

INTRODUCTION TO THE 2016 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, reaffirms the requirements of Executive Order 12866.

Consistent with these Executive Orders, the Office of Information and Regulatory Affairs (OIRA) is providing the 2016 Unified Regulatory Agenda (Agenda) and the Regulatory Plan (Plan) for public review. The Agenda and Plan are preliminary statements of regulatory and deregulatory policies and priorities under consideration. The Plan provides a list of important regulatory actions that agencies are considering for issuance in proposed or final form during the 2017 fiscal year. In contrast, the Agenda is a more inclusive list that includes numerous ministerial actions and routine rulemakings, as well as long-term initiatives that agencies do not plan to complete in the coming year but on which they are actively working. Changed circumstances, public comment, or applicable legal authorities could affect an agency's decision about whether to go forward with a listed regulatory action.

A central purpose of the Agenda is to involve the public, including State, local, and tribal officials, in Federal regulatory planning. The public examination of the Agenda and Plan will facilitate public participation in 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." We emphasize that rules listed on the Agenda must still undergo significant development and review before agencies can issue them. No regulatory action can become effective until it has gone through the legally required processes, which normally include public notice and comment. Any proposed or final action must also satisfy the requirements of relevant statutes, Executive Orders, and Presidential Memoranda.

Among other information, the Agenda provides an initial classification of whether a rulemaking is "significant" or "economically significant" under the terms of Executive Orders 12866 and 13563. The Agenda might list a rule as "economically significant" within the meaning of Executive Order 12866 (generally, having an annual effect on the economy of \$100 million or more) because it imposes costs, confers large benefits, affects significant budget resources, or removes costly burdens.

Executive Orders 13563 and 13610: Regulatory Development, and the Retrospective Review of Regulation

Executive Order 13563 reaffirmed the principles, structures, and definitions in Executive Order 12866, which has long governed regulatory review. Executive Order 13563 explicitly points to the need for predictability and certainty in the regulatory system, as well as for use of the least burdensome means to achieving regulatory ends. These Executive Orders include 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. They also establish public participation, integration and innovation, flexible approaches, scientific integrity, and retrospective review as areas of emphasis in regulation. In particular, Executive Order 13563

explicitly draws attention to the need to measure and improve “the actual results of regulatory requirements”—a clear reference to the importance of the retrospective review of regulations.

Executive Order 13563 addresses new regulations that are under development, as well as retrospective review 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. The prospective analysis required by Executive Order 13563 may depend on a degree of prediction and speculation about a rule's likely impacts, and the actual costs and benefits of a regulation may be lower or higher than what was anticipated when the rule was originally developed.

Executive Order 13610, *Identifying and Reducing Regulatory Burdens*, issued in 2012, institutionalizes the retrospective—or “lookback”—mechanism set out in Executive Order 13563 by requiring agencies to report to the Office of Management and Budget and to the public twice each year (January and July) on the status of their retrospective review efforts. In these reports, agencies are to “describe progress, anticipated accomplishments, and proposed timelines for relevant actions.”

Executive Orders 13563 and 13610 recognize that circumstances may change in a way that requires agencies to reconsider regulatory requirements. The retrospective review process allows agencies to reevaluate existing rules and to streamline, modify, or eliminate those regulations that do not make sense in their current form. The agencies' lookback efforts so far during this Administration have yielded approximately \$37 billion in savings for the American public over the next five years. Reflecting that focus, the current Agenda lists numerous actions that retroactively review existing regulatory programs.

Since President Obama issued Executive Order 13610, this Administration has worked to institutionalize retrospective review in the federal agencies. In July 2016, agencies submitted to OIRA the latest updates of their retrospective review plans, which are publicly available at: <https://www.whitehouse.gov/omb/oira/regulation-reform>. Federal agencies will again update their retrospective review plans in January 2017. OIRA has asked agencies to continue to emphasize retrospective reviews in their latest Regulatory Plans.

As agencies advance the regulations detailed in this 2016 Regulatory Plan, OIRA will continue its efforts to ensure that our regulatory system emphasizes, public participation, scientific evidence, innovation, flexible regulatory approaches, and careful consideration of costs and benefits. These considerations are meant to produce a regulatory system that is driven by the best available knowledge and evidence, attentive to real-world impacts, and is suited to the evolving circumstances of the 21st Century.