



March 26, 2009

Thank you for the opportunity to comment on the proposal to reform the federal regulatory process.

The Center for Plain Language is a federally-tax exempt, non-profit organization. We advocate for plain language in all government writing. Plain language from the government is critical in a democracy; a government cannot be transparent if its citizens do not understand what it says.

Regarding improvements to the regulatory process, we recommend you

- explicitly require the use of plain language in regulations to increase their transparency;
- modify EO 12866 to make the OMB review process more transparent to the public;
- modify the OMB review to make it less of a burden on the rulemaking process;
- rewrite the EO in clearer, simpler language; and
- make regulations.gov more usable.

### **Explicitly require regulations to be in plain language**

Plain language brings clarity to writing and aids the government and the public in the following ways:

- It makes government actions more transparent because the public understands what the government does.
- It encourages people to participate in the regulatory process. People are more likely to read and comment on regulations they can understand.
- It supports democracy. A democracy depends on an informed public. Obscure writing from the government fosters mistrust and conceals government actions from the scrutiny of an informed public.
- It saves the government (and the public) time and money by improving compliance, reducing errors by the public, and reducing or eliminating telephone calls and emails requesting explanations.

- It removes barriers between the government and the public. Bureaucratic writing from the government pushes the public away from government programs and sends a message that the government is like a secret society with its own secret language; it does not want public involvement in its processes. Plain language encourages citizen participation in government.

While EO 12866 does state the regulations should be written in clear language, we believe that the new Executive Order should include stronger language. The new order should include a definition of plain language such as the definition in H.R. 946. H.R. 946 states that “The term ‘plain language’ means language that the intended audience can readily understand and use because that language is clear, concise, well-organized, and follows other best practices of plain language writing.” And we recommend OMB return rules to agencies if they are difficult to understand. The principles that OMB should enforce include:

- (a) Using logical organization
- (b) Using common, everyday words, except for necessary technical terms
- (c) Having most verbs in the active voice
- (d) Using “you” and other pronouns where possible, to draw in the reader
- (e) Using reasonably short sentences
- (f) Using lists and tables where possible to sort out complicated material
- (g) Using “must” for requirements, instead of the ambiguous “shall”

See [www.plainlanguage.gov](http://www.plainlanguage.gov), especially <http://www.plainlanguage.gov/howto/guidelines/bigdoc/TOC.cfm>, for more on plain language principles.

### **Make OMB’s review process more transparent**

Revise EO 12866 to require OMB to publish a list of all rules it determines to be significant. We are not advocating that OMB change its criteria for review of these rules. But OMB should disclose to agencies and the public the reason it wants to review each significant rule. When OMB decides to review a rule because it “raises novel legal or policy issues,” it should discuss the issues and the reason(s) why OMB believes they are novel. This change would encourage the transparency that agencies and the public are entitled to.

If a rule is significant, the Order should require OMB to give the agency a written approval or disapproval letter, in the same way that it does for information collections. OMB posts information collection approvals on its website. It should do the same after it reviews a regulation.

OMB should publish in the Federal Register every month a list of regulations that it has under review and that it has reviewed in the past month. It should describe what changes were made as a result of its review. We recommend that the notice be short, its primary

purpose being to provide a link to the OMB website where OMB maintains information about its regulatory reviews.

### **Reduce the burden on rulemaking from OMB's review**

Require OMB to publish with each Unified Agenda of Rules a list of all the rules that it will review, together with an explanation of why OMB considers each rule significant (see above). OMB should do this within 60 days after GSA publishes the Agenda and weekly for rules which will publish before the 60 days are up. The Unified Agenda should become the only list of rulemakings that agencies send to OMB.

Do not permit OMB to do "informal" reviews. If a rule is not significant, OMB should not review it. Informal reviews have become a major source of delay in the rulemaking process, because they occur outside the prescribed process for normal OMB review and do not impose any deadline on OMB.

If an agency needs to publish a rule that was not included in the semiannual agenda, and OMB determines the rule to be significant, OMB should provide its reasons in writing and publish a notice of this determination in the Federal Register and on the web.

OMB currently has 90 days to review a rule but frequently takes more time. OMB should notify an agency in writing that it will extend the review. It should also publish a notice in the Federal Register and on the web stating that it is extending the review and giving the reason for the extension. OMB should be allowed to extend the review only one time and for no longer than 60 days.

Abolish or reduce the Regulatory Plan; it has little utility. If you retain the plan, require each agency to include in the fall regulatory agenda a regulatory plan that describes in 500 words or less the agency's regulatory priorities for the coming year. Limiting the plan to 500 words ensures that it will be a useful overview, free of the padding that characterizes current plans.

### **Draft the Executive Order in plain language for greater simplicity and clarity**

The Executive Order on the regulatory program should set the standard for clarity in regulations.

Eliminate archaic legalisms (issuance, by the authority vested in me, I hereby . . .). Chose simpler words instead of more complex bureaucratic ones (use "about" instead of "relating to," instead of "commission analytical studies by OIRA" use "ask OIRA to study").

Eliminate the ambiguous "shall" and instead use "must," "should," or "will," as appropriate.

Keep average sentence length under 20 words.

Change most verbs in passive voice to active, to clarify who does what, and when.

Prefer verbs over nouns, eliminate “hidden verbs” (Use “resolving conflicts” instead of “resolution of conflicts”)

We would be happy to provide plain language legal expertise to help draft a new regulatory Executive Order.

### **Improve regulations.gov**

While regulations.gov has improved citizen access to proposed regulations and related actions, it could be improved significantly. Search functions are clunky, and the site is burdened by excess text and unclear instructions. Future efforts to improve the site should include testing proposed redesigns with real customers. A site called “regulations.gov” should include existing regulations, not just proposed ones. While we aren’t suggesting that the Code of Federal Regulations database be pulled into regulations.gov, the two sites should be integrated so the public can easily access all final rules from regulations.gov, and so the CFR database directs users to proposed changes to existing regulations.

Thank you for considering these comments. If we can help ensure any new EO is clear, or if you need help with any other plain language issues, please contact me.

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