

New Federal Initiatives Project

**Executive Order Concerning Regulatory
Planning and Review**

**By
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EXECUTIVE ORDER CONCERNING REGULATORY PLANNING AND REVIEW

Every president since Ronald Reagan has relied on the Office of Information and Regulatory Affairs (OIRA) within the White House Office of Management and Budget to coordinate regulatory policy and to ensure new regulations are accountable to the public and consistent with Presidential priorities. Since 1993, OIRA's regulatory oversight has been guided by President Clinton's Executive Order 12866, which President Bush amended modestly in 2002 and 2007.

Like presidents before him, President Obama recognizes the importance of this "dispassionate and analytical 'second opinion' on agency actions," and he is moving to put his own stamp on this regulatory oversight function.

On January 30, 2009, he sent a memorandum to the heads of executive departments and agencies in which he directed the Director of OMB to prepare within 100 days a set of recommendations on a new Executive Order on Federal regulatory review. These recommendations are to "offer suggestions for the relationship between OIRA and the agencies; provide guidance on disclosure and transparency; encourage public participation in agency regulatory processes; offer suggestions on the role of cost-benefit analysis; address the role of distributional considerations, fairness, and concern for the interests of future generations; identify methods of ensuring that regulatory review does not produce undue delay; clarify the role of the behavioral sciences in formulating regulatory policy; and identify the best tools for achieving public goals through the regulatory process."

Also on January 30, 2009, President Obama issued Executive Order 13497, revoking President Bush's two amendments to E.O. 12866. Probably the most significant feature of the revoked Bush 43 executive orders was the January 2007 amendment subjecting agencies' "significant guidance documents" to the OIRA coordination and review process. The stated purpose of this consultation was to ensure that guidance documents with a significant impact on society were subject to appropriate interagency coordination and review prior to their issuance. The Order defined a "significant guidance document" include documents which could reasonably be anticipated to:

- (1) lead to an annual effect 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 impacts of entitlements, grants, user fees or loan programs or the rights or 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 the 2007 Executive Order.

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Related Links:

“OMB Prompt Letters: Are They Promoting (Smarter) Regulation?” by Karen Harned and Elizabeth A. Gaudio, *Engage*: http://www.fed-soc.org/publications/pubID.901/pub_detail.asp

“Independent Peer Review” by Jeffrey Ladik, *Engage*: http://www.fed-soc.org/publications/pubID.963/pub_detail.asp

“The Future of Regulatory Oversight and Analysis” by Susan Dudley and Arthur Fraas, *Mercatus on Policy*: http://mercatus.org/uploadedFiles/Mercatus/Publications/MOP51_OIRAweb.pdf

January 30, 2009 Executive Order: http://www.whitehouse.gov/the_press_office/Revocation-Of-Certain-Executive-Orders-Concerning-Regulatory-Planning-And-Review/

January 30, 2009 Memorandum to Heads of Executive Departments and Agencies: http://www.whitehouse.gov/the_press_office/memorandum_for_the_heads_of_executive_departments_and_agencies/

Copies of the revoked orders, and a related OMB Bulletin, see Executive Order 13422 dated January 18, 2007, Executive Order 13258 dated February 26, 2002, and the Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, dated April 2007, can be found at the following website: http://www.whitehouse.gov/omb/inforeg/eo12866/index_eo12866.html

Office of Information and Regulatory Affairs's “Regulatory Matters” page: http://www.whitehouse.gov/omb/inforeg_regmatters/

Primer on Regulation from the Mercatus Center: <http://www.mercatus.org/PDFDownload.aspx?contentID=23700>