

INTRODUCTION TO THE 2013 UNIFIED REGULATORY AGENDA AND 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, the Office of Information and Regulatory Affairs is providing the Unified Regulatory Agenda (Agenda) and the Regulatory Plan (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 includes “active rulemakings” that have at least some possibility of issuance over the next year, but, as in previous years, this list may include rules that are not issued in the coming year.

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

The 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 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.

A central purpose of the Agenda is to involve the public, including State, local, and tribal officials, in federal regulatory planning. We emphasize that rules listed on the Agenda must still undergo significant development and scrutiny, both within the agencies and externally, before they are issued. No regulatory action can become 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 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. For 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.

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 with rulemaking 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 agency regulatory decision making:

- *Public participation.* Agencies are directed to promote public participation, in part by making supporting documents available on Regulations.gov to promote transparency 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 new regulations that are under development and 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. The prospective analysis required by Executive Order 13563 may depend on a degree of prediction and speculation about likely impacts, 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.

In addition, circumstances may change in a way that requires reconsideration of regulatory requirements. As retrospective or "look back" analysis is 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. The regulatory look back is an ongoing exercise, and regular reporting about recent progress and coming initiatives is required.

In August 2011, over two dozen agencies developed plans to remove what the President called unjustified rules and "absurd and unnecessary paperwork requirements that waste time and money." The plans include over 500 initiatives that will reduce costs, simplify the system, and eliminate redundancy and inconsistency – which means many billions of dollars in savings for American businesses. Already, the Administration is on track to save more than \$10 billion dollars in the near term, with far more savings to come.

In July 2013, agencies submitted to OIRA their latest updates of their retrospective review plans, pursuant to Executive Orders 13563 and 13610. Many of the initiatives highlighted in the updated plans benefit small businesses. Federal agencies will update their retrospective review plans this winter.

We have asked agencies to emphasize regulatory look backs in their latest Regulatory Plans. 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 May 2012 President Obama issued Executive Order 13609, "Promoting International Regulatory Cooperation," which 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 look back 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."

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.