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Recommendations for Regulatory Review

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This document provides recommendations for a new Executive Order on regulatory review, as requested by President Obama in a memorandum issued Jan. 30. It is composed of two parts. The first summarizes the major recommendations. The second marks up the current Executive Order on regulatory review, E.O. 12866, offering specific language to implement these major recommendations as well as less significant changes.

Summary of Major Recommendations

Priority setting. Agencies generally do a poor job of explaining how or why they choose priorities. Agency regulatory agendas provide short explanations for priority actions, but they give little or no attention to the larger context. How do priorities link to goals and objectives? Why were they picked over other possibilities? What is their relative importance to each other? The impression left is that agencies have not grappled with these questions. At the very least, they are not making their reasoning public. The additions in Sec. 4 on the Planning Mechanism are meant to ensure that priorities are publicly justified using the best available data.

Cost-benefit analysis. Cost-benefit analysis, as conducted, is notoriously opaque. It can be extremely difficult to determine how an agency arrived at its quantified and monetized figures, which is the source of many objections to cost-benefit as a tool. Moreover, the component parts of a cost-benefit analysis—questions such as how costs are distributed—may be just as important to making good decisions, if not more so, than total amounts. Qualitative factors may also be key drivers in decision-making. The changes below include a new section (Sec. 5 on Agency Development of Regulation) that seeks to bring greater transparency to cost-benefit analysis to facilitate good decision-making and public understanding. This section is far more specific about what sort of information should be included in a cost-benefit analysis than what is currently required under E.O. 12866 (see section 5(b)(5) and (6)). Also included are assessments of distributional considerations and innovation that may result from a regulatory action.

Scientific integrity. Under the Bush administration, the White House and OIRA exerted undue political influence over scientific information developed by the agencies. Sec. 5(g) makes clear that agencies have primary responsibility to ensure the integrity of scientific information used to support regulatory actions. OIRA, OSTP, and others designated by

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the President may work with agencies to coordinate scientific assessment and provide oversight to ensure principles of scientific integrity are observed. They should not, however, alter, block or otherwise interfere with scientific conclusions of the agencies.

Timely promulgation of regulation. The rulemaking process can take a very long time—sometimes years—to complete. Where public need is great, there may be severe consequences in the meantime. The changes below attempt to provide a means to assess the length of rulemakings and to improve responsiveness. Specifically, Sec. 5(3) requires agencies to disclose the amount of time spent developing each new regulation and Sec. 4(c)(1)(G) requires that each agency's Regulatory Plan identify any regulatory actions that were not completed in accordance to the schedule set forth in the agency's Regulatory Plan of the preceding year. Sec. 5(e)(2) directs the agency's regulatory policy officer to annually assess this information and, where needed, identify methods of ensuring the regulatory process does not produce undue delay. Sec. 1(b)(5) also sets forth the principle that regulation, where necessary, should be developed in a timely manner.

Closing gaps in knowledge. Each agency is supposed to identify significant data gaps that impair tracking the performance of economically significant regulations (Sec. 6(a)(1)(E)). Section 5(e)(4) directs each agency's regulatory policy officer to annually assess these data gaps and others identified by the agency. Where addressing an identified data gap is a priority, the regulatory policy officer is supposed to recommend measures for closing the data gap, giving particular attention to information technologies that can reduce the cost of data gathering and analysis.

Performance assessment. Agencies do not adequately track the performance of their existing regulations. Sec. 6 below replaces Sec. 5 of E.O. 12866 (Existing Regulations) to make assessment of existing regulations more concrete. Specifically, this section requires annual assessment of new economically significant regulations and asks agencies to rate such regulations as effective; moderately effective; adequate; ineffective; or results not demonstrated. These ratings are the same as those assigned under the Performance Assessment Rating Tool (PART). OMB is responsible for reviewing and verifying these ratings. Other regulations may be reviewed in the same manner at the request of the President or Vice President. Each agency's regulatory policy officer is also supposed to annually review performance data and ratings to identify the best tools and practices for achieving regulatory objectives.

Public participation and transparency. The changes below seek to expand public participation and transparency in a number of ways. There is currently little opportunity for the public to participate in agency priority-setting. Sec. 4(d) attempts to change this by requiring each agency to prepare a draft Regulatory Plan for public comment. Sec. 5(d) requires each agency to publicly disclose through the Internet information developed to support regulatory actions. The public must also be able to submit comments through the Internet on each regulatory action. Today, Internet comment is possible for some but not all regulations. In addition, agencies should explore electronic methods to promote more robust interactivity between and among members of the public, agency personnel,

expert advisers, and other interested parties. Finally, Sec. 6 requires each agency to create a web site that tracks progress towards meeting regulatory performance objectives for economically significant regulations. Web sites must provide a means for members of the public to provide feedback and interact with each other and agency personnel on each regulatory action tracked.

OIRA flexibility in regulatory review. OIRA has a very small budget and a very small staff, yet its responsibilities are very large. Given this reality, OIRA devotes far too much time to rule-by-rule review, and is less effective as a result. By scaling back rule-by-rule review, OIRA could give more attention to agency coordination, agenda setting (pushing the President's priorities broadly rather than in specific provisions of specific rules), information policy, and general oversight. In the changes in Sec. 7 below, OIRA is required to review only those rules that are subject to the Unfunded Mandates Reform Act (rules requiring $100 million in expenditures by state and local governments or the private sector). With this change, OIRA likely would have to review less than 70 rules a year, compared to about 500 under E.O. 12866. The changes also give OIRA the option of reviewing "other significant regulations" if it determines such review is necessary. In other words, OIRA could still review, if it so chooses, any rule now subject to review under E.O. 12866. The definitions are provided in Sec. 3(f) and (g) for "economically significant regulatory actions" and "other significant regulations."

Criteria for OIRA returns and changes. There is a danger that OIRA desk officers may act based on their own personal views rather than on behalf of the President's priorities. Sec. 7(b)(1) establishes criteria for returning or changing regulatory actions. Specifically, OIRA may return or change a regulatory action only if it violates applicable law; is inconsistent with the President's priorities; does not meet the requirements of the Executive order; or conflicts with the policies of another agency. OIRA must provide a written statement to the agency identifying which of these criteria the action fails and explaining the basis for this judgment. This will provide clarity to the agency—and ultimately the public—and will provide a means for the Administrator of OIRA to assess the performance of OIRA staff.

Legal justification for OIRA changes. In performing regulatory reviews, OIRA frequently has not given due consideration to the law. This resulted in a number of the Bush administration's rules being overturned in court. In Sec. 7(b)(3), OIRA is required to provide a written statement to the agency explaining the legal basis supporting or permitting each substantive change requested. This should help ensure that OIRA's actions are legally grounded and avoid unnecessary litigation.

Dispute resolution. E.O. 12866 puts the Vice President in charge of resolving disputes between an agency and OIRA. Sec. 8 below is changed to put the President in charge of resolving disputes, recognizing that the President has ultimate authority and responsibility. The President may direct the Vice President to act on his behalf in resolving disputes.

Recommended Changes to Executive Order 12866[2]

Regulatory Planning and Review

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.

Comment [rar1]: The introduction is unchanged here, but it obviously needs to be rewritten for a new Executive Order. Nonetheless, it still applies well to today.

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.* Regulation should be legally grounded and responsive to 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. Federal agencies should evaluate public need in prioritizing and devising regulation. Agency evaluations should be transparent and conducted with public input. Priorities should be clearly delineated and explained using the best available data. In deciding whether and how to regulate, agencies should identify regulatory objectives, quantified to the extent feasible. Agencies should assess the 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 (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Assumptions and methodologies used to quantify or monetize costs and benefits should be clearly identified and explained. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize benefits and minimize costs in meeting identified objectives, unless a statute requires another regulatory approach. Agencies should explain in plain, understandable language how any chosen approach is supported by the assessment of costs and benefits. After implementation, agencies should

[2] The baseline text is that of the original Executive Order issued by President Clinton and does not include the Bush amendments of Executive Order 13422, which President Obama revoked Feb. 4.

monitor and report on the performance of regulations to ensure identified objectives are achieved.

(b) *The Principles of Regulation.* In setting regulatory priorities and developing and implementing regulation, agencies should adhere to the following principles:

Comment [rar2]: The highlighted portion is all new. Many of the principles from 12866 were moved to a new section on the development of regulation, Sec. 5 below. These principles are more general than those in 12866.

(1) Regulation should be consistent with the President's priorities;

(2) Regulation should be developed according to applicable law and the requirements of this Executive order, except where such requirements conflict with applicable law;

(3) Federal agencies should coordinate regulation with each other and with state, local, and tribal governments, so as to avoid regulatory requirements that are inconsistent, incompatible, or duplicative;

(4) Regulatory priorities and regulatory actions should be clearly explained and justified using the best available data;

(5) Each agency should develop regulation, where regulation is necessary to address public need, in a timely manner;

(6) The public should be provided opportunity to participate in regulatory decisions;

(7) Data, scientific findings, and assessments, including assessments of costs and benefits, used for regulatory actions should be objective, free of political influence, and transparent to the public;

(8) Regulations should be easy to understand to minimize uncertainty, improve compliance, and reduce the potential for litigation;

(9) Agencies should assess the costs and benefits of each regulatory action and design regulations to maximize the benefits and minimize the costs, employing, to the extent feasible, flexible, performance-based approaches to achieve regulatory objectives; and

(10) Agencies should monitor the performance of regulations to ensure objectives are achieved and reform or eliminate those regulations that are ineffective or outdated.

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.

(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) *President and Vice President.* The President, or the Vice President acting at the request of the President, is responsible for resolving disputes between the agencies and the Office of Management and Budget. 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, and the other Advisors.

(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 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) "Economically significant regulatory action" means any regulatory action that is likely to result in a rule that, consistent with 2 U.S.C. 1532, may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000 million or more (adjusted annually for inflation) in any 1 year.

(g) "Other significant regulatory action" means any regulatory action that is not economically significant, as defined by subsection (f), but that is likely to result in a rule that may:

(1) 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) *Agency Coordination.* The Administrator of OIRA shall ensure a common understanding of priorities among agency heads and, early in each year’s planning cycle, coordinate regulatory efforts to be accomplished in the upcoming year. In fulfilling this responsibility, the Administrator of OIRA may convene meetings of agency heads and other government personnel as appropriate.

(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, 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 identifying the agency's regulatory objectives, including quantifiable measures of outcomes the agency seeks to achieve;

(B) A statement identifying the agency's regulatory priorities and explaining based on the best available data:

(i) How and to what extent the agency's regulatory priorities will help achieve the agency's regulatory objectives;

(ii) Why the agency's regulatory priorities were picked over other possibilities;

(iii) The relative importance of the agency's regulatory priorities to each other; and

(iv) How they relate to the President's priorities;

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

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

(E) 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;

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

(G) A statement identifying any regulatory actions that were not completed in accordance to the agency's schedule from the Regulatory Plan of the preceding year and an explanation for why such actions were not completed;

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

(I) A summary of, and the agency's response to, public comments received under subsection (d).

(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 and the Advisors.

(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 and the Advisors.

(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 and the Advisors.

(6) The Administrator of OIRA 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) *Public Comment.* Each agency shall prepare a draft Regulatory Plan for public comment prior to submission of the Plan to OIRA. Each agency shall provide at least 30 days for public comment and shall allow comments to be submitted through the Internet.

Sec. 5. *Agency Development of Regulation.* (a) *General Requirements.* For each regulatory action, the issuing agency shall:

Comment [rar3]: This section is new and so it is not in track changes. Some of the provisions, however, were moved from other parts of E.O. 12866. The highlighted parts are new and do not appear anywhere in 12866.

(1) Adhere to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, and other applicable law;

(2) Summarize the legal basis for the action, including whether any aspect of the action is required by statute or court order;

(3) Disclose the number of days the agency has spent developing the regulation;

(4) Identify the problem(s) that the agency 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 the problem(s);

(5) Identify and assess available alternatives to direct regulation (such as economic incentives or disclosure of information upon which choices can be made by the public)

and proceed only if the agency determines that regulation is the best available method to achieve the regulatory objective;

(6) Examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively;

(7) Provide a clear description of the expected costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, proceed only upon a reasoned determination that the benefits of the intended regulation justify its costs, unless a statute requires another regulatory approach;

(8) Clearly identify and explain the assumptions and methodology used in quantifying and monetizing costs and benefits, in order to ensure that the agency's analysis can be replicated;

(9) Base decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation;

(10) Design the regulation in the most cost-effective manner to achieve the regulatory objective, taking into consideration incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity;

(11) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt;

(12) Tailor the regulation to fit differing needs or circumstances among individuals, businesses, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, to maximize benefits and minimize costs; and

(13) Explain in plain, understandable language what the intended regulation requires, how it will address the identified problem, and what the agency expects to achieve.

(b) *Regulatory Impact Analysis.* For each matter identified as, or determined by the Administrator of OIRA to be, an economically significant regulatory action or an other significant regulatory action within the scope of section 3(g)(1), the issuing agency shall prepare a Regulatory Impact Analysis that:

(1) Includes any statements prepared under the Unfunded Mandates Reform Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law;

(2) Provides 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;

(3) Provides 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;

(4) Provides 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;

(5) Includes a table or other easily understood format that presents the following benefit information for the agency's preferred or chosen regulation:

(A) A list by category of the benefits expected as a result of the regulatory action, including, where relevant, avoided premature deaths, injuries, and illnesses;

(B) A description of who is expected to realize identified benefits;

(C) Quantified estimates of expected gains for each category of benefits (such as the number of premature deaths expected to be avoided);

(D) Any monetary values assigned by the agency to quantified benefit estimates for each category and in total;

(E) Anticipated benefits that the agency was unable to quantify, including an explanation of why the agency was unable to quantify, and quantified benefits the agency did not monetize; and

(F) Time-scale information that describes when anticipated benefits will be realized and the effects of the regulatory action on future generations.

(6) Includes a table or other easily understood format that presents the following cost information for the agency's preferred or chosen regulation:

(A) A list by category of those expected to incur monetary costs as a result of the regulatory action;

(B) Monetary costs expected for each category and in total;

(C) Anticipated costs that the agency was unable to quantify, including an explanation of why the agency was unable to quantify;

(D) The number of entities or individuals within each category identified under subsection (d)(1)(B)(i);

(E) The average monetary cost expected to be incurred by each entity or individual within each category; and

(F) Time-scale information that describes when and for how long costs are expected to be incurred by entities or individuals within each category;

(7) Analyzes distributional considerations, including effects on vulnerable subpopulations and geographic areas, and to the extent relevant and informative, presents user-friendly visual presentations showing distributional impacts;

(8) Discusses innovation that may result from the regulatory action and the effects of such innovation on costs and benefits; and

(9) Explains in plain, understandable language how any chosen approach is supported by the agency's assessment of costs and benefits, distributional considerations, and innovation.

(c) *Performance Metrics.* For each economically significant regulatory action, the issuing agency shall identify quantifiable performance metrics for evaluating the success of the regulation as set forth in section 6. Such metrics shall include the regulatory objectives the agency expects to achieve.

(d) *Public Participation and Transparency.* (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.

(2) For each regulatory action, the issuing agency shall immediately and publicly disclose through the Internet all information developed in accordance with subsections (a), (b), and (c).

(3) 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.

(4) Each agency shall ensure that the public is able to submit comments through the Internet on any proposed regulation.

(5) Each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(6) Each agency should explore and, where appropriate, use electronic methods to foster discussion on regulatory actions among and between members of the public, expert advisers, representatives of state, local, and tribal governments, agency personnel, and other interested parties.

(e) *Regulatory Policy Officer*. Each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall:

(1) Participate at each stage of the regulatory process to foster the development of regulations that achieve the principles set forth in this Executive order;

(2) Annually assess the amount of time it takes the agency to develop regulations, reviewing information generated under section 4(c)(1)(G) and section 5(a)(3), and, where needed, identify methods of ensuring the regulatory process does not produce undue delay;

(3) Annually review the agency's performance data and ratings developed under section 6 to identify the best tools and practices for achieving regulatory objectives; and

(4) Annually assess significant gaps in data, including those identified under section 6(a)(1)(E), and, where addressing such a data gap is a priority, identify measures for closing the data gap, giving particular attention to information technologies that can reduce the cost of data gathering and analysis.

(g) *Scientific Integrity*. (1) Each agency shall have primary responsibility for ensuring the integrity of any scientific information used to support the agency's regulatory actions.

(2) Scientific assessment shall be independent, free of political influence, and openly shared with the public.

(3) The Administrator of OIRA, the Assistant to the President for Science and Technology, and others designated by the President may work with agencies to coordinate scientific assessment and provide oversight to ensure that principles of scientific integrity are observed.

(4) The Administrator of OIRA, the Assistant to the President for Science and Technology, and other White House officials shall not alter, block, or otherwise interfere with scientific conclusions of the agencies.

Sec. 6. *Performance Assessment of Regulations.* In order to ensure that regulations achieve identified objectives, each agency shall publicly track and assess the performance of regulations according to the following procedures:

Comment [rar4]: The highlighted parts are all my additions.

(a) *Performance Web Sites.* (1) Within 1 year of the date of this Executive order, each agency shall establish and maintain a public web site that:

(A) Tracks progress towards meeting the performance metrics developed under section 5(c) for each economically significant regulatory action completed after issuance of this Executive order;

(B) Updates data on performance metrics on an ongoing basis and in a timely manner;

(C) Provides performance data in a searchable and machine readable format;

(D) Presents performance data in user-friendly visual presentations, including, where relevant, presentations showing performance by geographic area;

(E) For each regulation monitored under this subsection, identifies any significant gaps in data that impair tracking of regulatory performance; and

(F) Provides a means for members of the public to provide feedback and interact with each other and agency personnel on each regulatory action tracked through the web site.

(2) OIRA shall establish and maintain a centralized web site that links to performance web sites maintained by the agencies.

(b) *Performance Ratings.* (1) Each agency head shall assess performance information gathered and disclosed under subsection (a) on an ongoing basis and in a timely manner to ensure that regulations achieve identified objectives.

(2) Each agency head shall on an annual basis assign each regulatory action monitored under subsection (a) one of the following ratings:

Comment [rar5]: These ratings are the same as those given under the Performance Assessment Rating Tool (PART)

(A) Effective;

(B) Moderately effective;

(C) Adequate;

(D) Ineffective; or

(E) Results not demonstrated (for a regulation that lacks adequate performance information for assessment).

(3) Each agency head shall prepare a written statement for each rating assigned under subsection (b)(2). Such statement shall explain the rating and if the regulation is not effective:

(A) Identify the reasons for underperformance;

(B) Indicate whether the regulation should be modified or eliminated; and

(C) Identify any legislative action the agency believes is necessary to improve performance or any legislative mandates that should be modified or eliminated.

(4) Each agency shall submit information prepared under subsection (b)(2) and (3) to the Office of Management and Budget, at such times and in the manner specified by the Director.

(5) OMB shall verify within 30 calendar days after the date of submission of information under subsection (b)(4) that each rating and statement is reasonable and supported by the best available data.

(6) Each rating and statement verified by OMB shall be immediately disclosed through the ExpectMore.gov web site and the relevant agency web site established under subsection (a).

(c) *Review of Other Regulations.* (1) Each agency shall establish a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its other significant regulations and economically significant regulations completed before issuance of this Executive order.

(2) The President, or the Vice President acting at the request of the President, may identify for review by the appropriate agency or agencies other existing regulations completed before issuance of this Executive order or otherwise not covered by subsection (a) and (b).

(3) For each regulation reviewed under subsection (c)(1) and (2), the agency head shall assign one of the performance ratings identified in subsection (b)(2) and prepare a written statement as set forth in subsection (b)(3). Each rating and statement shall be disclosed through the ExpectMore.gov web site and the relevant agency web site established under subsection (a).

Sec. 7. *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 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 economically significant and other significant regulatory actions within the meaning of this Executive order.

(2) Absent a material change in the development of the planned regulatory action, those not designated as economically 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 an economically significant regulatory action or that review of an other significant regulatory action is necessary. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as economically significant, in which case the agency need not further comply with subsection (a)(3) of this section.

(3) For each matter identified as, or determined by the Administrator of OIRA to be, an economically significant regulatory action and for each other significant regulatory action designated by OIRA for review, the issuing agency shall provide to OIRA the text of the draft regulatory action, together with any statements or analysis prepared under section 5 of this Executive order, including, where required, the agency's Regulatory Impact Analysis and performance metrics.

(4) 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 subsection (a)(3) 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 in subsection (b) of this section.

(5) If an agency head disagrees with a return or request for change by OIRA as set forth in subsection (b)(2),(3), and (4), the agency shall provide a written statement to OIRA explaining why the agency disagrees.

(6) After a regulatory action has been published in the Federal Register or otherwise issued to the public, the issuing agency shall, in a complete, clear, and simple manner, identify and publicly disclose through the Internet:

(A) The substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(B) Any changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight over regulatory actions. 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 economically significant regulatory actions and other significant regulatory actions designated for review by OIRA under subsection (a)(3) of this section.

(2) OIRA may return a regulatory action to an agency for reconsideration or request that an agency make changes to a regulatory action only if the action:

(A) Violates applicable law;

(B) Is inconsistent with the President's priorities;

(C) Does not meet the requirements of this Executive order; or

(D) Conflicts with the policies or actions of another agency.

(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 a written statement to the agency identifying which criteria under subsection (b)(2) the regulatory action fails and explaining the basis for such judgment.

(4) For each regulatory action for which OIRA requests a substantive change, OIRA shall:

(A) Ensure that each substantive change requested by OIRA meets the requirements of applicable law; and

(B) Provide a written statement to the agency explaining the legal basis supporting or permitting each substantive change and the criteria under subsection (b)(2) that necessitate each substantive change.

(5) 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 subsection (a)(3) 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.

(6) 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 through the Internet relevant information about such communication(s), as set forth below in subsection (b)(6)(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) 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 regulatory action has been withdrawn by the agency or returned by OIRA to the agency, OIRA shall publicly disclose through the Internet all documents exchanged between OIRA and the agency during and prior to the review by OIRA under this section.

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

Sec. 8. *Resolution of Conflicts.* (a) 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). 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.

(b) Resolution of such conflicts shall be informed by recommendations developed by the President or 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.

(c) During the 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 President or 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.

(d) 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. 9. *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 7 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 any requests for further consideration, or (2) the applicable time period in section 7(b)(5) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 7(b)(2)(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, as provided under section 7 of this order. Upon receipt of this request, the Chief of Staff to the President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 8 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 10. *Agency Authority.* Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 11. *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.