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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	RE: disclosure [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/09/2025 JLS] - To: Brett Kavanaugh - From: Timothy Flanigan	2	08/17/2001	
002	Memorandum	Expanded Disclosure [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/09/2025 JLS] - To: OIRA (Office of Information and Regulatory Affairs) - From: John Graham	3	N.D.	

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

OIRA (Office of Information and Regulatory Affairs) - Information Disclosure

FRC ID:

9121

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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SUPERSEDED

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	RE: disclosure - To: Brett Kavanaugh - From: Timothy Flanigan	2	08/17/2001	P5;
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SERIES:

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Timothy E. Flanigan

08/17/2001 08:57:02
AM

Record Type: Record

immediate internet info

To: Brett M. Kavanaugh/WHO/EOP
cc: Alberto R. Gonzales/WHO/EOP@EOP
Subject: Re: disclosure

Brett:

The attached messages relate to the OIRA disclosure policy we discussed with the Judge and Brad a few days ago. Would you take a closer look at the proposed policy and develop written comments. The comments should also cover the issue of whether the new policy, if adopted, should be set forth in a revised Exec. Order. Thanks.

Tim

----- Forwarded by Timothy E. Flanigan/WHO/EOP on 08/17/2001 08:53 AM -----



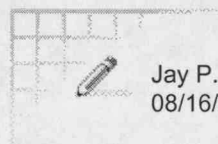
Alberto R. Gonzales
08/17/2001 06:46:04 AM

Record Type: Record

To: Timothy E. Flanigan/WHO/EOP@EOP
cc:
Subject: Re: disclosure

Tim, put one of our lawyers on this . We need to decide what we want to do.

----- Forwarded by Alberto R. Gonzales/WHO/EOP on 08/17/2001 06:45 AM -----



Jay P. Lefkowitz
08/16/2001 06:27:15 PM

Record Type: Record

To: Alberto R. Gonzales/WHO/EOP@EOP
cc: mitchell daniels/omb/eop@eop
Subject: Re: disclosure

I don't have any objection to more formal and/or additional staffing to vet the proposed expanded disclosure rules, but I also have no objection to their substance.

In fact, it seems to me that it is precisely because OIRA is supposed to be the place within the EOP that outside stakeholders can come and be heard on regulatory matters that it is probably in our interest to make OIRA's public disclosure of all such meetings quicker and more accessible. After all, it is one thing to be criticized on the substance of our regulatory decisions (where presumably we will always have solid policy justifications). It is a much different thing for us to be criticized for having reached decisions simply because Mr. X or Mr. Y (who happens to be from Texas and is now a lobbyist) brought a particular trade association in for a meeting a week before a regulatory announcement. That's why I think we should try to make the OIRA process as transparent as possible.

While I don't want to encourage stakeholders to try to hold meetings about regulatory matters with WH officials, I think that even if that were to occur, that is something that I think we can deal with by giving appropriate guidance to the WH staff about when and whom they can meet with.

As for the concern that has been raised as to whether it is inappropriate for a subordinate of the President to issue a policy that is different from the policy issued by a President in an EO, I am not sure what the right answer is. After all, the present EO is a Clinton EO, not one of ours. And while we are bound by that EO until and unless amended, I'm not sure that the proposed disclosure modifications undermine the EO in any way. I'm not sure that anyone has yet determined if we have other reasons to amend the EO, and unless there are compelling reasons to do so, I like the cover we get from conducting our regulatory review pursuant to a Clinton EO. Therefore, if the only thing we want to change is the disclosure process, there's an argument that we might want to do it without a new EO.

I will be back in the office Friday afternoon and would be happy to speak further about this.

* re-do the memo
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* Sai - FOIA
↳ full arsenal
of arguments

DRAFT

DRAFT

MEMORANDUM FOR OIRA STAFF

FROM: John Graham
Administrator

SUBJECT: Expanded Disclosure by OIRA of Communications from,
and Meetings with, Outside Parties on Regulatory Matters

⇒ moves corp
into West Wing

Having recently started my service as the Administrator of the Office of Information and Regulatory Affairs, and with the strong support of Director Daniels, I want to take this opportunity to express to OIRA staff my commitment to ensuring that OIRA carries out its regulatory review responsibilities in a transparent manner. This means, of course, complying fully with the disclosure requirements in Section 6(b)(4) of Executive Order (EO) 12866, which provide for "openness, accessibility, and accountability in the regulatory review process."

In addition, I have decided that OIRA will expand the information that it makes available to the public regarding communications that OIRA receives from "any person not employed by the executive branch of the Federal Government" (or, more simply, "outside communications"). Since its issuance in 1993, E.O. 12866 has required OIRA to include in its public docket library only those outside communications that it receives while a draft proposed or final rule is pending at OIRA for E.O. 12866 review. OIRA's review period begins when the rulemaking agency formally submits the draft rule for review, and ends when OIRA notifies the agency that it has concluded its review.

As I noted during my confirmation process, I believe that the Executive Branch's development of rules would be improved if the rulemaking agencies consulted with OIRA throughout their development of rules, rather than having OIRA's review focused at the end of the process. Earlier and more continuous consultations would better enable issues to be identified, discussed, and addressed in a timely and orderly way. In the coming weeks, I will begin a dialogue with the agencies on how these earlier consultations can be conducted.

Doesn't
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already
happen
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but this
info not
disclosed.

The initiation of these earlier interagency consultations may result in OIRA receiving additional outside communications on regulatory matters. For example, OIRA might receive outside communications before a draft proposed rule is formally submitted to OIRA for review, as well as during the period between the publication of the proposed rule and the submission of the draft final rule for review. Under the disclosure procedures under E.O. 12866, these outside

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communications are not required to be disclosed under Section 6(b)(4)(C). In the interests of transparency, I have decided that OIRA will make publicly available the outside communications that it receives, at whatever time, on any regulatory action that is listed in the semiannual *Regulatory Agenda* (which is the comprehensive compilation of the regulatory matters that are under development in the Executive Branch) and that is given a priority of "economically significant" or "other significant." OIRA would disclose, for these outside communications, the same information that OIRA is required to disclose under E.O. 12866.

why?

In addition to expanding the scope of OIRA's disclosure procedures, I have also decided that OIRA should make it easier for the public to obtain information about these outside communications. OIRA's practice under E.O. 12866 has been to make this information available in its public docket library in the New Executive Office Building. This has required interested members of the public either to visit the docket library or to submit a Freedom of Information Act request for the file and await OMB's response to the request.

OK

In the interests of transparency, I have decided that OIRA will take advantage of the Internet to enable the public to easily obtain the information about outside communications that is required to be disclosed under Section 6(b)(4)(C) of E.O. 12866 and under the new disclosure procedures that I am announcing. OIRA will post on OMB's Internet website –

- information on meetings, phone calls and other oral communications with outside parties that is required to be disclosed under Section 6(b)(4)(C)(iii) of E.O. 12866 (i.e., the dates and names of the participants, their organizational affiliation, and a plain-language description of the subject matter of the discussion), and
- a listing of the written outside communications, which would include the date of the communication (whether paper or electronic), the sender and his or her organizational affiliation, and a plain-language description of its subject matter (or, in the case of a large volume of outside communications on the same rulemaking activity, a categorization and description of such outside communications), in accordance with Section 6(b)(4)(C)(ii) of E.O. 12866.

Free info

Is there a clamor? need?

In the case of meetings, OIRA will work with OMB's Administration Office to have the information posted on OMB's website (and OIRA will place the information in the docket library) as soon as possible after the meeting has been scheduled, and will update the information to the extent necessary no later than five business days after the meeting has occurred. With respect to phone calls, other oral communications and written communications, OIRA shall provide the information to OMB's Administration Office for posting on OMB's website (and OIRA shall place this information in the docket library), no later than five business days after the phone call or oral communication occurs or the written communication is received by OIRA.

These new disclosure procedures will take effect on October 1, 2001, and will apply to meetings, phone calls, and other oral outside communications to OIRA that occur on or after October 1 and to written outside communications that OIRA receives on or after October 1.

It is also my intention that OIRA develop the capability to post on OMB's website, at the earliest practicable opportunity, the actual text of the written outside communications (in addition to their being available in the OIRA docket library). OIRA's Deputy Administrator shall work to implement a process for posting the text of these written communications.

The OIRA Deputy Administrator and OIRA's Branch Chiefs are responsible for implementing these new disclosure procedures and for ensuring that OIRA complies fully with the existing disclosure procedures under Section 6(b)(4) of E.O. 12866.

Source: All Sources > Federal Legal - U.S. > Executive Branch Materials > Executive Orders 

Terms: 12866 and oira ([Edit Search](#))

58 FR 51735, *

FEDERAL REGISTER

VOL. 58, No. 190

Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 12866 of September 30, 1993

Title 3-

The President

Regulatory Planning and Review

Part VIII

58 FR 51735

DATE: Monday, October 4, 1993

To view the next page, type .np* TRANSMIT.

To view a specific page, transmit p* and the page number, e.g. p*1

[*51735]

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Statement of Regulatory Philosophy and Principles. (a) The Regulatory

Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

- (1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.
- (2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation [*51736] is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.
- (3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.
- (4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.
- (5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.
- (6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.
- (7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.
- (8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.
- (9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to

carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order. **[*51737]**

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (**OIRA**) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of **OIRA**, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other

Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of **OIRA**.

(e) "Regulatory action" means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected **[*51738]** to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) Have an 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or

"agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of **OIRA**. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

[*51739]

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to **OIRA** by June 1st of each year.

(3) Within 10 calendar days after **OIRA** has received an agency's Plan, **OIRA** shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of **OIRA**, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of **OIRA** believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of **OIRA** shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to **OIRA**.

(d) *Regulatory Working Group*. Within 30 days of the date of this Executive order, the Administrator of **OIRA** shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of **OIRA** shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by **OIRA**, the Administrative Conference of the United States, or any other agency.

(e) *Conferences*. The Administrator of **OIRA** shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of **OIRA** shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations [*51740] promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to **OIRA** a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of **OIRA** shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of **OIRA**:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide **OIRA**, at such times and in the manner specified by the Administrator of **OIRA**, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory [*51741] actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of **OIRA** notifies the agency that **OIRA** has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of **OIRA** may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of **OIRA** to be, a significant regulatory action, the issuing agency shall provide to **OIRA**:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of **OIRA** to be, a

significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to **OIRA** the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify **OIRA** as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for **OIRA** to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);
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(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to **OIRA** for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of **OIRA**.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) **OIRA Responsibilities.** The Administrator of **OIRA** shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. **OIRA** shall, to the extent permitted by law, adhere to the following guidelines:

(1) **OIRA** may review only actions identified by the agency or by **OIRA** as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) **OIRA** shall waive review or notify the agency in writing of the results of its review within

the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to **OIRA**;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless **OIRA** has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, **OIRA** shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of **OIRA** returns to an agency for further consideration of some or all of its provisions, the Administrator of **OIRA** shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which **OIRA** is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of **OIRA** in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, **OIRA** shall be governed by the following disclosure requirements:

(A) Only the Administrator of **OIRA** (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under **OIRA** review;

(B) All substantive communications between **OIRA** personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between **OIRA** personnel and such person(s);

(ii) **OIRA** shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between **OIRA** personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between **OIRA** personnel and any such persons); and

(iii) **OIRA** shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) **OIRA** shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between **OIRA** personnel and any person

not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, **OIRA** shall make available to the public all documents exchanged between **OIRA** and the agency during the review by **OIRA** under this section.

(5) All information provided to the public by **OIRA** shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of **OIRA** shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of **OIRA** of the President's decision with respect to the matter.

Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of **OIRA** notifies the agency that **OIRA** has waived its review of the action or has completed its review without [*51744] any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without **OIRA** having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify **OIRA** and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal

management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

Editorial note: For the President's remarks on signing this Executive order, see issue 39 of the Weekly Compilation of Presidential Documents.

WILLIAM J. CLINTON

THE WHITE HOUSE,

September 30, 1993.

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