



Ex-Post Evaluation and Regulatory Stock Management in the United States

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Agenda

The Need for Ex Post Evaluation

Background on U.S. Regulatory Process and OIRA

Executive Order 12866

Executive Order 13771

Executive Order 13777

Preliminary Results and Deregulation Examples



The Need for Ex Post Evaluation

2012 OECD Recommendation on Regulatory Policy and Governance

Recommendation 5

Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives.



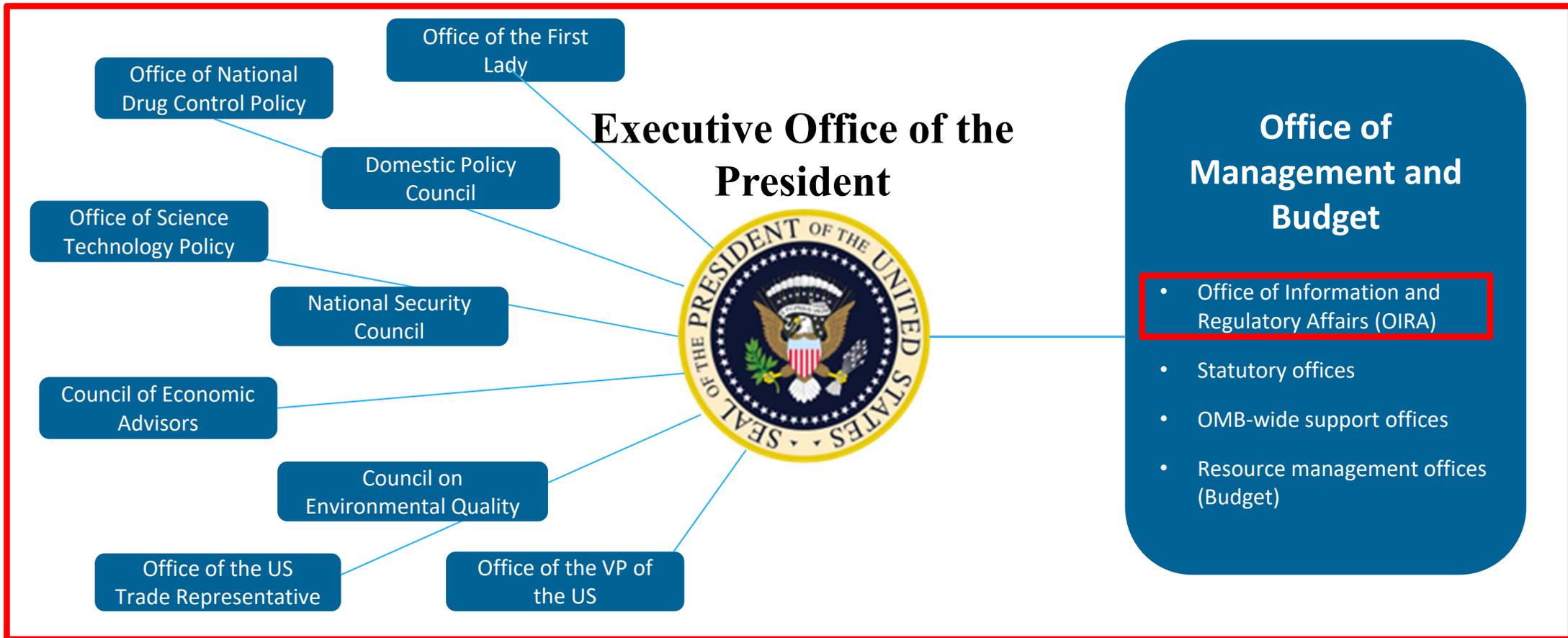
U.S. Regulatory Process



- Review:
 - Within sub-agency (e.g., Food and Drug Administration)
 - Within Department (e.g., Health and Human Services)
 - Executive Office of the President and interagency (if “significant”)
- Publication of proposed and final rules in the *Federal Register*
- Comments and support materials docketed at www.regulations.gov



What Is OIRA?

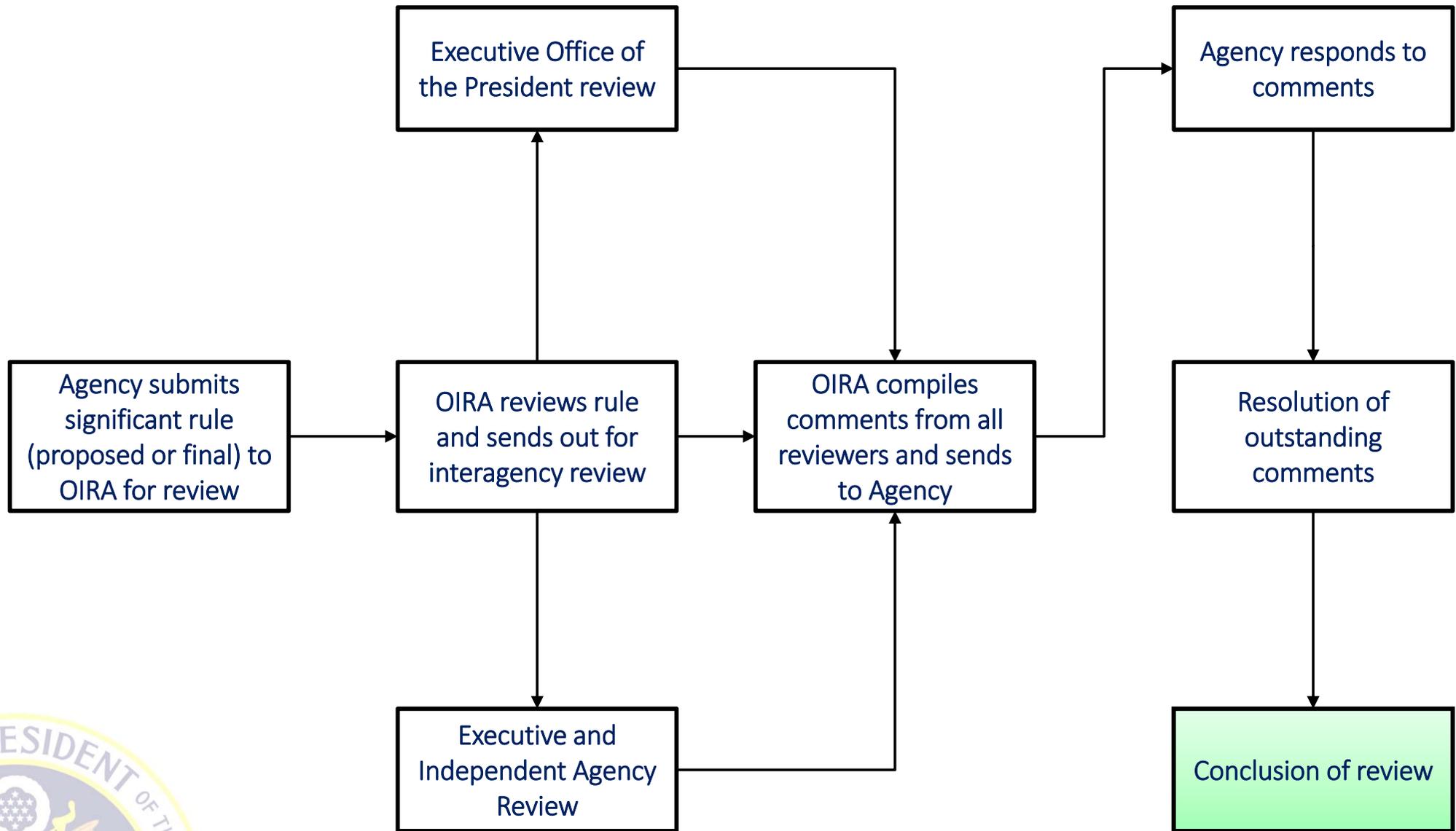


Centralized Regulatory Review –EO 12866

- 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.
 - Regulation must be consistent with the President’s priorities.
 - Regulation do not conflict with the policies or actions of another agency.
 - Regulations must identify nature and significance of problem.
 - Alternatives to address the problem must be identified and assessed.
 - The costs, benefits, impacts, of each alternative must be assessed (regulatory impact analysis).
 - The alternative selected should maximize net benefits to society.
- These principles guide OIRA’s review of regulations.
- OIRA considers all private-sector and public-sector (state, local, tribal, and Federal) costs, benefits, impacts of government regulatory actions.



OIRA Centralized Regulatory Review Process



Regulatory Transparency and Participation

Disclosure of Information Under Executive Order 12866:

- The public can consult OMB's online "Regulatory Review Dashboard" to learn each day which rules are under formal review at OMB.
- Meetings with outside parties – OIRA and the issuing agency will meet with external stakeholders regarding rules under review. OMB's website notes which outside groups have met with OIRA, including the participants, and docket written materials provided to OIRA during the meeting.
- All written information given to us while a rule is under review is sent to the agency, placed in OIRA's docket, and posted online.
- Return letters sent to the agencies outlining our concerns with rules we send back are posted on our website.



OMB Circular A-4

- Guidelines for the conduct of regulatory impact analysis.
- Underwent public comment, interagency review and peer review.
- Issued September 2003.



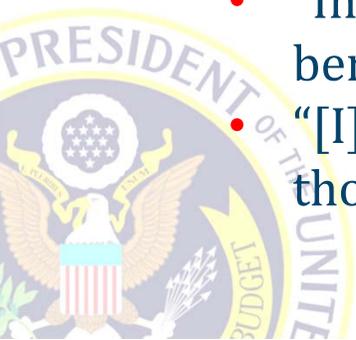
Executive Order 13771: “Reducing Regulation and Controlling Regulatory Costs”

Key Requirements

- For each new regulation, an agency shall identify at least two existing regulations to be repealed, unless prohibited by law.
- Grants the Office of Management and Budget (OMB) the authority to establish annual regulatory cost allowances for agencies.
- Agencies must receive approval from the OMB Director to issue a regulation that is not included in the Unified Regulatory Agenda.

Executive Order 12866, “Regulatory Planning and Review” (September 1993), remains in effect.

- “In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives.”
- “[I]n choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits.”



OMB Guidance on Executive Order 13771: Qualifying Regulatory and Deregulatory Actions

“Regulatory actions” impose total costs greater than zero.

- Only regulations deemed “significant” under E.O. 12866.
- Significant finalized guidance documents.

“Deregulatory actions” provide meaningful regulatory burden reduction and have total costs less than zero.

- All regulations (including “significant” regulations under E.O. 12866).
- Guidance and interpretive documents.
- Information collection requests that “repeal or streamline recordkeeping, reporting, or disclosure requirements.”
- Regulations overturned by subsequently enacted primary laws (e.g., Congressional Review Act resolutions).
- Some actions related to international regulatory cooperation.



OMB Guidance on Executive Order 13771: Offsets

An “offset” means:

- an agency has taken at least two deregulatory actions per regulatory action, and
- the incremental cost of the regulatory action has been counterbalanced by incremental cost savings from deregulatory actions.

Offsets must be consistent with an agency’s total incremental cost allowance.



OMB Guidance on Executive Order 13771: Measurement of Costs and Cost Savings

How do we count costs and cost savings?

- Costs should be estimated using the methods and concepts in OMB Circular A-4, OMB's guidance to agencies on regulatory impact assessment.
- Accounting conventions for the categorization of costs and cost savings should generally follow past agency practices.

“Total incremental costs”

- Equals the sum of all costs from regulatory actions minus the cost savings from deregulatory actions.

Transfer regulations are exempt.

- Regulations that transfer income between taxpayers and program beneficiaries or establish fees.
• Transfer rules may include provisions that generate costs or cost savings.



OMB Guidance on Executive Order 13771: Banking and Transferring Cost Savings

Banking

- Agencies may “bank” both cost savings and the associated deregulatory actions for use in subsequent fiscal years.
- Surplus costs savings and deregulatory actions do not expire.

Transfers

- Cost savings and deregulatory actions may be transferred within an agency, between different components of that agency.
- Cost savings and deregulatory actions may also be transferred between agencies, with the consent of the supplying agency and approval from OMB.



OMB Guidance on Executive Order 13771: Exemptions

Expressly Exempt Actions

- Regulations pertaining to matters of military, national security, or foreign affairs, or to agency organization, management, or personnel.
- Such actions qualify for a full exemption.

Emergency Actions

- Regulations addressing critical health, safety, financial, or non-exempt national security matters.
- OMB will grant exemptions with respect to the timing of offsets.

Statutorily or Judicially Required Actions

- Regulations meeting imminent statutory or judicial deadlines.
- OMB will grant exemptions with respect to the timing of offsets.

De Minimus Actions

- Example: regulations imposing costs of \$50,000 over a large number of entities.
- OMB may grant full or partial exemptions.



OMB Guidance on Executive Order 13771: Identification of Regulatory Costs and Savings

FY 2018 Incremental Cost Allowances

- OMB requested agencies to propose total incremental cost allowances for FY 2018 to inform the Director's determinations under E.O. 13771.
- Agencies must explain how they developed their proposed allowances and how they support the goals of E.O. 13771.
- OMB expects that agencies will propose a net reduction in total regulatory costs for FY 2018.

The Unified Agenda and Regulatory Plan will include useful information about agency plans to comply with E.O. 13771.

- The Unified Agenda of Regulatory and Deregulatory Actions is the semi-annual publication about agencies' upcoming regulatory actions.
- The annual Regulatory Plan explains the regulatory priorities of agencies.



OMB Guidance on Executive Order 13771: Consequences of Non-Compliance

To comply with E.O. 13771, by the end of a fiscal year an agency must

- finalize at least twice as many deregulatory actions as regulatory actions, and
- meet its total incremental cost allowance.

Non-compliant agencies must submit to the OMB Director a plan for coming into full compliance that provides:

- the reasons for, and magnitude of, non-compliance;
- how and when the agency will come into full compliance;
- any other relevant information requested by the OMB Director.



How do Agencies Prioritize Existing Requirements to Repeal or Revise?

Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established Regulatory Reform Task Forces in agencies.

E.O. 13777 directs Task Forces to:

- evaluate existing regulations and make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law; and
- seek input from public stakeholders significantly affected by regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

Task Forces must identify regulations that, among other things:

- eliminate jobs, or inhibit job creation;
- are outdated, unnecessary, or ineffective;
- impose costs that exceed benefits; or
- are inconsistent with the requirements of the Information Quality Act.



Preliminary Results and Deregulation Examples

Results Fiscal Year 2018

- 12-to-1 ratio: 176 deregulatory actions and 14 significant regulatory actions.
- 4-to-1 ratio: 57 significant deregulatory actions and 14 significant regulatory actions.
- Savings of \$23 billion in regulatory costs.

Preliminary Results Fiscal Year 2019

- Anticipated savings of \$18 billion in regulatory costs.

Examples

- **Minor Harvest Fishing Exemption** – Small fishing operations would be able to continue small-scale fishing in the Pacific Ocean during the off season, allowing new market opportunities for small businesses. (Department of Commerce, National Oceanic and Atmospheric Administration)
- **Drones** - Safely allow and efficiently integrate some unmanned aircraft systems (drones) into the National Air Space. (FAA)
- **New Reactor Licensing Process** – Added clarity and efficiency and would ensure consistency in the licensing process for new nuclear reactors. (Nuclear Regulatory Commission)



References

- Executive Order 12866: www.whitehouse.gov/OMB/infoereg/eo12866.pdf
- Executive Order 13771: <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>
- Executive Order 13777: <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>
- Office of Management and Budget, Memorandum: Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs", M-17-21: www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation
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