Coordination of Regulatory Policy Across Agencies

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Any views expressed here are solely those of the presenter, and do not necessarily reflect the position of the Office of Management and Budget or the Executive Office of the President.
Agenda

Legal Framework for Rulemaking in the U.S.

Interagency Coordination of Rulemaking

Office of Information and Regulatory Affairs

Executive Orders 12866, 13563, and 13771

Paperwork Reduction Act
Legal Framework in the United States

- United States Constitution
- United States Code (USC)
- Code of Federal Regulations (CFR)

**Legislative Branch (Congress)**
- Public Laws
- “Primary Legislation”

**Executive Branch**
- Regulations
- “Secondary Legislation”
Regulations in the U.S.

The Executive Branch can make law.

- Congress delegates authority to Executive Branch agencies to implement statutes through rulemaking.
- Some statutes are so broad that agencies can make new programs without new statutes.

Many important public policy decisions are made during rulemaking.

- Regulatory enforcement and allocation of resources.
- Grants, loans, and loan guarantees.
- Rights and responsibilities of the 50 States and the public.
United States Rulemaking Process

**Legislative Branch**
- Congress passes law authorizing or requiring regulation. ([www.Congress.gov](http://www.Congress.gov))

**Executive Branch**
- Unified Agenda & Regulatory plans.
- Public reviews proposed regulation/docket and sends comments to agency. ([www.Regulations.gov](http://www.Regulations.gov))
- Agency reviews public comments drafts and final regulation.
- If “significant” OMB reviews and draft final regulation. ([www.RegInfo.gov](http://www.RegInfo.gov))

**Judicial Branch**
- Agencies submit all final regulations to Congress under the Congressional Review Act.
- Disapproval resolution passed and signed by the President.
- The final regulation may be challenged in court.
- Court “vacates” all or part of rule.
Office of Management and Budget (OMB)

OMB assists the President in the development and implementation of budget, program, management, and regulatory polices.

- Develops the President’s annual budget submission to Congress.
- Assists the President in managing the Executive Branch, developing the Administration’s position on legislation before Congress and executing the law.
- Provides high quality regulatory analysis.

History

- 1921: Bureau of the Budget (BoB) established within the Treasury Department.
- 1939: BoB moved from Treasury to the Executive Office of the President.
- 1970: BoB reorganized into the Office of Management and Budget.
Role of the Office of Information and Regulatory Affairs

• OIRA was established by the Paperwork Reduction Act of 1980, partially in response to the explosion in regulation that occurred in the 1970s and earlier in the U.S.

• As part of the Office of Management and Budget, OIRA is a central body that has special standing with the agencies.

• OIRA is the lead division of OMB for regulatory oversight and interagency review of “significant” regulations.

• OIRA also develops and oversees government-wide policies in the areas of information collection, information policy, privacy, and statistical and science policy.
Office of Information and Regulatory Affairs

Administrator
- Presidential Appointment
- Senate Confirmed

Counselor
- Presidential Appointment

Associate Administrator
- Presidential Appointment

Deputy Administrator

Records Management

Information Policy

Statistical & Science Policy

Natural Resources & Environment

Transportation & Security

Food, Health & Labor

Privacy
Interagency Coordination of Rulemaking: Presidential Oversight

- President Ford: Required, for the first time, regulatory impact analysis (RIA) requirement for major regulations (over $100 million in impact).

- President Carter: Established the Regulatory Analysis Review Group.

- President Reagan: Solidified regulatory oversight authority within the White House, issuing Executive Order 12291, which required OMB review and approval of rules.

- President George H.W. Bush: Continued the Reagan Executive Order.

- President Clinton: Issued Executive Order 12866, which focused OMB oversight on "significant" rules and increased the disclosure of contacts with outside parties.

- President George W. Bush: Maintained the Clinton Executive Order that requires the agencies to do RIAs and send significant regulations to OMB for review.

- President Obama: Issued Executive Order 13563, which affirms EO 12866 and outlines his regulatory strategy to support continued economic growth and job creation.

- President Trump: Issued Executive Order 13371 which outlines a regulatory budget and a requirement for identifying deregulatory rules before issuing regulatory rules, as allowed by law.
Executive Order 12866: “Regulatory Planning and Review”

Issued by President Clinton in October 1993.
- Governs OIRA’s centralized, interagency review of draft regulations.

Establishes principles of regulation.
- Regulation must be consistent with law.
- Regulations must identify nature and significance of problem.
- Alternatives to address the problem must be identified and assessed.
- The costs and benefits of each alternative must be assessed.
- The alternative selected should maximize net benefits to society.

These principles guide OIRA’s review of regulations.
What regulations must OIRA review?

“Significant” Rules
- Create a serious inconsistency or otherwise interfere with another agency’s actions.
- Materially alter the budgetary impact of Federal programs.
- Raise novel legal or policy issues.
- OIRA reviews 500-700 proposed and final regulations per year—those OIRA determines to be significant—out of about 6,500 that are published in the Federal Register.

“Economically Significant” Rules
- Subset of “significant” rules.
- 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, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.
- About 70-100 of the regulations reviewed are “economically significant.”
Executive Order 12866: Important Requirements and Scope

Executive Order 12866 has deadlines for OIRA review (usually 90 days).

Executive Order 12866 requires economic analysis.

- Economically significant regulations require more analysis than smaller rules.
- OIRA examines the RIA and the regulation and makes suggestions to improve both the RIA and the rule’s cost-effectiveness, ensure adherence to the Executive Order’s principles, and consistency with the President’s priorities.

Independent Regulatory Agencies are not covered.

- For example, Consumer Product Safety Commission, Federal Communications Commission, and the financial regulators.
OIRA Review Process

Agency submits significant rule to OIRA for review

Executive Office of the President reviews rule and sends out for interagency review

OIRA compiles comments from all reviewers and sends to Agency

Agency responds to comments

Executive and Independent Agency Review

Resolution of outstanding comments

Conclusion of review
OIRA Review Process (Cont’d)

Executive Office of the President
- Office of Management and Budget
- Council of Environmental Quality
- United States Trade Representative
- Council of Economic Advisors
- National Security Council
- Office of Science and Technology Policy
- National Economic Council
- Domestic Policy Council
- White House Counsel
- Office of the Vice President
- Office of the National Drug Control Policy
- Office of Public Engagement and Intergovernmental Affairs
- Office of the First Lady
- Office of Digital Strategy

Executive and Independent Agencies
- Department of Transportation
- Department of Labor
- Department of Interior
- Environmental Protection Agency
- Department of Energy
- Department of Health and Human Services
- Department of Justice
- Department of Homeland Security
- Department of Treasury
- Department of Commerce
- Department of State
- Department of Housing and Urban Development
- Department of Agriculture
- Federal Energy Regulatory Commission
- Nuclear Regulatory Commission
- Securities and Exchange Commission
Possible Actions at the End of OIRA Review

Allow the agency to issue the rule.

- A rule is usually sent directly to the *Federal Register* at the conclusion of review.

Agency withdrawal of the rule.

- If we are unable to resolve issues during the review process, or the agency needs more time to make changes, the agency can withdraw the rule.

“Return Letter”

- OIRA may return a regulation for agency reconsideration to address OIRA concerns.
- Very public and very rare.
Executive Order 13563: “Improving Regulation and Regulatory Review”

Issued by President Obama in January 2011.

• Reaffirms the principles, processes, and structures of EO 12866.

• Calls for public participation to promote an open exchange with stakeholders.

• Directs agencies to harmonize, simplify, and coordinate rules to reduce costs and to promote simplicity.

• Considers flexible approaches that reduce burdens and maintain freedom of choice for the public (e.g., public warnings or provisional information).

• Calls for scientific integrity.

• Directs agencies to conduct retrospective analysis of existing rules and produce preliminary plans for periodic review.
Executive Order 13771: “Reducing Regulation and Controlling Regulatory Costs”

Issued by President Trump in January 2017.

- Directs agencies to repeal two prior regulations for every one regulation issued, as allowed by law.

- Establishes annual regulatory cost submissions by agencies to the Office of Management and Budget to set a regulatory budget.

- Requires approval by the Director of OMB if a regulation is not within the Unified Regulatory Agenda.
Paperwork Reduction Act

- Enacted in 1980 and established OIRA.
- Requires agencies to request comment in the Federal Register on information collections before finalizing.
- Requires that agencies to receive clearance from OIRA before requesting information from the public.
- Requires that information to be collected has practical utility and minimizes burden on the public.
  - Ensures no duplication of information requests
References

- Office of Information and Regulatory Affairs: [http://www.whitehouse.gov/omb/inforeg_default](http://www.whitehouse.gov/omb/inforeg_default)
- Executive Order 12866:
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