



**Asia-Pacific  
Economic Cooperation**

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## **Promoting Regulatory Cooperation in the Asia-Pacific Region**

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**U.S. Office of Management and Budget  
Office of Information and Regulatory Affairs**

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**Promoting Regulatory Cooperation  
in the Asia-Pacific Region**

**APEC 2011 Symposium**

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Alexander T. Hunt  
Office of Information and Regulatory Affairs  
Office of Management and Budget

Any views expressed here are solely those of the presenter, and do not necessarily reflect the position of the Office of Management and Budget or the Executive Office of the President.

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**Good Regulatory Practices in the U.S.**

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- ❖ **Centralized Management and Leadership**
  - ❖ Emphasizes the importance of and adherence to regulatory principles and procedures.
- ❖ **Regulatory Impact Analysis**
  - ❖ Contributes to more informed policy decisions and promotes economic efficiency.
- ❖ **Transparency and Accountability**
  - ❖ Addresses concerns about undue influence and allows all interested parties to be heard.

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## Centralized Management and Leadership

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- ❖ **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 body that has special standing with the agencies.
- ❖ OIRA manages and coordinates Federal rulemaking, and oversees Federal information management, statistical policy, and information technology policy.

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## Centralized Management and Leadership

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- ❖ **Presidential Executive Order 12866**

- ❖ Executive Order 12866 on “Regulatory Planning and Review” governs OMB’s centralized review of agency rulemaking, requiring OMB review of “significant” agency regulatory actions.
- ❖ Agencies submit draft significant regulations (both proposed and final) to OIRA for a 90-day review before publishing them in the *Federal Register*.
- ❖ OIRA reviews 500-700 proposed and final regulations per year—those we determine to be significant—out of about 6,500 that are issued.
- ❖ About 70-100 of the regulations reviewed are “economically significant” (over \$100 million per year in economic effects).

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## Key Purposes of Regulatory Review

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- ❖ It helps to ensure that regulations are consistent with the law and with the President's principles and priorities.
  
- ❖ It promotes coordination among different parts of the Executive Branch.
  
- ❖ It helps to improve and strengthen the analysis underlying rules.

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## Regulatory Impact Analysis

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- ❖ **Basic Goals**
  - ❖ Maximize net benefits to society—or at least ensure that benefits justify costs.
  - ❖ Promote economic efficiency by regulating only where markets fail, and when regulating, by using cost-effective and market-based approaches.
  - ❖ Increase the transparency of the regulatory system.
- ❖ **Elements of a Regulatory Impact Analysis**
  - ❖ Statement of need for the proposed rule that identifies the nature and significance of the problem (e.g., identification of the market failure).
  - ❖ Examination of alternative approaches to addressing the problem.
  - ❖ Analysis of the costs and benefits of each alternative.
  - ❖ OMB Circular A-4: Guidelines for the Conduct of Regulatory Analysis (September 2003)

**Slide 5**

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**SB1** Sarah Bashadi, 9/15/2010

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## Regulatory Transparency and Accountability

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### ❖ Administrative Procedure Act of 1946

- ❖ The Act requires that agencies go through a notice and comment process open to all members of the affected public, both U.S. and foreign.
- ❖ Before agencies can issue a final regulation, they must respond to the public comments, make sure that the final regulation is a logical out-growth of the proposal and the public record, and is not arbitrary or capricious.
- ❖ The public record is used by the courts in settling any challenge to the regulations brought by the affected public.

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## Regulatory Transparency and Accountability

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### ❖ Disclosure of Information Under Executive Order 12866

- ❖ The public can consult OMB's website and learn each day which rules are under formal review at OMB and which have been cleared.
- ❖ OMB's website notes which outside groups have recently lobbied OIRA on rules under review.
- ❖ All written information given to us while a rule is under review is sent to the agency, placed in our public docket reading room, and posted on our website.
- ❖ Return letters sent to the agencies outlining our concerns with rules we send back are posted on our website.

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## New Approach to Regulatory Review

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- ❖ On September 10, 2009, Cass Sunstein was confirmed as Administrator of the Office of Information and Regulatory Affairs.
- ❖ Like past administrators, Sunstein brings his own unique perspective to rulemaking. As he noted during his confirmation hearing, his approach to regulatory review acknowledges:
  - ❖ The role of behavioral sciences, particularly humanized cost-benefit analysis, in formulating regulatory policy;
  - ❖ The role of distributional considerations and concern for the interests of future generations; and
  - ❖ The importance of open government and transparency and encouraging public participation in agency regulatory processes.

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## OIRA's International Role

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- ❖ Centralized regulatory review under Executive Order 12866.
  - ❖ OIRA works with various Federal agencies, including the Office of the U.S. Trade Representative (USTR) and the Department of Commerce, to ensure U.S. regulations are consistent with U.S. economic and trade commitments and goals.
- ❖ OIRA works with the National Institute of Standards and Technology (NIST) to promote agency participation in, and use of, voluntary consensus standards (including international standards) to meet their technical requirements.
- ❖ OIRA works with the State Department on a wide-range of activities to promote the U.S. regulatory principles, processes, and transparency.

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## OECD

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- ❖ **OIRA Engagement in Regulatory Policy**
  - ❖ Since the mid-1990s, OIRA has actively participated in the work of the OECD's program on Regulatory Management and Reform.
  - ❖ OIRA Branch Chiefs have regularly served on the relevant Bureaus, including the Regulatory Policy Committee Bureau.
  
- ❖ **Key Venue for Promoting and Sharing Best Practices**
  - ❖ 2005 Guiding Principles for Regulatory Quality and Performance
  - ❖ Current initiative on "Regulations 2.0"
  
- ❖ **OECD-APEC Integrated Checklist for Regulatory Reform**
  - ❖ Collaborative effort to promote good regulatory practices.
  - ❖ Self-assessment tool that evaluates an economy's regulatory, competition, and market-openness policies.

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## Why Cooperation Matters

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- ❖ **Non-tariff barriers reduce economic growth and trade.**
  
- ❖ **International regulatory cooperation is one of the best ways to identify and address existing barriers and to prevent future barriers.**
  
- ❖ **Exchanging best practices improves regulatory outcomes at home and promotes cooperation abroad.**

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## Regulatory Cooperation

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### ❖ Key Goals

- ❖ Make regulations more compatible, more simple, and less burdensome;
- ❖ increase regulatory transparency and provide “early warnings;” and
- ❖ strengthen the analytic basis of regulation.

### ❖ Horizontal Issues – Sharing Best Practices

- ❖ Regulatory impact analysis.
- ❖ Public consultation.
- ❖ Risk assessment.
- ❖ Use of standards in regulation.

### ❖ Sectoral Issues

- ❖ Focus on “upstream cooperation.”

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## Institutional Roles

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### ❖ Central Agencies

- ❖ In the U.S. – National Security Staff, USTR, and OIRA.
- ❖ Set priorities, coordinate activities, and provide leadership.

### ❖ Foreign/Trade Agencies

- ❖ In the U.S. – Departments of State and Commerce.
- ❖ Ensure consistency with relevant international obligations of any regulatory cooperation efforts and other aspects of enhanced regulatory cooperation.

### ❖ Regulatory Agencies

- ❖ In the U.S. – Environmental Protection Agency; Food and Drug Administration; Department of Transportation, and many others.
- ❖ Work with counterpart agencies to achieve progress on sectoral initiatives.

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## Lessons Learned

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- ❖ It is easier to prevent unnecessary regulatory differences than to remove existing ones.
- ❖ Avoid long-standing trade irritants .
- ❖ Focus on areas with the best prospects of success and where the net benefits are highest.
- ❖ Engage external stakeholders.
- ❖ Focus on the long term.

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## References:

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- ❖ OIRA's Homepage: [http://www.whitehouse.gov/omb/inforeg\\_default](http://www.whitehouse.gov/omb/inforeg_default)
- ❖ RegInfo: [www.RegInfo.gov](http://www.RegInfo.gov)
- ❖ Regulations.gov: [www.Regulations.gov](http://www.Regulations.gov)
- ❖ Circular A-4: [http://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/#c](http://www.whitehouse.gov/omb/circulars_a004_a-4/#c)
- ❖ Executive Order 12866: <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>
- ❖ Administrative Procedure Act: [www.archives.gov/federal-register/laws/administrative-procedure/](http://www.archives.gov/federal-register/laws/administrative-procedure/)
- ❖ APEC-OECD Integrated Checklist for Regulatory Reform: <http://www.oecd.org/dataoecd/41/9/34989455.pdf>

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