

INTRODUCTION TO THE 2012 REGULATORY PLAN

Executive Order 12866, issued in 1993, requires the production of a Unified Regulatory Agenda and Regulatory Plan. Executive Order 13563, issued in 2011, reaffirmed the requirements of Executive Order 12866.

Consistent with Executive Orders 12866 and 13563, we are providing the Unified Regulatory Agenda and the Regulatory Plan for public review. The Agenda and Plan are a preliminary statement of regulatory and deregulatory policies and priorities under consideration. The Agenda and Plan may include rules that are not issued in the following year and some that might never be issued. Indeed, at this point, executive agencies have finalized only 43 out of the 132 economically significant active rulemakings listed in the Fall 2011 agenda. Continuing last year's practice, OMB took several steps to clarify the purposes and uses of the Agenda and Plan, including focusing the list of "active rulemakings" on rules that have at least some possibility of issuance over the next year. OMB also worked with agencies to make it easier to understand which rules are truly active rulemakings rather than long-term actions or completed actions.

We emphasize that rules listed on the agenda, designed among other things "to involve the public and its State, local, and tribal officials in regulatory planning," must still undergo significant internal and external scrutiny before they are issued. No regulatory action can be made effective until it has gone through legally required processes, which generally include public review and comment. Any proposed or final action must also satisfy the requirements of relevant statutes, Executive Orders, and Presidential Memoranda. Those requirements, public comments, and new information may or may not lead an agency to go forward with an action that is currently under contemplation and that is included here. For example, the directives of Executive Order 13563, emphasizing the importance of careful consideration of costs and benefits, may lead an agency to decline to proceed with a previously contemplated regulatory action.

Whether a regulation is listed on the Agenda as "economically significant" within the meaning of Executive Order 12866 (generally, having an annual effect on the economy of \$100 million or more) is not an adequate measure of whether it imposes high costs on the private sector. Economically significant actions may impose small costs or even no costs. For example, regulations may count as economically significant not because they impose significant costs, but because they confer large benefits or remove significant burdens. Moreover, many regulations count as economically significant not because they impose significant regulatory costs on the private sector, but because they involve transfer payments as required or authorized by law. As an example, the Department of Health and Human Services issues regulations on an annual basis, pursuant to statute, to govern how Medicare payments are increased each year. These regulations effectively authorize transfers of billions of dollars to hospitals and other health care providers each year.

The number of economically significant actions from Executive agencies listed as "active rulemakings" – 128 – is lower than the corresponding figure for the last two editions of the Agenda, which contained 132 and 145 such rules, respectively. It is notable that the number of such rules has not grown even taking account of rules implementing the Affordable Care Act

(Public Laws 111-148 & 111-152) and the Wall Street Reform and Consumer Protection Act (Public Law 111-203). Moreover, it is worth noting that a number of the rulemakings stay on the agenda from year to year; compared to the last Agenda, for example, this agenda adds only 12 new active economically significant non-recurring rules from Executive Agencies.¹ Also, the estimated net benefits of regulation have been remarkably high in this Administration; in total, net benefits over the first three fiscal years of this Administration were \$91 billion.

With these notes and qualifications, the Regulatory Plan provides a list of important regulatory actions that are now under contemplation for issuance in proposed or final form during the upcoming fiscal year. In contrast, the Unified Agenda is a more inclusive list, including numerous ministerial actions and routine rulemakings, as well as long-term initiatives that agencies do not plan to complete in the coming year.

OMB hopes that the public examination of the Regulatory Plan and the Unified Agenda will help ensure, in the words of Executive Order 13563, a regulatory system that protects “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.”

Executive Order 13563 explicitly points to the need for predictability and for certainty, as well as for use of the least burdensome tools for achieving regulatory ends. It indicates that agencies “must take into account benefits and costs, both quantitative and qualitative.” It explicitly draws attention to the need to measure and to improve “the actual results of regulatory requirements” – a clear reference to the importance of retrospective evaluation.

Executive Order 13563 reaffirms the principles, structures, and definitions in Executive Order 12866, which has long governed regulatory review. In addition, it endorses, and quotes, a number of provisions of Executive Order 12866 that specifically emphasize the importance of considering costs – including the requirement that to the extent permitted by law, agencies should not proceed in the absence of a reasoned determination that the benefits justify the costs. Importantly, Executive Order 13563 directs agencies “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” This direction reflects a strong emphasis on quantitative analysis as a means of improving regulatory choices and increasing transparency.

Among other things, Executive Order 13563 sets out five sets of requirements to guide regulatory decision making:

- *Public participation.* Agencies are directed to promote public participation, in part by making supporting documents available on Regulations.gov in order to promote transparency

¹ Out of the last Agenda’s 132 economically significant active rulemakings from Executive Agencies, agencies finalized 24 non-recurring rules as well as 19 rules that recur annually (and so appear in both the last Agenda and the current Agenda). Eight economically significant rules listed as long-term rulemakings in the last Agenda became active rulemakings in this Agenda, and 12 new active non-recurring rules were added to this Agenda—for a total of 128 economically significant active rulemakings from Executive Agencies in this Agenda.

and public comment. Executive Order 13563 also directs agencies, where feasible and appropriate, to engage the public, including affected stakeholders, before rulemaking is initiated.

- *Integration and innovation.* Agencies are directed to attempt to reduce “redundant, inconsistent, or overlapping” requirements, in part by working with one another to simplify and harmonize rules. This important provision is designed to reduce confusion, redundancy, and excessive cost. An important goal of simplification and harmonization is to promote rather than to hamper innovation, which is a foundation of both growth and job creation. Different offices within the same agency might work together to harmonize their rules; different agencies might work together to achieve the same objective. Such steps can also promote predictability and certainty.
- *Flexible approaches.* Agencies are directed to identify and consider flexible approaches to regulatory problems, including warnings, appropriate default rules, and disclosure requirements. Such approaches may “reduce burdens and maintain flexibility and freedom of choice for the public.” In certain settings, they may be far preferable to mandates and bans, precisely because they maintain freedom of choice and reduce costs. The reference to “appropriate default rules” signals the possibility that important social goals can be obtained through simplification – as, for example, in the form of automatic enrollment, direct certification, or reduced paperwork burdens.
- *Science.* Agencies are directed to promote scientific integrity, and in a way that ensures a clear separation between judgments of science and judgments of policy.
- *Retrospective analysis of existing rules.* Agencies are directed to produce preliminary plans to engage in retrospective analysis of existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed. [Executive Order 13610](#), *Identifying and Reducing Regulatory Burdens*, issued in 2012, institutionalizes the “look back” mechanism set out in Executive Order 13563, by requiring agencies to report to OMB and the public twice each year (January and July) on the status of their retrospective review efforts, to “describe progress, anticipated accomplishments, and proposed timelines for relevant actions.” (See below for additional details on Executive Order 13610.)

Executive Order 13563 addresses both the “flow” of new regulations that are under development and the “stock” of existing regulations that are already in place. With respect to agencies’ review of existing regulations, the Executive Order calls for careful reassessment, based on empirical analysis. It is understood that the prospective analysis required by Executive Order 13563 may depend on a degree of speculation and that the actual costs and benefits of a regulation may be lower or higher than what was anticipated when the rule was originally developed. It is also understood that circumstances may change in a way that requires reconsideration of regulatory requirements. After retrospective analysis has been undertaken, agencies will be in a position to reevaluate existing rules and to streamline, modify, or eliminate those that do not make sense in their current form.

In August 2011, over two dozen agencies released final plans to remove what the President called unjustified rules and “absurd and unnecessary paperwork requirements that waste time and

money.” Over the next five years, billions of dollars in savings are anticipated from just a few initiatives from the Department of Transportation, the Department of Labor, the Department of Health and Human Services, and the Environmental Protection Agency. And all in all, the plans’ initiatives will save tens of millions of hours in annual paperwork burdens on individuals, businesses, and state and local governments.

The plans offer more than 500 proposals. Many of the proposals focus on small business. Some of the proposed initiatives represent a fundamental rethinking of how things have long been done – as, for example, with numerous efforts to move from paper to electronic reporting. For both private and public sectors, those efforts can save money.

Many of the reforms will have a significant impact. Recent plan updates include the following examples:

- The Treasury Department, along with the Department of Homeland Security’s Customs and Border Protection, issued a final rule in August 2012 eliminating the mailing of paper “courtesy” notices of liquidation, which provide informal, advanced notice of the liquidation date to the importers of record whose entry summaries are electronically filed. This effort to proceed only electronically streamlines the notification process and reduces printing and mailing costs.
- The Department of Transportation would allow combined drug and alcohol testing for operators conducting commercial air tours. This rulemaking would allow certificate holders to implement one drug and alcohol testing program for what had been considered to this point two separate employing entities. The intent is to decrease operating costs by eliminating duplicate programs while ensuring no loss in safety.
- The Federal Acquisition Regulation (FAR) will be amended to implement policy guidance provided by Office of Management and Budget (OMB) in Memorandum M-12-16, dated July 11, 2012, Providing Prompt Payment to Small Business Subcontractors, to address the acceleration of payments to small business subcontractors.

The regulatory look back is not a one-time exercise. Regular reporting about recent progress and coming initiatives is required. The goal is to change the regulatory culture to ensure that rules on the books are reevaluated and are effective, cost-justified, and based on the best available science. By creating regulatory review teams at agencies, we will continue to examine what is working and what is not, and to eliminate unjustified and outdated regulations.

In addition to looking back at existing regulations, we are also focused on reducing unjustified reporting and paperwork burdens. In [a June 22, 2012 Memorandum](#), “Reducing Reporting and Paperwork Burdens,” OIRA asked executive departments and agencies to implement [Executive Order 13610](#), *Identifying and Reducing Regulatory Burdens*, by taking continuing steps to reassess regulatory requirements and, where appropriate, to streamline, improve, or eliminate those requirements. Agencies were asked to prioritize “initiatives that will produce significant quantifiable monetary savings *or significant quantifiable reductions in paperwork burdens*” (emphasis added). Agencies were also asked to “give special consideration

to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses.” In addition, Executive Order 13610 requires agencies to focus on “cumulative burdens” and to “give priority to reforms that would make significant progress in reducing those burdens.” Fundamentally, looking retrospectively to reduce existing burdens, while looking forward to ensure that future regulations are well-justified, will promote the nation’s economic growth while continuing to protect the health and safety of the American people.

Agencies prioritized these reviews, including opportunities for measurable reductions in paperwork burdens, and are pursuing plans that include the following:

- The Department of Veterans Affairs (VA) is working to consolidate the application and renewal process for health benefits by eliminating the collection of financial information that is already collected by the Internal Revenue Service (IRS) and Social Security Administration (SSA). In addition to the re-use of data, the VA expects to improve the application by making it more adaptive to data provided by respondents and the information needed to make a determination for benefits. VA expects veterans to save thousands of hours and the Federal government to save millions of dollars from this improved process.
- The Federal Emergency Management Agency (FEMA) is progressing toward the implementation of an integrated agency-wide e-Grants online application that will be available to the public online. The system will simplify submission of grant program applications across FEMA by creating online forms. Fully integrating and automating these systems will improve efficiency and the effectiveness of FEMA operations to better serve the needs of internal and external stakeholders. Grantees are expected to save over 500,000 hours in paperwork burden per year.

OMB would also like to highlight Executive Order 13609, “Promoting International Regulatory Cooperation,” which was issued by President Obama in May 2012. The Executive Order emphasizes the importance of international regulatory cooperation as a key tool for eliminating unnecessary differences in regulation between the United States and its major trading partners which, in turn, supports economic growth, job creation, innovation, trade and investment, while also protecting public health, safety, and welfare. Among other things, the Executive Order provides that agencies that are required to submit a Regulatory Plan must “include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563” and Executive Order 13609. Further, the Executive Order requires agencies to “ensure that significant regulations that the agency identifies as having significant international impacts are designated as such” in the Agenda. Additionally, as part of the regulatory lookback initiative, Executive Order 13609 requires agencies to “consider reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners...when stakeholders provide adequate information to the agency establishing that the differences are unnecessary.”

OMB believes the implementation of Executive Order 13609 and 13610 will further strengthen the emphasis that Executive Order 13563 has placed on careful consideration of costs and benefits, public participation, integration and innovation, flexible approaches, and science. These requirements are meant to produce a regulatory system that draws on recent learning, that is driven by evidence, and that is suited to the distinctive circumstances of the twenty-first century.