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Role of Oversight Bodies in Promoting Good Regulatory Practices

Submitted by: United States



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Role of Oversight Bodies in Promoting Good Regulatory Practices

2018 APEC Conference on Good Regulatory Practices

Port Moresby, Papua New Guinea

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Office of Information and Regulatory Affairs

U.S. Office of Management and Budget

Agenda

Legal Framework for Rulemaking in the U.S.

Interagency Coordination of Rulemaking

Regulatory Transparency and Accountability

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Conclusions

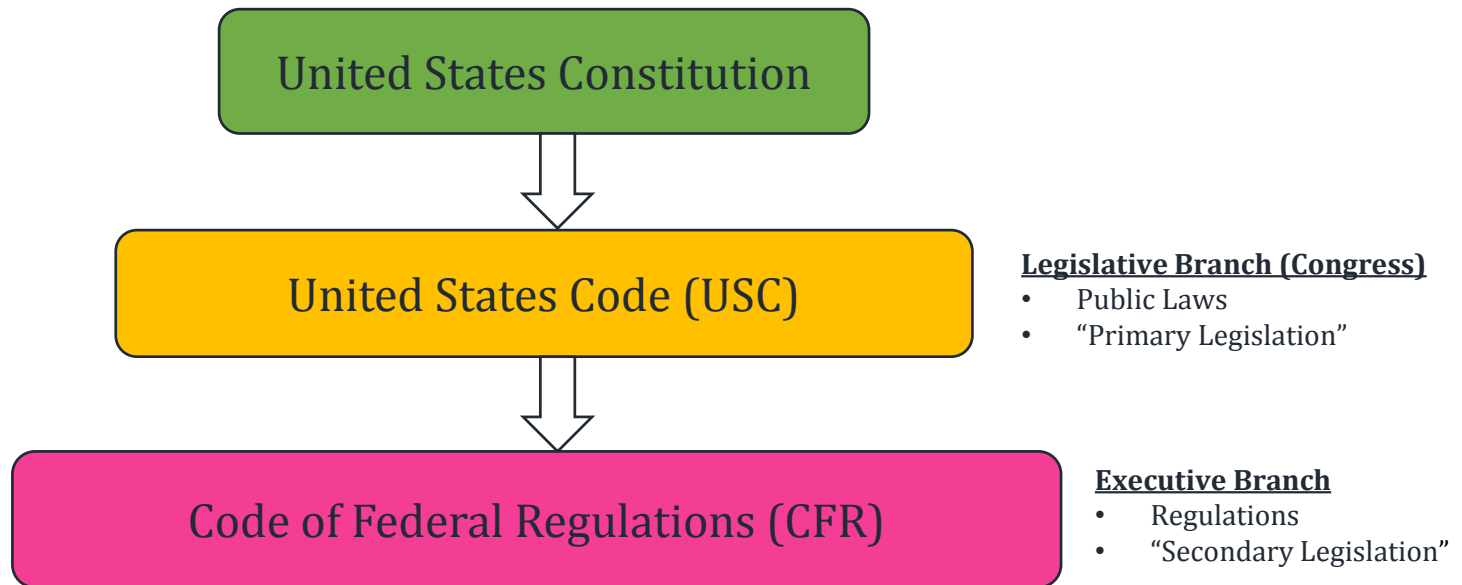
What are good regulatory practices (GRPs)?

GRPs are internationally recognized processes and procedures that can be used to improve the quality and cost-effectiveness of domestic regulations.

GRPs address practices aimed at

- ***establishing administrative bodies and procedures that govern intragovernmental coordination of rulemaking activity;***
- strengthening the analytical basis of regulations through robust analysis of their impacts; and
- increasing regulatory transparency and accountability by promoting public participation to ensure that stakeholders can share their views, expertise, and data during the development of regulations.

Legal Framework for Rulemaking in the United States



Regulations in the U.S.

The Executive Branch can make law.

- Congress delegates authority to Executive Branch agencies to implement statutes through rulemaking.
- Some statutes are so broad that agencies can make new programs without new statutes.

Many important public policy decisions are made during rulemaking.

- Regulatory enforcement and allocation of resources.
- Grants, loans, and loan guarantees.
- Rights and responsibilities of the 50 States and the public.

Office of Management and Budget (OMB)

OMB assists the President in the development and implementation of budget, program, management, and regulatory policies.

- Develops the President's annual budget submission to Congress.
- Assists the President in managing the Executive Branch, developing the Administration's position on legislation before Congress and executing the law.
- Provides high quality regulatory analysis.

History

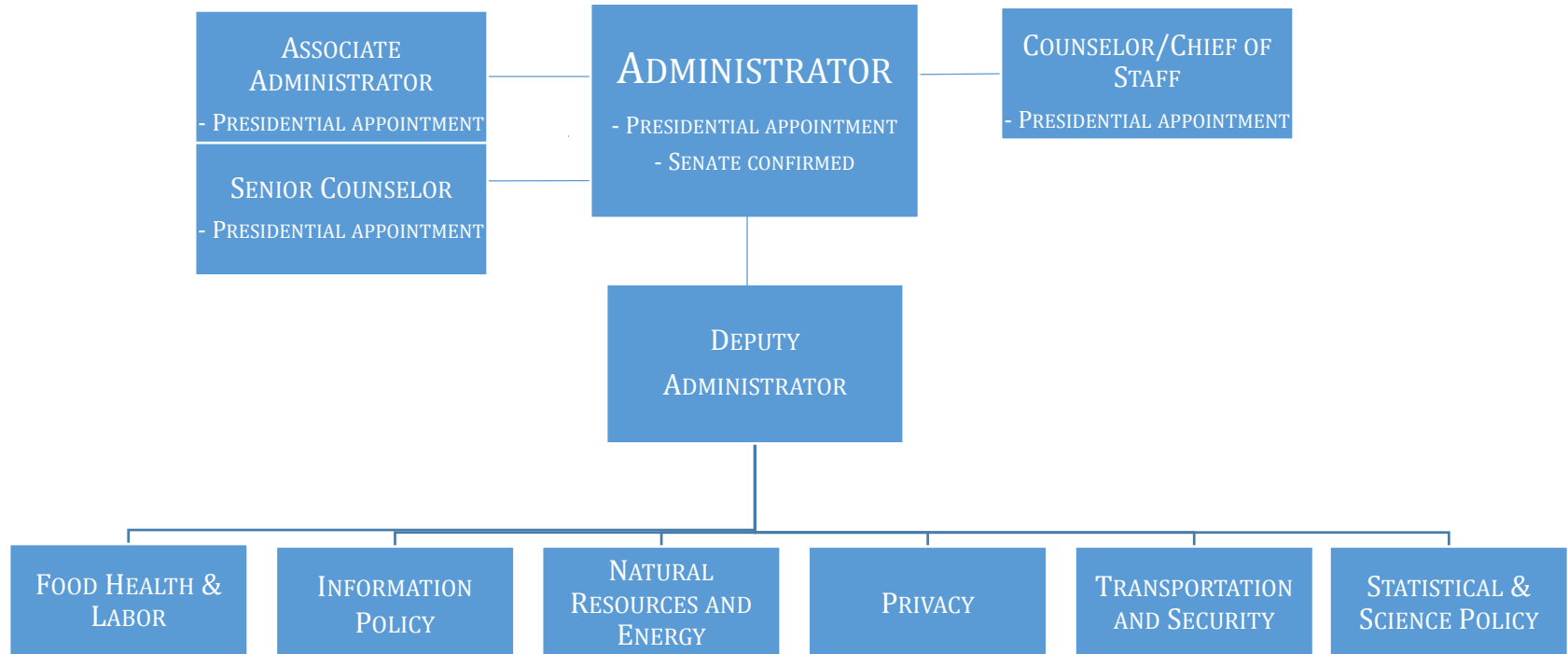
- 1921: Bureau of the Budget (BoB) established within the Treasury Department.
- 1939: BoB moved from Treasury to the Executive Office of the President.
- 1970: BoB reorganized into the Office of Management and Budget.

Interagency Coordination of Rulemaking: Office of Information and Regulatory Affairs

Role of the Office of Information and Regulatory Affairs

- OIRA was established by the Paperwork Reduction Act of 1980, partially in response to the explosion in regulation that occurred in the 1970s and earlier in the U.S.
- As part of the Office of Management and Budget, OIRA is a central oversight body that has special standing with the agencies.
- OIRA is the lead division of OMB for regulatory oversight and interagency review of “significant” regulations.
- OIRA also develops and oversees government-wide policies in the areas of information collection, information policy, privacy, and statistical and science policy.

Office of Information and Regulatory Affairs



Interagency Coordination of Rulemaking: Presidential Oversight

1970s

- President Ford: Required, for the first time, regulatory impact analysis (RIA) requirement for major regulations (over \$100 million in impact).
- President Carter: Established the Regulatory Analysis Review Group.

1980s

- President Reagan: Solidified regulatory oversight authority within the White House, issuing Executive Order 12291, which required OMB review and approval of rules.
- President George H.W. Bush: Continued the Reagan Executive Order.

1990s

- President Clinton: Issued Executive Order 12866, which focused OMB oversight on “significant” rules and increased the disclosure of contacts with outside parties.

2000s

- President George W. Bush: Maintained the Clinton Executive Order that requires the agencies to do RIAs and send significant regulations to OMB for review.
- President Obama: Issued Executive Order 13563, which affirms EO 12866 and outlines his regulatory strategy to support continued economic growth and job creation.

2010s

- President Trump: Issued Executive Order 13771 which outlines a regulatory budget and a requirement for identifying deregulatory rules before issuing regulatory rules, as allowed by law.

Executive Order 12866: “Regulatory Planning and Review”

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.
- Regulations must identify nature and significance of problem.
- Alternatives to address the problem must be identified and assessed.
- The costs and benefits of each alternative must be assessed.
- The alternative selected should maximize net benefits to society.

These principles guide OIRA’s review of regulations.

What regulations must OIRA review?

“Significant” Rules

- Create a serious inconsistency or otherwise interfere with another agency’s actions.
- Materially alter the budgetary impact of Federal programs.
- Raise novel legal or policy issues.
- OIRA reviews 500-700 proposed and final regulations per year—those we determine to be significant—out of about 6,500 that are published in the *Federal Register*.

“Economically Significant” Rules

- Subset of “significant” rules.
- Annual effect on the economy 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.
- About 70-100 of the regulations reviewed are “economically significant.”

EO 12866: Important Requirements and Scope

EO 12866 has deadlines for OIRA review (up to 90 days).

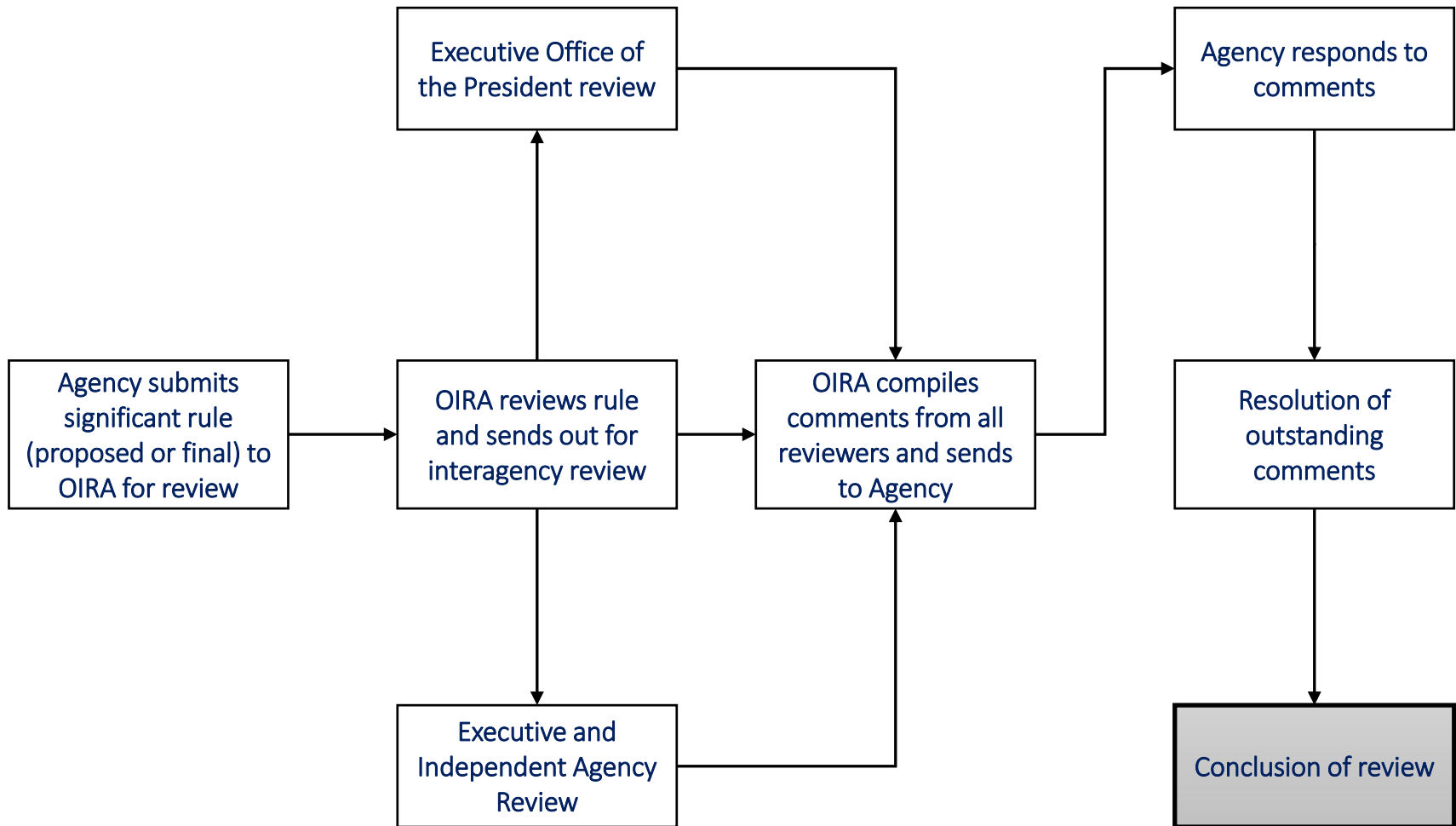
EO 12866 requires economic analysis.

- Economically significant regulations require more analysis than smaller rules.
- OIRA examines the RIA and the regulation and makes suggestions to improve both the RIA and the rule's cost-effectiveness, ensure adherence to the Executive Order's principles, and consistency with the President's priorities.

Independent Regulatory Agencies are not covered.

- For example, Consumer Product Safety Commission, Federal Communications Commission, and the financial regulators.

OIRA Centralized Regulatory Review Process



OIRA Centralized Regulatory Review Process (Cont'd)

Executive Office of the President

- Office of Management and Budget
- Council of Environmental Quality
- United States Trade Representative
- Council of Economic Advisors
- National Security Council
- Office of Science and Technology Policy
- National Economic Council
- Domestic Policy Council
- White House Counsel
- Office of the Vice President
- Office of the National Drug Control Policy
- Office of Public Engagement and Intergovernmental Affairs
- Office of the First Lady
- Office of Digital Strategy
- Other as necessary

Executive and Independent Agencies

- Department of Transportation
- Department of Labor
- Department of the Interior
- Environmental Protection Agency
- Department of Energy
- Department of Health and Human Services
- Department of Justice
- Department of Homeland Security
- Department of the Treasury
- Department of Commerce
- Department of State
- Department of Housing and Urban Development
- Department of Agriculture
- Federal Energy Regulatory Commission
- Nuclear Regulatory Commission
- Securities and Exchange Commission
- Federal Reserve Board
- Other as necessary

Possible Actions at the End of OIRA Review

Allow the agency to issue the rule.

- A rule is usually sent directly to the *Federal Register* at the conclusion of review.

Agency withdrawal of the rule.

- If we are unable to resolve issues during the review process, or the agency needs more time to make changes, the agency can withdraw the rule.

“Return Letter”

- OIRA may return a regulation for agency reconsideration to address OIRA concerns.
- Very public and very rare.

Regulatory Transparency and Participation: Disclosure of Information Under EO 12866

Public Disclosure of Regulations Under OIRA Review

- The “Regulatory Review Dashboard” on RegInfo.gov provides information about OIRA’s pending and concluded reviews of significant rulemakings.
- RegInfo.gov provides historical information about rules back to 1995 and return letters sent to the agencies outlining OIRA’s concerns with returned rules.

Communications with Outside Parties

- RegInfo.gov notes which outside groups have met with OIRA and agencies regarding rules under review, including the participants.
- All written information given to OIRA while a rule is under review is sent to the agency and posted on RegInfo.gov.

Unified Agenda and Regulatory Plan

- 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.
- Both are available on RegInfo.gov and Regulations.gov.

Regulatory Transparency and Participation: RegInfo.gov Mobile App



RegInfo Mobile, available on both iPhone and Android applications, allows users to more easily find information about the status of Federal regulations and information collection requests.

The app includes an interactive visualization of important rulemaking milestones, such as when proposed and final regulations are published.

Other Oversight Responsibilities

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

- For each new regulation, an agency shall identify at least two existing regulations to be repealed, unless prohibited by law.
- Grants 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.

Reports to Congress.

- Report to Congress on the Benefits and Costs of Federal Regulations

Guidance and training for agencies.

- OMB Circular A-4, “Regulatory Analysis”

Conclusions

- A firm and enduring commitment to good regulatory practices from the center of government is a necessary condition for a successful regulatory program.
- Centralized oversight bodies must have clear missions that receive high level and sustained political support.
- Effective centralized oversight requires transparency and accountability to address concerns about undue influence by special interests, allow all interested parties to be heard, and maintain political support for regulatory reform.

References

- Executive Order 12866, Regulatory Planning and Review (September 30, 1993): <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>
- RegInfo.gov: <https://www.reginfo.gov/public/>
- Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs (January 30, 2017): <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>
- OMB Reports to Congress: https://obamawhitehouse.archives.gov/omb/inforeg_regpol_reports_congress/
- OMB Circular A-4, “Regulatory Analysis,” (September 17, 2003): https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/
- Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs”, M-17-21 (April 5, 2017): <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>