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From: Erika Houtz [redacted]
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To: FN-OMB-OIRA-Submission
Subject: comments on changing regulatory review process

As stated in the Federal Register, the Office of Information and Regulatory Affairs at OMB reviews Federal regulations to "ensure consistency with Presidential priorities [...] and to offer a dispassionate and analytical 'second opinion' on agency actions". Those two objectives will often, and do often conflict, as aligning regulations with presidential policy is an inherently non-analytical and non-dispassionate process. It is time that the Office of Information and Regulatory Affairs reorganize its efforts to serve as dispassionate arbiter of the legality of regulations coming out of the agencies. Because my expertise is in environmental regulation, I will focus my comments to the handling of regulations coming out of the EPA, though the intent of these comments is broad. The OIRA needs to employ people that are experts in understanding both the legal requirements that underpin a regulation and the scientific bases for which regulations are set. Otherwise, there is no authority to deem a regulation proper or improper. As a corollary, the agency presenting a regulatory decision should always be presumed to have the greatest level of expertise on the basis for the regulation. This acknowledgment should manifest itself in two ways: First, the OIRA should not undermine the validity of a regulation without great certainty that it is legally or scientifically wrong. Second, attempts to review or change a regulatory decision should occur in parallel with the regulating agency's actions, particularly when there is a risk to public health. For example, when EPA set an interim perchlorate standard, the decision to allow the National Academies to review the scientific underpinnings of the perchlorate standard halted the EPA's actions on pursuing a drinking water standard for perchlorate. It would have been precautionary and prudent to allow EPA to advance with its actions on perchlorate as the National Academies review took place. Reviews are usually requested by a party or agency who has a significant interest in preventing a regulation from going forward; allowing an agency to proceed with regulatory actions during a review prevents other entities from using the review process as a delay tactic.

The regulatory review process should not be seen as an opportunity to conform regulations to presidential political or policy preferences. There are other, more transparent legal avenues to exercise the president's agenda, if it is in fact an agenda governed by the law. Some laws require the implementation of regulations that are not practical, modern, politically agreeable, or even constitutional. Nevertheless, changing regulations to meet any worthy or constitutional agenda against the word of the law is not the business of the White House or any entity involved in the regulatory review process. If a *law* is the root of the problem, then the White House must take to the Courts via a legal petition or persuade the legislature to change the laws. Those pathways are both more transparent and more permanent, transcending regulatory modifications unlawfully exerted during a single administration. The Obama's guarantee of better government and more transparency can be fulfilled through conscientious, deferent regulatory review that meets the word of the law and faithfully recognizes the scientific bases underpinning regulation.

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