



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

The U.S. Regulatory Process: A Briefing for the MENA-OECD Governance Program

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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.



Agenda

Understanding the U.S. Approach to Regulatory Policy

- ❖ Administrative Procedure Act
- ❖ Role of OMB and the Office of Information and Regulatory Affairs
- ❖ Executive Order 12866
- ❖ Executive Order 13563
- ❖ Regulatory Impact Analysis
- ❖ Transparency and Accountability



U.S. Approach to Regulatory Policy

❖ Centralized Management and Leadership

- ❖ Emphasizes the importance of and adherence to regulatory principles and procedures, to ensure regulations are coordinated across the Executive Branch and are consistent with the President's priorities and principles.

❖ Regulatory Impact Analysis

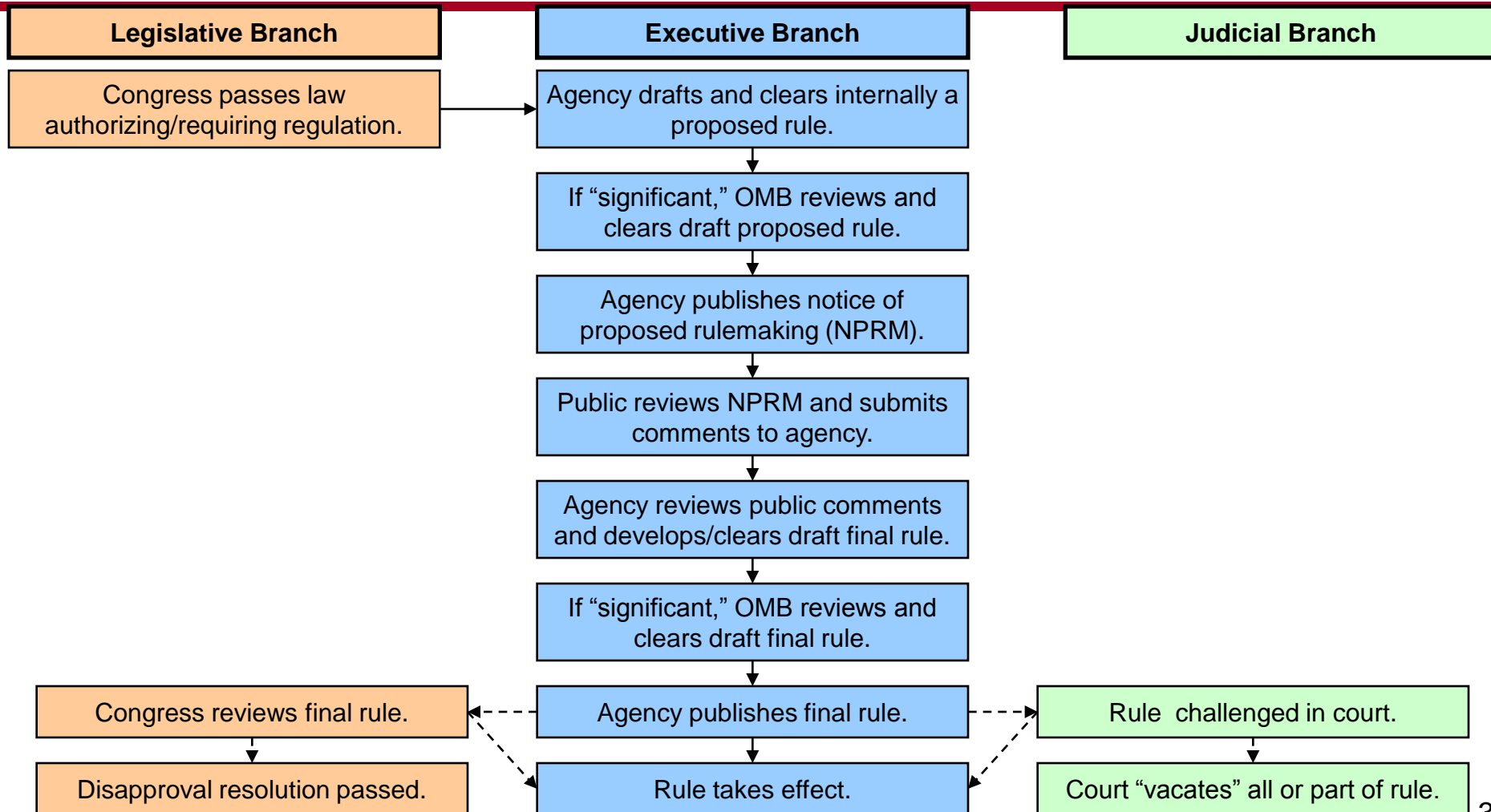
- ❖ Contributes to more informed policy decisions and promotes efficiency.

❖ Transparency and Accountability

- ❖ Addresses concerns about undue influence and allows all interested parties to be heard.



U.S. Rulemaking Process





Administrative Procedure Act

- ❖ The 1946 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 outgrowth of the proposal and the public record, and is not arbitrary or capricious.
- ❖ The Act requires that agency rules (proposed and final) be published in the *Federal Register*.
- ❖ The public record is used by the courts in settling any challenge to the regulations brought by the affected public.



Centralized Management and Leadership: Office of Management and Budget and OIRA

- ❖ **Assists the President in the development and implementation of budget, program, management, and regulatory polices.**
 - ❖ 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.
- ❖ **Role of the Office of Information and Regulatory Affairs (OIRA)**
 - ❖ 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.



OIRA's Role under Executive Order 12866

- ❖ Executive Order 12866 and 13563 on Regulatory Planning and Review governs OMB's oversight 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 conducts a centralized review of draft regulations, sharing these draft rules across agencies and policy councils (e.g. Council of Economic Advisors) who may have expertise and equities in the regulation.
- ❖ 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).



Executive Order 12866 – What does OIRA look for?

- ❖ Does the regulation raise novel legal or policy issues?
- ❖ Does the regulation create a serious inconsistency or interfere or duplicate an action taken or planned by another agency?
- ❖ Does the regulation reflect the President's priorities and principles?
- ❖ Does the regulation have significant budget impacts?
- ❖ Does the regulation adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities?

And ultimately – Do the benefits of the regulations justify the costs?

In our review, we make suggestions to improve the underlying analysis and regulations themselves.

If we are unable to resolve issues during the review process, or the agency needs more time to make changes, under E.O. 12866, the agency can withdraw the rule or we can return the rule back to the agency for reconsideration.



Executive Order 13563

- ❖ Improving Regulation and Regulatory Review Executive Order 13563, issued by President Obama in January 18, 2011
 - ❖ Reaffirms the principles and structures of EO 12866
 - ❖ Calls for public participation to promote an open exchange with stakeholders
 - ❖ Directs agencies to harmonize, simplify, and coordinate rules to reduce costs and to promote simplicity
 - ❖ Considers flexible approaches that reduce burdens and maintain freedom of choice for the public (e.g., public warnings or provisional information)
 - ❖ Calls for scientific integrity
 - ❖ Direct agencies to conduct retrospective analysis of existing rules and produce preliminary plans for periodic review



Retrospective Review of Regulations

- ❖ Under E.O. 13563, President Obama ordered executive agencies to periodically review existing federal regulations that may be outmoded, ineffective, insufficient, or excessively burdensome.
- ❖ Agencies were required, within 120 days of the Executive Order, to submit preliminary plans to OIRA that, on a periodic basis, would identify regulations to improve, streamline, or eliminate, where appropriate.
- ❖ Agency plans were subject to public comment and suggestions.
- ❖ Initial plans included over 500 initiatives that will reduce costs, simplify the regulatory system, and eliminate redundancy and inconsistency. Initiatives are expected to save more than \$6 billion over the next five years.
- ❖ Plans are subject to quarterly progress report requirements.



Regulatory Impact Analysis

- ❖ EO 12866 requires agencies to conduct regulatory analysis for “economically significant” regulatory actions.
 - ❖ Costs or benefits greater than \$100 million annually.
- ❖ OMB has had guidelines for regulatory analysis since the 1980s.
 - ❖ Revisions were made in 1996, 2000, and “Circular A-4” was issued in 2003.
- ❖ The Guidelines were developed in a rigorous and open manner.
 - ❖ Subject to public review and comment.
 - ❖ Interagency review process.
 - ❖ Reviewed by a panel of leading academic experts in economics, decision science, public health, and law.

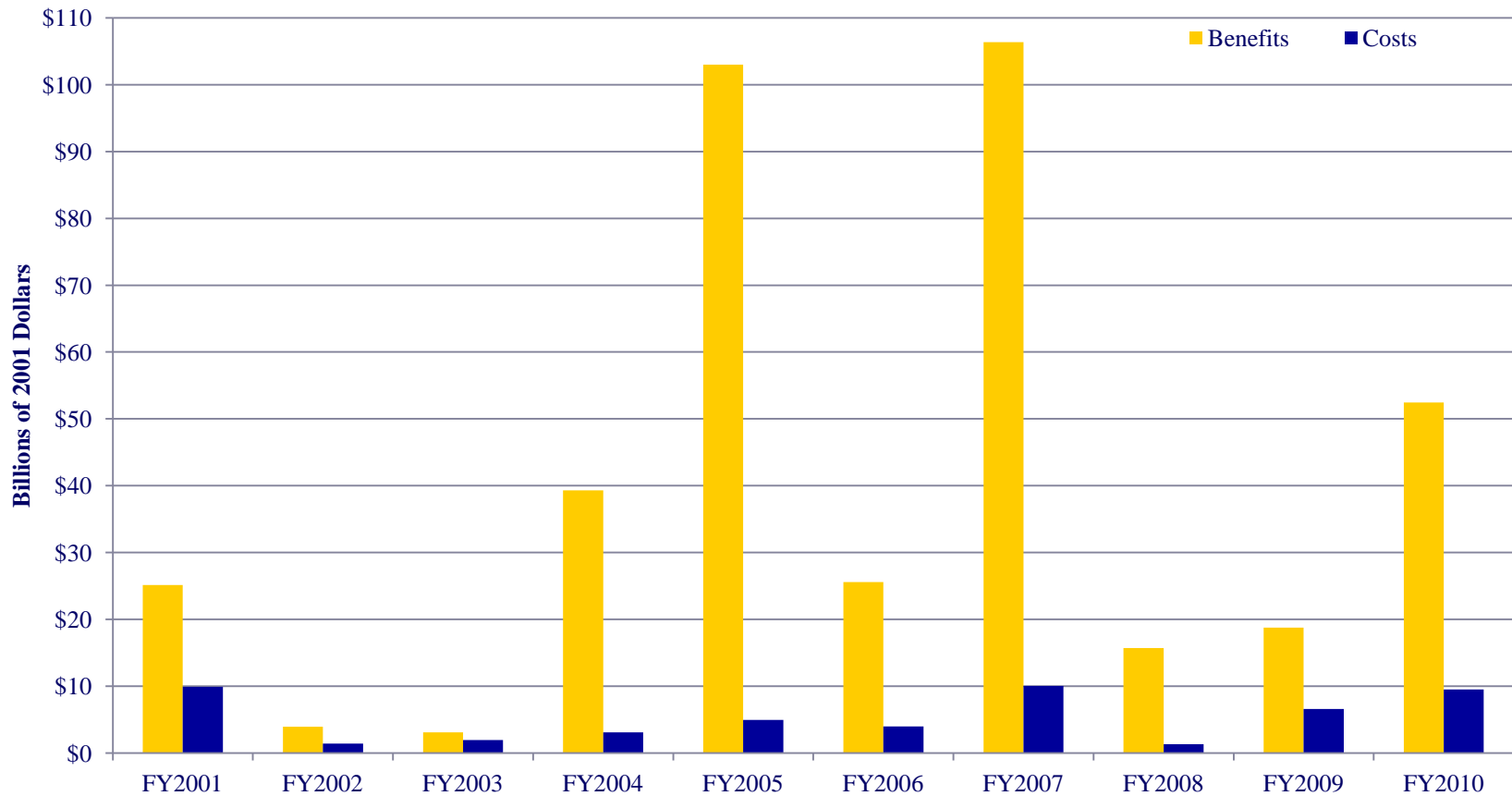


What is Good Regulatory Analysis?

- ❖ A good regulatory analysis will maximize net benefits and answer these three questions (and do so in a transparent manner):
 - (1) What is the need for the proposed action?
 - ❖ Market failure or other social purpose.
 - ❖ Federalism and global considerations.
 - (2) What are the alternative regulatory options?
 - ❖ Measuring alternatives against a baseline scenario.
 - (3) What are the benefits and costs of the proposed action and the primary alternatives?
 - ❖ Benefit-cost analysis (BCA)
 - ❖ Cost-effectiveness analysis (CEA)
 - ❖ Uncertainty analysis



Results: Costs and Benefits of Economically Significant Rules (2001-2010)





Transparency and Accountability

- ❖ President's Memorandum on Transparency and Open Government, January 21, 2009:
 - ❖ "Knowledge is widely dispersed in society....My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use." -- President Obama, January 21, 2009
 - ❖ "...sunlight is the best disinfectant." -- President Obama, January 28, 2009

- ❖ Three core principles:
 - ❖ Transparency
 - ❖ Participation
 - ❖ Collaboration



Transparency and Public Participation

Mechanisms for Public Stakeholder Input

- ❖ **OIRA Dashboard (www.reginfo.gov)** - The public can visit OMB's website and easily access and learn each day which rules are under formal review at OMB and which have been cleared along with agency information collections currently under review under the Paperwork Reduction Act (PRA).
- ❖ **Meetings with Outside Parties** – Executive Order 12866 allows for OIRA and the issuing agency to meet with external stakeholders regarding rules under review and offer their insights and input. OMB's website notes which outside groups have met with OIRA to discuss rules under review. The OMB web site lists all meetings, participants, and any written materials provided to OIRA during the meeting.
- ❖ **Unified Agenda and Regulatory Plan** - The public can access the Unified Agenda of Regulatory and Deregulatory Actions and the Annual Regulatory Plan to learn about agencies' upcoming regulatory actions. The Unified Agenda is published twice each year and can be accessed on Reginfo.gov and Regulations.gov.
- ❖ **Regulations.gov (www.regulations.gov)** – A one-stop site to find and comment on Federal regulations. The public can use this site to view the regulatory docket and materials supporting rulemakings and send their comments electronically to agencies on Federal regulations published for comment in the *Federal Register*.



Take Aways

- ❖ Greater internal coordination of regulatory policies.
- ❖ Regulatory impact assessment.
- ❖ Public participation in rulemaking.



References

- ❖ **Administrative Procedure Act (APA)** -- <http://www.archives.gov/federal-register/laws/administrative-procedure/>
- ❖ **Executive Order 12866** -- <http://www.whitehouse.gov/OMB/infoereg/eo12866.pdf>
- ❖ **Executive Order 13563** -- http://www.whitehouse.gov/sites/default/files/omb/infoereg/eo12866/eo13563_01182011.pdf
- ❖ **Office of Information and Regulatory Affairs** -- http://www.whitehouse.gov/omb/infoereg_default and http://www.whitehouse.gov/omb/infoereg_infopoltech
- ❖ **RegInfo.gov**, where to find Federal regulatory information as well Federal information collection requests. The public can use this site to search the Unified Agenda of Regulatory and Deregulatory Actions and Regulatory Plan, as well as current and past OIRA regulatory reviews in accordance with EO 12866.
- ❖ **Regulations.gov**, your one-stop site to comment on Federal regulations. The public can use this site to send their comments electronically to agencies on Federal regulations published for comment in the Federal Register.
- ❖ **FederalRegister.gov**, the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.
- ❖ **The “Reg Map”** -- <http://www.reginfo.gov/public/reginfo/Regmap/index.jsp>