

International Trade Alert

September 15, 2017

Key Points

- On September 12, 2017, U.S. Customs and Border Protection issued a *Federal Register* notice, “Reducing Regulation and Controlling Regulatory Costs,” to request comments from interested parties on CBP regulations, paperwork requirements and other regulatory obligations that the agency should modify or eliminate. Commentators currently have until December 11, 2017 to submit responses.
- This Notice is part of CBP’s effort to follow the President’s recent mandate that executive agencies and departments identify potential regulations for repeal or modification to reduce their regulatory burden on the public. Even if interested parties have previously commented to the Trump Administration on this issue, they should still consider submitting comments to CBP, as we expect that CBP may more thoroughly review these comments and consider them when identifying its list of requirements to remove or modify.
- Commentators should try to provide financial impact data on burdensome requirements. Information on specific costs, including lost economic opportunity and/or impaired U.S. job growth, may have more impact on persuading CBP to address a certain regulation.
- The Notice states that CBP cannot eliminate regulations that “reflect statutory requirements.” Commentators should ensure that any identified regulations do not have specific statutory underpinnings and instead, focus on regulations that CBP has enacted solely from a general authority.



CBP Provides The Trade Community with An Opportunity to Identify Regulatory Burdens for Possible Elimination or Modification

On September 12, 2017, U.S. Customs and Border Protection (CBP) issued a *Federal Register* notice, “[Reducing Regulation and Controlling Regulatory Costs](#)” (the “Notice”), to request comments from interested parties on specific CBP regulations, paperwork requirements, or other regulatory obligations that the agency should alter or eliminate to reduce regulatory burden. In the Notice, CBP has specifically asked for comments from any entity that CBP affects, whether it is a state, local or tribal government, business, consumer, nongovernmental organization, manufacturer or trade association. CBP identifies a

list of questions related to regulatory burden that commentators should consider when preparing their comments on what requirements to remove or modify. The questions include the following:

- Are there CBP rules or reporting requirements that have become outdated and, if so, how can they be modernized to better accomplish their objective?
- Are there CBP rules that are still necessary, but have not operated as well as expected such that a modified, or slightly different, approach at lower cost is justified?
- Are there CBP rules that unnecessarily obstruct, delay, curtail or otherwise impose significant costs on the secure flow of legitimate trade and travel to and from the United States?
- Does CBP currently collect information that it does not need or use effectively?
- Are there regulations, reporting requirements or regulatory processes that are unnecessarily complicated or could be streamlined to achieve statutory obligations in more efficient ways?
- Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

CBP also states that commentators should identify the specific regulation, in either Title 19 CFR Chapter I or Title 8 CFR Chapter I, or reporting requirement that the commentator wants removed or modified. Interested parties currently need to submit comments by December 11, 2017.

President Trump's Focus on Regulatory Reform

Since President Trump entered office, he has published several orders relating to regulatory reform. On January 30, 2017, the President issued Executive Order (EO) 13771 with the same title as the recent CBP Notice i.e., "Reducing Regulation and Controlling Regulatory Costs." This EO stated, among other things, that agencies proposing or promulgating a new regulation must also identify two existing regulations to repeal. On January 24, 2017, the President issued a Presidential Memorandum, titled "Streamlining, Permitting and Reducing Regulatory Burden for Domestic Manufacturing," in which he instructed executive agency heads to reduce regulatory burdens that negatively affect domestic manufacturing. In conjunction with this memorandum, the Commerce Department solicited comments from the public through a *Federal Register* Notice (82 FR 12786) on potential regulations that fell within scope of this review. Then, on February 24, 2017, the President issued EO 13777, "Enforcing the Regulatory Reform Agenda," which directed executive agencies to establish a Regulatory Reform Task Force to evaluate existing regulations in order to make recommendations to the head of that agency on repeal, amendment or modification.

However, even if interested parties have commented on regulations to remove in the context of these previous EOs and notices, they should still consider submitting comments to CBP. CBP may consider these comments more thoroughly. Plus, the President has instructed agencies like CBP to undergo their own regulatory review process. We understand that this Notice is one of the first steps of that process.

The Importance of Including Specific Supporting Data in Comments

The Notice recognizes that CBP cannot always comprehend the full extent of a certain requirement's cost to persons and/or companies. It also notes that members of the public may have information that can show the benefits and, most importantly, the burdens of a particular regulation.

Considering these acknowledgements and considering that the Notice asks for detailed supporting data on why CBP should remove or change a requirement, commentators should try to provide as much in the way of financial impact data with respect to a burdensome requirement. Specific information on costs or economic loss may have more impact on persuading CBP that it needs to address a certain regulation. In addition, given President Trump's focus on growth in U.S. jobs and employment, if a commentator can equate a regulatory burden to job loss or an inability to expand or hire more workers, it may strengthen the request for removing that regulation.

The Scope of Requirements that CBP Will Consider Repealing and Modifying

CBP has limited the scope of regulations that it will consider removing. The Notice states that CBP cannot eliminate regulations that "reflect statutory requirements." The position of CBP is that an amendment or repeal of such regulations requires an act of Congress. As such, members of the trade industry should ensure that any regulations that they identify for removal do not arise from a specific statutory mandate. Instead, commentators should look for regulations that CBP has enacted from a more general authority.

For instance, if CBP has cited a statutory provision that broadly provides that the Commissioner or Secretary shall promulgate regulations to implement this part of the statute and does not have text that matches the regulatory requirement, CBP may not have statutory underpinning for the requirement. These are the types of regulations that CBP might have the capacity to remove. Commentators should examine the relevant U.S. customs laws in order to ensure that they are highlighting regulatory provisions that can actually be removed.

Commentators should consider not only actual regulations, but also overly burdensome information collections. The Notice mentions that the Office of Management and Budget (OMB) has directed that these information collections, as well as agency policies, are an area within the scope of potential removal. For example, CBP has various information collections (some of which may not have undergone a required review by the OMB) that lack statutory underpinnings. Given the burdensome nature of some information collections, commentators may also want to provide financial impact data and advocate for their elimination, or at least the implementation of a more disciplined process, such as notice and comment and OMB review.

Conclusion

This CBP Notice provides the trade community with a significant opportunity to identify burdensome regulatory requirements, including information collections, for possible elimination or modification, consistent with the Administration's focus on de-regulation. While it remains to be seen what requirements CBP might eliminate or modify, the agency, like others, is following through on the Administration's

commitments and will no doubt take seriously well founded comments that meet the criteria described in the Notice.

Contact Information

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