programs (OPP) announced that it will devote the second day of a two-day Pesticide Program Dialogue Committee (PPDC) meeting on May 3-4, 2017, to obtaining comment on regulatory actions that may be appropriate for repeal, replacement, or modification of regulatory measures applicable to pesticides. Registration for this meeting closes on April 27, 2017.

**Commentary**

The forthcoming public meetings and the request for comment provide unique opportunities to call attention to regulations and/or policies that should be revised or repealed, or are being implemented or enforced incorrectly. Over the years, we have flagged many such regulations and policies and note a few below by way of illustration:

- Supply chain issues involving Significant New Use Rules (SNUR).
  - Seek novel approaches that limit requirements applicable to manufacturers and processors that handle substances in forms that lead to concerns (e.g., manufacturing exempt polymers, substances in high concentration).

- Improving TSCA notification submitter access to reports and records documenting EPA’s review of new chemical notifications.
Such documents are critically important to understanding EPA’s views and need to be provided in a timely manner when requested by the submitter. Alternatively, providing such documents should become part of EPA’s standard operating procedures for new chemicals.

Need for a more transparent and coherent discussion of EPA’s current interpretation of new TSCA provisions including, but not limited to, those concerning new chemicals.

While PMN review is stove piped to protect Confidential Business Information (CBI), EPA needs to do more to provide public information about its approaches to issues such as whether it assumes personal protective equipment is used by workers, how it views U.S. Occupational Safety and Health Administration (OSHA) standards, and its interpretation of its statutory obligations and interpretations, as well as a clearer explanation of its policy and scientific approaches and interpretations regarding new chemicals.

Inventory nomenclature conventions:

- EPA has started discussions related to “identical substances” listed on the Inventory; discussions need to continue, be more defined and predictable, and be more inclusive;
- EPA should revisit the Soap and Detergent Association (SDA) nomenclature convention and update it to reflect current technologies; and
- EPA should clarify its approach to various statutory mixtures through notice and comment -- as it has for monomer acid, activated phosphors, and carbon nanotubes.

Need for more transparent and coherent pesticide label review procedures.

Revise OPP’s policy of de novo label review for a label amendment application if similar changes are not imposed on competing products.

Improve the OPP information management process and tools for supplemental distributor files, which have a significant error incidence and yet are a basis for enforcement.

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