

# Small Business Notes

Minnesota Department of Employment and  
Economic Development (DEED)

## *In this issue:*

- **Federal Office of Information and Regulatory Affairs Issues Guidance to Federal Agencies on Implementing January 30, 2017 Executive Order on Reducing Regulation and Controlling Regulatory Costs**

## **Federal Office of Information and Regulatory Affairs Issues Guidance to Federal Agencies on Implementing January 30, 2017 Executive Order on Reducing Regulation and Controlling Regulatory Costs**

President Trump's executive order of January 30, 2017 imposed a "regulatory cap" for fiscal year 2017 with three major elements:

- Unless prohibited by law, whenever an executive branch agency... publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two regulations to be repealed.
- For fiscal year 2017 the heads of agencies are directed that the total cost of all new regulations shall be no greater than zero unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget.
- Any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by elimination of existing costs associated with at least two prior regulations.

On February 2, 2017 the Office of Information and Regulatory Affairs issued an interim guidance on implementation of the order. While much of the guidance is addressed to accounting issues specific to the actions to be taken by agencies (e.g., how to count costs; how to deal with costs in deregulatory actions; transfer of savings within the agency and to other agencies), the guidance does make three points that may be unexpected to those affected by federal regulations:

- The order does NOT apply to the actions of independent regulatory agencies. This means that the regulations of agencies like the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), the Small Business Administration (SBA), the National Labor Relations Board (NLRB), the Federal Communications Commission (FCC), the Consumer Financial Protection Board (CFPB), the Commodity Futures Trading Commission (CFTC).

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- The order applies only to “significant regulatory actions” as defined in Executive Order 12866. That is, it applies only to a regulations that may:
  - 1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, the environment, public health or safety, state or local or tribal governments and communities;
  - 2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
  - 3) Materially alter the budget impacts of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients; or
  - 4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities or the principles of the executive order.
- Federal spending rules that primarily cause income transfers from taxpayers to program beneficiaries (for example Medicare rules) are not covered by the executive order.

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