§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter not more than $3,200,000 for fiscal year 2009, $3,200,000 for fiscal year 2010, and $3,200,000 for fiscal year 2011. Of any amounts appropriated under this section, not more than $2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.


HISTORICAL AND REVISION NOTES

Derivation U.S. Code

§ 596c Revised Statutes and Statutes at Large


The word “thereby” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2008—Pub. L. 110–290 amended section generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter not more than $3,200,000 for fiscal year 2005, $3,100,000 for fiscal year 2006, and $3,000,000 for each fiscal year thereafter up to and including fiscal year ending September 30, 2011. Of any amounts appropriated under this section, not more than $2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”

2004—Pub. L. 108–401 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than $2,000,000 for fiscal year 1990, $2,100,000 for fiscal year 1991, $2,200,000 for fiscal year 1992, $2,300,000 for fiscal year 1993, and $2,400,000 for fiscal year 1994. Of any amounts appropriated under this section, not more than $1,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”


1990—Pub. L. 101–422 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than $1,600,000 for fiscal year 1988 and not more than $2,000,000 for each fiscal year thereafter up to and including fiscal year 1990. Of any amounts appropriated under this section, not more than $1,000 may be made available in each fiscal year for official reception and entertainment expenses for foreign dignitaries.”

1986—Pub. L. 99–470 substituted “Authorization of appropriations for Appropriations” in section catchline and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not to exceed $2,500,000 for the fiscal year ending September 30, 1986, and not to exceed $2,300,000 for each fiscal year thereafter up to and including the fiscal year ending September 30, 1988.”

1982—Pub. L. 97–330 substituted provisions authorizing appropriations of not to exceed $2,300,000 for fiscal year ending Sept. 30, 1982, and not to exceed $2,200,000 for each fiscal year thereafter up to and including fiscal year ending Sept. 30, 1984, for provisions that had authorized appropriations of not to exceed $1,700,000 for fiscal year ending Sept. 30, 1979, $2,000,000 for fiscal year ending Sept. 30, 1980, $2,300,000 for fiscal year ending Sept. 30, 1981, and $2,300,000 for fiscal year ending Sept. 30, 1982.

1978—Pub. L. 95–293 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982, of $1,700,000, $2,000,000, $2,300,000, and $2,300,000, respectively, for provisions authorizing appropriations for fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, and June 30, 1978, of $760,000, $850,000, $850,000, $900,000, and $950,000, respectively, and provisions authorizing for each fiscal year thereafter such sums as may be necessary.

1972—Pub. L. 92–526 substituted provisions authorizing to be appropriated necessary sums not in excess of $760,000 for fiscal year ending June 30, 1974, $850,000 for fiscal year ending June 30, 1975, $850,000 for fiscal year ending June 30, 1976, $900,000 for fiscal year ending June 30, 1977, and $950,000 for fiscal year ending June 30, 1978, and each fiscal year thereafter, for provisions authorizing to be appropriated necessary sums, not in excess of $450,000 per annum.

1969—Pub. L. 91–164 substituted “$500 per annum” for “$250,000”.

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

§ 601. Definitions

For purposes of this chapter—

(1) the term ‘‘agency’’ means an agency as defined in section 551(1) of this title;

(2) the term ‘‘rule’’ means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term ‘‘rule’’ does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valu-
ations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;
(3) the term "small business" has the same meaning as the term "small business concern, under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
(4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;
(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;
(6) the term "small entity" shall have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and
(7) the term "collection of information"—
(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—
(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or
(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and
(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.
(8) RECORDKEEPING REQUIREMENT.—The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

(Added Pub. L. 96–354, § 3(a), Sept. 19, 1980, 94 Stat. 1164, provided that: "This subtitle [subtitle D (§§241–245) of title II of Pub. L. 104–121, amending this section and sections 603 to 605, 609, 611, and 612 of this title and enacting provisions set out as a note under section 609 of this title] shall become effective on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996], except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.")

Effective Date
"The provisions of this Act [enacting this chapter] shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981."

Short Title
"That this Act [enacting this chapter] may be cited as the 'Regulatory Flexibility Act'."

Regulatory Enforcement Reports
"(a) DEFINITION.—In this section, the term 'agency' has the meaning given that term under section 551 of title 5, United States Code.
"(b) IN GENERAL.—
"(1) INITIAL REPORT.—Not later than December 31, 2003, each agency shall submit an initial report to—
"(A) the chairpersons and ranking minority members of—
"(i) the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] and the Committee on Small Business and Entrepreneurship of the Senate; and
"(ii) the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Committee on Small Business of the House of Representatives; and
"(B) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b));
"(2) FINAL REPORT.—Not later than December 31, 2004, each agency shall submit a final report to the members and officer described under paragraph (1) (A) and (B)."

References in Text
Section 3 of the Small Business Act, referred to in par. (3), is classified to section 632 of Title 15, Commerce and Trade.
ASSessment Of FEDERAL REGulations And POLICIES ON FAMILIES


“(A) The number of enforcement actions in which a civil penalty is assessed by the agency in a calendar year is included in the report.

“(B) The number of enforcement actions in which a civil penalty is assessed by the agency is included in the report.

“(C) The number of enforcement actions described in subparagraphs (A) and (B) in which the civil penalty is assessed is included in the report.

“(D) The total monetary amount of the reductions or waivers referred to in subparagraph (C).

“(E) Definitions.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(c) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall conduct an assessment in accordance with subsection (a).

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(d) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(e) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall conduct an assessment in accordance with subsection (a).

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(f) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(g) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall conduct an assessment in accordance with subsection (a).

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(h) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(i) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall conduct an assessment in accordance with subsection (a).

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(j) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(SEC. 203. PURPOSES. The purposes of this section are to—

“(1) improve the management of executive branch agencies; and

“(2) provide an adequate rationale for implementation of each policy or regulation that may negatively affect family well-being.

“(SEC. 204. REQUIREMENTS FOR ENFORCEMENT.—The Office of Policy Development shall—

“(A) ensure that policies and regulations proposed by agencies are implemented consistent with this section; and

“(B) provide evaluations of policies and regulations that may affect family well-being to the Director of the Office of Management and Budget.

“(SEC. 205. CERTIFICATION.—The Director of the Office of Management and Budget shall—

“(A) provide certifications to the Congress that such policy or regulation has been assessed in accordance with this section; and

“(B) provide an adequate rationale for implementation of each policy or regulation that may negatively affect family well-being.

“(2) Office of Management and Budget.—The Director of the Office of Management and Budget shall—

“(A) ensure that policies and regulations proposed by agencies are implemented consistent with this section; and

“(B) provide evaluations of policies and regulations that may affect family well-being to the Director of the Office of Policy Development.

“(C) advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in the United States.

“(D) Small Entity Regulatory Fairness Act of 1996.—Each report under this section shall include definitions selected at the discretion of the reporting agency of the terms ‘enforcement actions’, ‘reduction or waiver’, and ‘small entity’ as used in the report.”

“SEC. 202. SHORT TITLE. This title (enacting sections 801 to 808 of this title and section 657 of Title 15, Commerce and Trade, amending this section, sections 504, 603 to 605, 609, 611, and 612 of this title, section 648 of Title 15, and section 2412 of Title 28, Judiciary and Judicial Procedure, and acting provisions set out as notes under this section and sections 504, 609, and 801 of this title, and amending provisions set out as a note under section 631 of Title 15) may be cited as the ‘Small Business Regulatory Enforcement Fairness Act of 1996’. “SEC. 203. FINDINGS. “Congress finds that—

“(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

“(2) small businesses bear a disproportionate share of regulatory costs and burdens;

“(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

“(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

“(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

“(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

“SEC. 204. PURPOSES. The purposes of this section are—

“(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations; and

“(2) to provide for judicial review of chapter 6 of title 5, United States Code;
"(3) to encourage the effective participation of small businesses in the Federal regulatory process;
"(4) to simplify the language of Federal regulations affecting small businesses;
"(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;
"(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and
"(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

**SEC. 211. DEFINITIONS.**

For purposes of this subtitle—

"(1) the terms 'rule' and 'small entity' have the same meanings as in section 551 of title 5, United States Code;
"(2) the term 'agency' has the same meaning as in section 551 of title 5, United States Code; and
"(3) the term 'small entity compliance guide' means a document designated and entitled as such by an agency.

**SEC. 212. COMPLIANCE GUIDES.**

"(a) Compliance Guide.

"(1) In General.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 603(b) [probably should be 'section 604'] of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule and shall entitle such publications 'small entity compliance guides'.

"(2) Publication of Guides.—The publication of each guide under this subsection shall include—

"(A) the posting of the guide in an easily identified location on the website of the agency; and
"(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

"(3) Publication Date.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

"(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and
"(B) not later than the date on which the requirements of that rule become effective.

"(4) Compliance Actions.

"(A) In General.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

"(B) Explanation.—The explanation under subparagraph (A)—

"(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met; and
"(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements, except that, compliance with any procedures described pursuant to this section does not establish compliance with the rule, or establish a presumption or inference of such compliance.

"(C) Procedures.—Procedures described under subparagraph (B)(ii)—

"(i) shall be suggestions to assist small entities; and
"(ii) shall not be additional requirements, or diminish requirements, relating to the rule.

"(5) Agency Preparation of Guides.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with the States in the preparation of small entity compliance guides and develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

"(6) Reporting.—Not later than 1 year after the date of enactment of the Fair Minimum Wage Act of 2007 [May 25, 2007], and annually thereafter, the head of each agency shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and any other committee of relevant jurisdiction in the Senate, the Committee on Homeland Security and Governmental Affairs, and any other committee of relevant jurisdiction in the House of Representatives, with respect to a rule or a group of related rules.

**SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.**

"(a) General.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity to enforce an agency's compliance with paragraphs (1) through (5).

"(b) Comprehensive Source of Information.—Agencies shall cooperate to make available to small entities and all other available information on statutory and regulatory requirements affecting small entities.

"(c) Limitation on Judicial Review.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

**SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.**

"(a) General.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, an agency's compliance with paragraphs (1) through (5).

"(b) Comprehensive Source of Information.—Agencies shall cooperate to make available to small entities and all other available information on statutory and regulatory requirements affecting small entities.

"(c) Limitation on Judicial Review.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

**SEC. 215. COOPERATION ON GUIDANCE.**

"(a) General.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, an agency's compliance with paragraphs (1) through (5).

"(b) Comprehensive Source of Information.—Agencies shall cooperate to make available to small entities and all other available information on statutory and regulatory requirements affecting small entities.

"(c) Limitation on Judicial Review.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

**SEC. 216. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.**

"(a) General.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, an agency's compliance with paragraphs (1) through (5).

"(b) Comprehensive Source of Information.—Agencies shall cooperate to make available to small entities and all other available information on statutory and regulatory requirements affecting small entities.

"(c) Limitation on Judicial Review.—An agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.
both Federal and State regulations where regulations within an agency’s area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

"SEC. 216. EFFECTIVE DATE.

"This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996]."

"SUBTITLE B—REGULATORY ENFORCEMENT REFORMS

"SEC. 221. DEFINITIONS.

"(1) the terms ‘rule’ and ‘small entity’ have the same meanings as in section 551 of title 5, United States Code;

"(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and

"(3) the term ‘small entity compliance guide’ means a document designated as such by an agency.

"SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

"[Enacted section 657 of Title 15, Commerce and Trade.]

"SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

"(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section [Mar. 29, 1996] to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

"(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

"(1) requiring the small entity to correct the violation within a reasonable correction period;

"(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

"(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

"(4) excluding violations involving willful or criminal conduct;

"(5) excluding violations that pose serious health, safety or environmental threats; and

"(6) requiring a good faith effort to comply with the law.

"(c) REPORTING.—Agencies shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section [Mar. 29, 1996] on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

"SEC. 224. EFFECTIVE DATE.

"This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996]."

EFFECTS OF DEREGULATION ON RURAL AMERICA

Pub. L. 101–574, title III, §309, Nov. 15, 1990, 104 Stat. 2831, provided that:

"(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of—

"(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

"(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling or flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

"(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

"(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

"(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

"(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

"(b) REPORT.—Not later than 12 months after the date of enactment of this title [Nov. 15, 1990], the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 96–354 provided that:

"(a) The Congress finds and declares that—

"(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

"(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

"(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

"(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

"(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

"(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions..."
as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

"(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

"(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to explain the rationale for their actions to assure that such proposals are given serious consideration."

**EXECUTIVE ORDER NO. 12291**

Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, which established requirements for agencies to follow in promulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

**EXECUTIVE ORDER NO. 12498**

Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, which established criteria for executive departments and agencies to follow in formulating and implementing policies or limitations on private property use, or that impose Federal legislation, comments on proposed Federal regulations, proposed Federal legislation, comments on proposed Federal regulations, proposed Federal regulations, proposed Federal regulations, comments on proposed Federal legislation, or other Federal policy statements, was revoked by Ex. Ord. No. 123045, §7, Apr. 21, 1997, 62 F.R. 19888, and is set out as a note under section 4232 of Title 42, The Public Health and Welfare.

**EXECUTIVE ORDER NO. 12606**

Ex. Ord. No. 12606, Sept. 2, 1987, 52 F.R. 34188, which provided criteria for executive departments and agencies to follow in formulating and implementing policies and regulations to ensure consideration of effect of those policies and regulations on autonomy and rights of the family, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

**EXECUTIVE ORDER NO. 12612**

Ex. Ord. No. 12612, Oct. 26, 1987, 52 F.R. 41685, which set out fundamental federalism principles and policy-making criteria for executive departments and agencies to follow in formulating and implementing regulations and limited the instances when executive departments and agencies could construe a Federal statute to preempt State law, was revoked by Ex. Ord. No. 14332, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

**EXECUTIVE ORDER NO. 12630**

Governmental Actions and Interference With Constitutionally Protected Property Rights

Ex. Ord. No. 12630, Mar. 15, 1988, 53 F.R. 8569, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

**SECTION 1. Purpose.** (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and, in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

**Sic. 2. Definitions.** For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone;

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not includ-
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(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) “Actions” refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

S. 3. General Principles. In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies are those that are taken to protect the public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-acting, requiring that compensation be paid whenever governmental action results in a taking of private property, regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

S. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency is directed by law to authorize or permit a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance the purpose of protecting public health and safety;

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

S. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of the department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.
(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

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The Regulatory Philosophy

Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling 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. In deciding whether and how to regulate, agencies should assess all 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. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(a) The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling 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. In deciding whether and how to regulate, agencies should assess all 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. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) The Principles of Regulation. To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including the data and arguments supporting the need for action) as well as assess the significance of that problem.

(2) Each agency shall 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.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the govern-
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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.

SIC. 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 Chief of Staff to the Vice President; (9) 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, the other Advisors, and the Office of the Vice President.

(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 promulgation is expected to have a promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect 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.

SIC. 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

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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, in agencies’ Policy Meeting. Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(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 regulatory identifier number, a brief summary of the action, the legal authority 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 its amendments into proposed or final regulations to provide information about the planned regulatory action. The public may contact the agency for additional information about the planned regulatory action.

(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). As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important 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 of the agency’s regulatory objectives and priorities and how they relate to the President’s priorities;

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

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

(D) 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;

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

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

(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, the Advisors, and the Vice President.

(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, the Advisors, and the Vice President.

(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, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors’ assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination. Any such consultation shall not impose significant or unique burdens on those governmental entities and that appear to have outlived their
justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Adviser, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy or may identify legislative changes that may be appropriate for reconsideration by the Congress.

Sec. 6. 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:

1. OIRA Responsibilities. (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 shall, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by the regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following information developed as part of the agency's decision-making process (unless prohibited by law):

(i) 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, for 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;

(ii) 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; and

(iii) 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.

(D) 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 subsections (a)(3)(B) and (C) 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 below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

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

(b) OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. 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 significant regulatory actions under subsection (a)(3)(B) of this section.

(2) 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 in-
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 15 days; and

(3) 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.

(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 the issuing agency a written explanation for such return, setting forth the pertinent provision(s) of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) 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 communications, 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 relevant information about such communications, as set forth below in subsection (b)(4)(C) of this section.

(6) OIRA shall maintain a publicly available log of any meetings and telephone conversations between OIRA personnel and persons not employed by the executive branch of the Federal Government relating to the substance of a regulatory action under review and directed to the recipient to the affected agency(ies) for inclusion in the public docket(s).

(7) Any comments submitted to OIRA by any outside party that the matter is under review and that any comments should be submitted in writing.

(8) Expiration. 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 6 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 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency intends to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisers. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

(9) Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

(10) 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.

(11) Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders herefore granted for any category of rule are revoked.

[Section 1 of Ex. Ord. No. 13467, which revoked Ex. Ord. Nos. 12291 and 12498, as amended by the amendments by those Ex. Ords. to Ex. Ord. 12666, set out above.]
SEC. 1. Implementation of Human Rights Obligations.
(a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which the United States is now or may become a party in the future, it is hereby ordered as follows:

(b) It shall also be the policy and practice of the Government of the United States to promote respect for international human rights obligations that are relevant to their functions and by working with and strengthening the various international mechanisms for the promotion of human rights, including, \emph{inter alia}, the United Nations, the International Labor Organization, and the Organization of American States.

SEC. 2. Responsibility of Executive Departments and Agencies. (a) All executive departments and agencies (as defined in 5 U.S.C. 101-105, including boards and commissions, and hereinafter referred to collectively as "agency" or "agencies") shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

(c) The principal functions of the Interagency Working Group shall include:

(i) \begin{enumerate}
\item coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise;
\item coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;
\item coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;
\item developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;
\item developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;
\item developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;
\item coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nontrivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;
\item making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, for the promotion of human rights; and
\end{enumerate}
(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not preclude the work of other interagency entities, including the President’s Committee on the International Labor Organization, that address international human rights issues.

Sect. 5. Cooperation Among Executive Departments and Agencies. All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

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(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized acts of Congress, to determine the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to the problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

Sect. 3. Federalism Policymaking Criteria. In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practical, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 (“Intergovernmental Review of Federal Programs”) [31 U.S.C. 6506 note] remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant financial questions and the national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative flexibility possible. Intrusive federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:

(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;

(2) where possible, refer to the States to establish standards;
(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and
(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

SIC. 4. Special Requirements for Preemption. Agencies, in taking action that preempts State law, shall act in strict accordance with governing law,
(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.
(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.
(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.
(d) When an agency foresees the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.
(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

SIC. 5. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would:
(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;
(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or
(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policy-making criteria set forth in section 3, cannot otherwise be met.

SIC. 6. Consultation. Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

SIC. 7. Increasing Flexibility for State and Local Waivers.
(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.
(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.
(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

SIC. 8. Accountability.
(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993 (set out above), each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from
the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

SIC. 9. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.


(a) This order shall supplement but not supersed e the requirements contained in Executive Order 12372 ("Powers and duties of the Federal Government") (51 U.S.C. 6506 note), Executive Order 12866 ("Regulatory Planning and Review") [set out above], Executive Order 12888 ("Civil Justice Reform") (28 U.S.C. 519 note), and OMB Circular A-19.

(b) Executive Order 12612 ("Federalism"), Executive Order 12875 ("Enhancing the Intergovernmental Partnership"), Executive Order 13083 ("Federalism"), and Executive Order 13085 ("Suspension of Executive Order 13083") are revoked.

(c) This order shall be effective 90 days after the date of this order.

William J. Clinton.

EX. ORD. NO. 13198. AGENCY RESPONSIBILITIES WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13198, Jan. 29, 2001, 66 F.R. 8497, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a person, including the United States, its agencies, its officers, or any person.

SIC. 1. Establishment of Executive Department Centers for Faith-Based and Community Initiatives. (a) The Attorney General, the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall each establish within their respective departments a Center for Faith-Based and Community Initiative (Center).

(b) Each executive department Center shall be supervised by a Director, appointed by the department head in consultation with the White House of Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each department shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each department’s Center shall begin operations no later than 45 days from the date of this order.

SIC. 2. Purpose of Executive Department Centers for Faith-Based and Community Initiatives. The purpose of the executive department Centers will be to coordinate department efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

SIC. 3. Responsibilities of Executive Department Centers for Faith-Based and Community Initiatives. Each Center shall, to the extent permitted by law: (a) conduct, in coordination with the White House OFBCI, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in department programs and initiatives, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs and activities; (b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in department programs and initiatives to the greatest extent possible; (c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and, other department initiatives, including but not limited to Web and Internet resources.

SIC. 4. Additional Responsibilities of the Department of Health and Human Services and the Department of Labor Centers. In addition to those responsibilities described in section 3 of this order, the Department of Health and Human Services and the Department of Labor Centers shall, to the extent permitted by law: (a) conduct a comprehensive review of policies and practices affecting faith-based and other community organizations in department programs and activities of the department, as well as its partners in State and local government, and their contractors.

SIC. 5. Reporting Requirements. (a) Report. Not later than 180 days after the date of this order and annually thereafter, each of the five executive department Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) Contents. The report shall include a description of the department’s efforts in carrying out its responsibilities under this order, including but not limited to:

(1) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(2) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the department, the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for department action. Each report filed thereafter shall measure the department’s performance against the objectives set forth in the initial report.

SIC. 6. Responsibilities of All Executive Departments and Agencies. All executive departments and agencies (agencies) shall: (a) designate an agency employee to serve as a liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SIC. 7. Administration and Judicial Review. (a) The agencies’ actions directed by this Executive Order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This Order does not create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
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vided:

ments submitted by Advocacy on the proposed rule

eed to annually to the Director of the Office of

on the extent of compliance with this order by agencies.

the relevant rulemaking agency.

the internal management of the Federal Gov-

t, and does not, create any right or benefit, substantive or procedural,

ort of small entities under the Act. Such notifications

of small entities under the Act. Such notifications

carry out this order only to the extent that such information al-

e or the relevant rulemaking agency.

S. 8. Judicial Review. The order is intended only to

improve the internal management of the Federal Gov-

ment. This order is not intended to, and does not,

ec city, its departments, agencies, or other entities, its officers

or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. No. 13279, EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS


By the authority vested in me as President by the

Constitution and the laws of the United States of

America, including section 121(a) of title 40, United

States Code, and section 301 of title 3, United States

Code, and in order to guide Federal agencies in formu-

lating and developing policies with implications for

faith-based organizations and other other [sic] neigh-

borhood organizations, to ensure equal protection of

the laws for faith-based and other neighborhood organi-

zations, to further the national effort to expand oppor-

tunities for, and strengthen the capacity of, faith-based

and other other [sic] neighborhood organizations so

that they may better meet social needs in America's

communities, and to ensure the economical and effi-

cient administration and completion of Government

contracts, it is hereby ordered as follows:

SECTION 1. Definitions. For purposes of this order:

(a) ‘Federal financial assistance’ means assistance

that non-Federal entities receive or administer in the

form of grants, contracts, loans, loan guarantees, prop-

erty, cooperative agreements, food commodities, direct

appropriations, or other assistance, but does not in-

clude a tax credit, deduction, or other benefit or

exemption.

(b) ‘Social service program’ means a program that

is faith-based organizations and other other [sic] neigh-

borhood organizations, to ensure the economical and effi-

cient administration and completion of Government

contracts, it is hereby ordered as follows:

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that non-Federal entities receive or administer in the

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appropriations, or other assistance, but does not in-

clude a tax credit, deduction, or other benefit or

exemption.

(b) ‘Social service program’ means a program that

is faith-based organizations and other other [sic] neigh-

borhood organizations, to ensure the economical and effi-

ce
(viii) services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims of criminal offenses, and services related to intervention in, and prevention of, domestic violence; and
(ix) services related to the provision of assistance for housing under Federal law.
(c) “Policies that have implications for faith-based and other neighborhood organizations” refers to all policies, programs, and regulations, including official guidance and informal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.
(d) “Agency” means a department or agency in the executive branch.
(e) “Specified agency heads” means:
(i) the Attorney General;
(ii) the Secretary of Agriculture;
(iii) the Secretary of Commerce;
(iv) the Secretary of Labor;
(v) the Secretary of Health and Human Services;
(vi) the Secretary of Housing and Urban Development;
(vii) the Secretary of Education;
(viii) the Secretary of Veterans Affairs;
(ix) the Secretary of Homeland Security;
(x) the Administrator of the Environmental Protection Agency;
(xi) the Administrator of the Small Business Administration;
(xii) the Administrator of the United States Agency for International Development; and
(xiii) the Chief Executive Officer of the Corporation for National and Community Service.
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® 2. Fundamental Principles. In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:
(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.
(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.
(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.
(d) All organizations that receive Federal financial assistance under social service programs be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.
(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), subject to any time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.
(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) or in any other manner prohibited by law. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance must be free from political interference or even the appearance of such interference and must be made

In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:
(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.
(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.
(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.
(d) All organizations that receive Federal financial assistance under social service programs be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.
(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), subject to any time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.
(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) or in any other manner prohibited by law. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance must be free from political interference or even the appearance of such interference and must be made
on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.

SEC. 3. Ensuring Uniform Implementation Across the Federal Government. In order to promote uniformity in agencies’ policies that have implications for faith-based and other neighborhood organizations and in related guidance, and to ensure that those policies and guidance are consistent with the fundamental principles set forth in section 2 of this order, there is established an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group). The Mission and Function of the Working Group. The Working Group shall meet periodically to review and evaluate existing agency regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations. Where appropriate, specified agency heads shall, to the extent permitted by law, amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles set forth in section 2 of this order.

(b) Uniform Agency Implementation. Within 120 days of the date of this order, the Working Group shall submit a report to the President on amendments, changes, or additions that are necessary to ensure that regulations and guidance documents associated with the distribution of Federal financial assistance for social service programs are consistent with the fundamental principles set forth in section 2 of this order. The Working Group’s report should include, but not be limited to, a model set of regulations and guidance documents for agencies to adopt in the following areas:

(i) prohibited uses of direct Federal financial assistance and separation requirements; (ii) protections for religious identity; (iii) the distinction between “direct” and “indirect” Federal financial assistance; (iv) protections for beneficiaries of social service programs; (v) transparency requirements, consistent with and in furtherance of existing open government initiatives; (vi) obligations of nongovernmental and governmental intermediaries; (vii) instructions for peer reviewers and those who recruit peer reviewers; and (viii) training on these matters for government employees and for Federal, State, and local governmental and nongovernmental organizations that receive Federal financial assistance under social service programs. In developing this report and in reviewing agency regulations and guidance for consistency with section 2 of this order, the Working Group shall consult the March 2010 report and recommendations prepared by the President’s Advisory Council on Faith-Based and Neighborhood Partnerships on the topic of reforming the Office of Faith-Based and Neighborhood Partnerships.

(c) Guidance. The Director of the Office of Management and Budget (OMB), following receipt of a copy of the report of the Working Group, and in coordination with the Department of Justice, shall issue guidance to agencies on the implementation of this order, including in particular subsections 2(h)–(j).

(d) Membership of the Working Group. The Director of the Office of Faith-Based and Neighborhood Partnerships and a senior official from the OMB designated by the Director of the OMB shall serve as the Co-Chairs of the Working Group. The Co-Chairs shall convene regular meetings of the Working Group, determine its agenda, and direct its work. In addition to the Co-Chairs, the Working Group shall consist of a senior official with knowledge of policies that have implications for faith-based and other neighborhood organizations from the following agencies and offices:

(i) the Department of State;
(ii) the Department of Justice;
(iii) the Department of the Interior;
(iv) the Department of Agriculture;
(v) the Department of Commerce;
(vi) the Department of Labor;
(vii) the Department of Health and Human Services;
(viii) the Department of Housing and Urban Development;
(ix) the Department of Education;
(x) the Department of Veterans Affairs;
(xi) the Department of Homeland Security;
(xii) the Environmental Protection Agency;
(xiii) the Small Business Administration;
(xiv) the United States Agency for International Development;
(xv) the Corporation for National and Community Service; and
(xvi) other agencies and offices as the President, from time to time, may designate.

(e) Administration of the Initiative. The Department of Health and Human Services shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

SEC. 4. Amendment of Executive Order 11246. Pursuant to section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order further to strengthen the Federal interest in ensuring that the cost and progress of Federal procurement contracts are not adversely affected by an artificial restriction of the labor pool caused by the unwarranted exclusion of faith-based organizations from such contracts, section 204 of Executive Order 11246 of September 24, 1965, as amended, [42 U.S.C. 2000e note] is hereby further amended to read as follows:

“SEC. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order:

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no reemployment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.”

SEC. 5. General Provisions.


(b) The agencies shall coordinate with the White House OFBCI concerning the implementation of this order.

(c) Nothing in this order shall be construed to require an agency to take any action that would impair the conduct of foreign affairs or the national security.

SEC. 6. Responsibilities of Executive Departments and Agencies. All executive departments and agencies (agencies) shall:

(a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and
(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the
White House OFBCI as it may request, to the extent permitted by law.

SIC. 7. Judicial Review. This order is intended only to improve the internal management of the executive branch, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any person.

EX. ORD. NO. 13280. RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND THE AGENCY FOR INTERNATIONAL DEVELOPMENT WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13280, Dec. 12, 2002, 67 F.R. 77145, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America's communities, it is hereby ordered as follows:

SECTION 1. Establishment of Centers for Faith-Based and Community Initiatives at the Department of Agriculture and the Agency for International Development. (a) The Secretary of Agriculture and the Administrator of the Agency for International Development shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).
(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).
(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.
(d) Each Center shall begin operations no later than 45 days from the date of this order.

SIC. 2. Purpose of Executive Branch Centers for Faith-Based and Community Initiatives. The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

SIC. 3. Responsibilities of the Centers for Faith-Based and Community Initiatives. Each Center shall, to the extent permitted by law:
(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;
(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;
(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;
(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and
(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SIC. 4. Reporting Requirements.
(a) Report. Not later than 180 days from the date of this order and annually thereafter, each of the two Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.
(b) Contents. The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:
(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and
(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.
(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

SIC. 5. Responsibilities of the Secretary of Agriculture and the Administrator of the Agency for International Development. The Secretary of Agriculture and the Administrator shall:
(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI, and
(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SIC. 6. Administration and Judicial Review. (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.
(b) This order is not intended to, 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 entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13342. RESPONSIBILITIES OF THE DEPARTMENT OF COMMERCE AND VETERANS AFFAIRS AND THE SMALL BUSINESS ADMINISTRATION WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13342, June 1, 2004, 69 F.R. 31509, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

SECTION 1. Establishment of Centers for Faith-Based and Community Initiatives at the Departments of Commerce and Veterans Affairs and the Small Business Administration. (a) The Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).
(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).
(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.
(d) Each Center shall begin operations no later than 45 days from the date of this order.
eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SIC. 3. Responsibilities of the Centers for Faith-Based and Community Initiatives. Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SIC. 4. Reporting Requirements. (a) Report. Not later than 180 days from the date of this order and annually thereafter, each of the three Centers described in section 1 of this order shall prepare and submit a report to the President through the White House OFBCI.

(b) Contents. The report shall include a description of the agency’s efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Auditors. The first report, filed pursuant to section 4(a) of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency’s performance against the objectives set forth in the initial report.

SIC. 5. Responsibilities of the Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration. The Secretaries and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SIC. 6. Administration and Judicial Review. (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. No. 13397, RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES. Ex. Ord. No. 13397, Mar. 7, 2006, 71 F.R. 12275, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America’s social and community needs, it is hereby ordered as follows:

§ 601. TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

§ 601. Purpose of the Center. The purpose of the Center shall be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

§ 602. Responsibilities of the Center for Faith-Based and Community Initiatives. In carrying out the purpose set forth in section 2 of this order, the Center shall:

(a) conduct, in coordination with the WHOFBCI Director, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in Department programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate Departmental outreach efforts to disseminate information more effectively to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

§ 603. The purpose of the Center

(a) The Secretary of Homeland Security (Secretary) shall establish within the Department of Homeland Security a Center for Faith-Based and Community Initiatives (Center).

(b) The Center shall be supervised by a Director appointed by the Secretary. The Secretary shall consult with the Director of the White House Office of Faith-Based and Community Initiatives (WHOFBCI) prior to making such appointment.

(c) The Department shall provide the Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Center shall begin operations no later than 45 days from the date of this order.

§ 604. Responsibilities of the Center for Faith-Based and Community Initiatives. Each Center shall establish within the Department of Homeland Security a Center for Faith-Based and Community Initiatives (Center of the Department). The purpose of the Center shall be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.
(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and
(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.
(c) Performance Indicators. The first report shall include annual performance indicators and measurable objectives for Departmental action. Each report filed thereafter shall measure the Department’s performance against the objectives set forth in the initial report.

SIC. 5. Responsibilities of the Secretary. The Secretary shall:
(a) designate an employee within the department to serve as the liaison and point of contact with the WHOFCI Director; and
(b) cooperate with the WHOFCI Director and provide such information, support, and assistance to the
WHOFBCI Director as requested to implement this order.

SIC. 6. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(b) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department or agency or the head thereof;
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(c) This order shall be implemented in a manner consistent with Executive Order 12630 of March 15, 1988.
(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13406. PROTECTING THE PROPERTY RIGHTS OF THE AMERICAN PEOPLE

Ex. Ord. No. 13406, June 23, 2006, 71 F.R. 36973, provides:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the rights of the American people against the taking of their private property, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the United States to protect the rights of Americans to their private property, including by limiting the taking of private property by the Federal Government to situations in which the taking is for public use, with just compensation, and for the purpose of benefiting the general public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken.

SIC. 2. Implementation. (a) The Attorney General shall:
(i) issue instructions to the heads of departments and agencies to implement the policy set forth in section 1 of this order; and
(ii) monitor takings by departments and agencies for compliance with the policy set forth in section 1 of this order.

(b) Heads of departments and agencies shall, to the extent permitted by law:
(i) comply with instructions issued under subsection (a)(1); and
(ii) provide to the Attorney General such information as the Attorney General determines necessary to carry out subsection (a)(1).

SIC. 3. Specific Exclusions. Nothing in this order shall be construed to prohibit a taking of private property by the Federal Government, that otherwise complies with applicable law, for the purpose of:
(a) public ownership or exclusive use of the property by the public, such as for a public medical facility, roadway, park, forest, governmental office building, or military reservation;
(b) projects designated for public, common carrier, public transportation, or public utility use, including those for which a fee is assessed, that serve the general public and are subject to regulation by a governmental entity;
(c) conveying the property to a nongovernmental entity, such as a telecommunications or transportation common carrier, that makes the property available for use by the general public as of right;
(d) preventing or mitigating a harmful use of land that constitutes a threat to public health, safety, or the environment;
(e) acquiring abandoned property;
(f) quieting title to real property;
(g) acquiring ownership or use by a public utility;
(h) facilitating the disposal or exchange of Federal property; or
(i) meeting military, law enforcement, public safety, public transportation, or public health emergencies.

SIC. 4. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
(b) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department or agency or the head thereof;
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(c) This order shall be implemented in a manner consistent with Executive Order 12630 of March 15, 1988.
(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13497. REVOCATION OF CERTAIN EXECUTIVE ORDERS CONCERNING REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 13497, Jan. 30, 2009, 74 F.R. 6113, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:


SIC. 2. The Director of the Office of Management and Budget and the heads of executive departments and agencies shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 12258 or Executive Order 13222, to the extent consistent with law.

SIC. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13563. IMPROVING REGULATION AND REGULATORY REVIEW

Ex. Ord. No. 13563, Jan. 18, 2011, 76 F.R. 3821, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in
§ 601
docket, including relevant scientific and technical find-
lic comment on all pertinent parts of the rulemaking
feasible and permitted by law, an opportunity for pub-
format that can be easily searched and downloaded. For
the rulemaking docket on regulations.gov, including
relevant scientific and technical findings, in an open
generally be at least 60 days. To the extent feasible and
permitted by law, each agency shall also provide, for
each agency shall afford the public a meaningful oppor-
tunity, and seek to improve, the actual results of regu-
latory requirements.

Sic. § 601. Doxet, including relevant scientific and technical find-
ings, in an open exchange that involves public participa-
tion. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open ex-
change of information and perspectives among State,
local, and tribal officials, experts in relevant disci-
plines, affected stakeholders in the private sector,
and the public as a whole.

(b) To promote that open exchange, each agency, con-
sistent with Executive Order 12866 and other applicable
legal requirements, shall endeavor to provide the pub-
clic with an opportunity to participate in the regulatory
process. To the extent feasible and permitted by law,
each agency shall afford the public a meaningful oppor-
tunity, to comment through the Internet on any pro-
posed regulation, with a comment period that should
generally be at least 60 days. To the extent feasible and
permitted by law, each agency shall also provide, for
both proposed and final rules, timely online access to
the rulemaking docket on regulations.gov, including
relevant scientific and technical findings, in an open
format that can be easily searched and downloaded.
For proposed rules, such access shall include, to the extent
feasible and permitted by law, an opportunity for pub-
lic comment on all pertinent parts of the rulemaking
docket, including relevant scientific and technical find-
ings.

(c) Before issuing a notice of proposed rulemaking,
each agency, where feasible and appropriate, shall seek
the views of those who are likely to be affected, includ-
ing those who are likely to benefit from and those who
are potentially subject to such rulemaking.

Sic. § 601. Integration and Innovation. Some sectors and industries
face a significant number of regulatory re-
quirements, some of which may be redundant, incon-
sistent, or overlapping. Greater coordination across
agencies could reduce these requirements, thus reduc-
ing costs and simplifying and harmonizing rules. In de-
veloping regulatory actions and identifying appropriate
approaches, each agency shall attempt to promote such
coordination, simplification, and harmonization. Each
agency shall also seek to identify, as appropriate,
means to achieve regulatory goals that are designed to
promote innovation.

Sic. § 601. Flexible Approaches. Where relevant, feasible, and
consistent with regulatory objectives, and to the
extent permitted by law, each agency shall identify and
consider regulatory approaches that reduce burdens
and maintain flexibility and freedom of choice for the
public. These approaches include warnings, appropriate
default rules, and disclosure requirements as well as
provision of information to the public in a form that is
clear and intelligible.

Sic. § 601. Science. Consistent with the President’s
Memorandum for the Heads of Executive Departments
and Agencies, “Scientific Integrity” (March 9, 2009),
and its implementing guidance, each agency shall en-
sure the objectivity of any scientific and technological
information and processes used to support the agency’s
regulatory actions.

Sic. § 601. Retrospective Analyses of Existing Rules. (a) To
facilitate the periodic review of existing significant
regulations, agencies shall consider how best to pro-
 mote retrospective analyses of rules that may be out-
moded, ineffective, insufficient, or excessively burden-
some, and to modify, streamline, expand, or repeal
them in accordance with what has been learned. Such
retrospective analyses, including supporting data,
should be released online whenever possible.

(b) Within 120 days of the date of this order, each
agency shall develop and submit to the Office of
formation and Regulatory Affairs a preliminary plan, con-
sistent with law and its resources and regulatory prior-
ities, under which the agency will periodically review
its existing significant regulations to determine whether
any such regulations should be modified, stream-
lined, expanded, or repealed so as to make the agency’s
regulatory program more effective or less burdensome in
achieving the regulatory objectives.

Sic. § 601. General Provisions. (a) For purposes of this
order, “agency” shall have the meaning set forth in
section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair
or otherwise affect:
(i) authority granted by law to a department or agen-
cy, or the head thereof; or
(ii) functions of the Director of the Office of Manage-
ment and Budget relating to budgetary, administra-
tive, or legislative proposals.

(c) This order shall be implemented consistent with
applicable law and subject to the availability of appro-
priations.

(d) This order is not intended to, and does not, create
any right or benefit, substantive or procedural, enforce-
able at law or in equity by any party against the
United States, its departments, agencies, or entities,
its officers, employees, or agents, or any other person.

Barack Obama.

Ex. Ord. No. 13579. REGULATION AND INDEPENDENT
RUGULATORY AGENCIES.
Ex. Ord. No. 13579, July 11, 2011, 76 F.R. 41587, pro-
vided:
By the authority vested in me as President by the
Constitution and the laws of the United States of
America, and in order to improve regulation and regu-
lar review, it is hereby ordered as follows:
SIC. 1. Policy. (a) Wise regulatory decisions de-
depend on public participation and on careful analysis of
the likely consequences of regulation. Such decisions
are informed and improved by allowing interested
members of the public to have a meaningful oppor-
tunity to participate in rulemaking. To the extent per-
mitted by law, such decisions should be made only after
consideration of their costs and benefits (both quan-
titative and qualitative).

(b) Executive Order No. 13563 of January 18, 2011, “Im-
proving Regulation and Regulatory Review,” directed
to executive agencies, was meant to produce a regu-
lar system that protects “public health, welfare,
safety, and our environment while promoting economic
growth, innovation, competition, and job crea-
tion.” Independent regulatory agencies, no less than
executive agencies, should promote that goal.
that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment. Reviews and approvals of infrastructure projects can be delayed due to many factors beyond the control of the Federal Government, such as poor project design, incomplete applications, uncertain funding, or multiple reviews and approvals by State, local, tribal, or other jurisdictions. Given these factors, it is critical that executive departments and agencies take steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.

To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals. They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays. They must provide for transparency and accountability by utilizing cost-effective information technology to collect and disseminate information about individual projects and agency performance, so that the priorities and concerns of all our citizens are considered. They must rely upon early and active consultation with State, local, and tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews. They must recognize the critical role project sponsors play in assuring the timely and cost-effective review of projects by providing complete information and analysis and by supporting, as appropriate, the costs associated with review. And, they must enable agencies to share priorities, work collaboratively and concurrently to advance reviews and permitting decisions, and facilitate the resolution of disputes at all levels of agency organization.

Each of these elements must be incorporated into routine agency practice to provide demonstrable improvements in the performance of Federal infrastructure permitting and review processes, including lower costs, more timely decisions, and a healthier and cleaner environment. Also, these elements must be integrated into project planning processes so that projects are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and other cultural resources, and the environment, and to minimize or mitigate impacts that may occur. Permitting and review process improvements that have proven effective must be expanded and institutionalized.

(b) In advancing this policy, this order expands upon efforts undertaken pursuant to Executive Order 13580 of July 12, 2011 (Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska), Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), and my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review), as well as other ongoing efforts.

Section 2. Steering Committee on Federal Infrastructure Permitting and Review Process Improvement. There is established a Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (the Steering Committee), to be chaired by the Chief Performance Officer (CPO), in consultation with the Chair of the Council on Environmental Quality (CEQ).

(a) Infrastructure Projects Covered by this Order. The Steering Committee shall facilitate improvements in Federal permitting and review processes for infrastructure projects in sectors including surface transportation, aviation, ports and waterways, water resource projects, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Steering Committee.
(b) Membership. Each of the following agencies (Member Agencies) shall be represented on the Steering Committee by a Deputy Secretary or equivalent officer of the United States:

(i) the Department of Defense;
(ii) the Department of the Interior;
(iii) the Department of Agriculture;
(iv) the Department of Commerce;
(v) the Department of Transportation;
(vi) the Department of Energy;
(vii) the Department of Homeland Security;
(viii) the Environmental Protection Agency;
(ix) the Advisory Council on Historic Preservation;
(x) the Department of the Army; and
(xi) such other agencies or offices as the CPO may invite to participate.

(2) Projects of National or Regional Significance. In furtherance of the policies of this order, the Member Agencies shall coordinate and consult with each other to select, submit to the CPO by April 30, 2012, and periodically update thereafter, a list of infrastructure projects of national or regional significance that will have their status tracked on the online Federal Infrastructure Projects Dashboard (Dashboard) created pursuant to my memorandum of August 31, 2011.

(d) Responsibilities of the Steering Committee. The Steering Committee shall:

(i) develop a Federal Permitting and Review Performance Plan (Federal Plan), as described in section 3(a) of this order;
(ii) implement the Federal Plan and coordinate resolution of disputes among Member Agencies relating to implementation of the Federal Plan and Agency Plans; and
(iii) by January 31, 2013, and annually thereafter, after input from interested agencies, offices, and interagency working groups as necessary, including the President’s Management Council and Performance Improvement Councils, and, with regard to use and expansion of the Dashboard, the Chief Information Officer (CIO) and Chief Technology Officer to implement this order.

(e) Duties of the CPO. The CPO shall:

(i) in consultation with the Chair of CEQ and Member Agencies, issue guidance on the implementation of this order;
(ii) in consultation with Member Agencies, develop and track performance metrics for evaluating implementation of the Federal Plan and Agency Plans; and
(iii) by January 31, 2013, and annually thereafter, after input from interested agencies, offices, and interagency working groups as necessary, including the President’s Management Council and Performance Improvement Councils, and, with regard to use and expansion of the Dashboard, the Chief Information Officer (CIO) and Chief Technology Officer to implement this order.

(f) No Involvement in Particular Permits or Projects. Neither the Steering Committee, nor the CPO, may direct or coordinate agency decisions with respect to any particular permit or project.

(g) Section 5. Plans for Measurable Performance Improvement. (a) By May 31, 2012, the Steering Committee shall, following coordination with Member Agencies and other interested agencies, develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment. The Federal Plan shall include, but not be limited to, the following actions to implement the policies outlined in section 1 of this order, and shall reflect the agreement of any Member Agency with respect to requirements in the Federal Plan affecting such agency:

(i) institutionalizing best practices for: enhancing Federal, State, local, and tribal government coordination on permitting and review processes (such as conducting reviews concurrently rather than sequentially to the extent practicable); avoiding duplicative reviews; and engaging with stakeholders early in the permitting process;

(ii) developing mechanisms to better communicate priorities and resolve disputes among agencies at the national and regional levels;

(iii) institutionalizing use of the Dashboard, working with the CIO to enhance the Dashboard, and utilizing other cost-effective information technology systems to share environmental and project-related information with the public, project sponsors, and permit reviewers; and

(iv) identifying timeframes and Member Agency responsibilities for the implementation of each proposed action.

(b) Each Member Agency shall:

(i) by June 30, 2012, submit to the CPO an Agency Plan identifying those permitting and review processes the Member Agency views as most critical to significantly reducing the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment, and describing specific and measurable actions the agency will take to improve these processes, including:

(1) performance metrics, including timelines or schedules for review;

(2) technological improvements, such as institutionalized use of the Dashboard and other information technology systems;

(3) other practices, such as pre-application procedures, early collaboration with other agencies, project sponsors, and affected stakeholders, and coordination with State, local, and tribal governments; and

(iv) steps the Member Agency will take to implement the Federal Plan.

(ii) by July 31, 2012, following coordination with other Member Agencies and interested agencies, publish its Agency Plan on the Dashboard; and

(iii) by December 31, 2012, and every 6 months thereafter, report progress to the CPO on implementing its Agency Plan, as well as specific opportunities for additional improvements to its permitting and review procedures.

(g) Section 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall be implemented consistent with Executive Order 13175 of November 5, 2000 (Consultation and Coordination with Indian Tribal Governments) and my memorandum of November 5, 2009 (Tribal Consultation).

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13609. PROMOTING INTERNATIONAL REGULATORY COOPERATION

Ex. Ord. No. 13609, May 1, 2012, 77 F.R. 26413, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote international regulatory cooperation, it is hereby ordered as follows:

SECTION 1. Policy. Executive Order 13663 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. In an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of Executive Order 13663.

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the
differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

SISC. 2. Coordination of International Regulatory Cooperation. (a) The Regulatory Working Group (Working Group) established by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), which was reaffirmed by Executive Order 13563, shall, as appropriate:

(i) serve as a forum to discuss, coordinate, and develop common understanding among agencies of U.S. Government positions and priorities with respect to:

(A) international regulatory cooperation activities that are reasonably anticipated to lead to significant regulatory actions;

(B) efforts across the Federal Government to support significant, cross-cutting international regulatory cooperation activities, such as the work of regulatory cooperation councils; and

(C) the promotion of good regulatory practices internationally, as well as the promotion of U.S. regulatory approaches, as appropriate; and

(ii) examine, among other things:

(A) appropriate strategies for engaging in the development of regulatory approaches through international regulatory cooperation, particularly in emerging technology areas, when consistent with section 1 of this order;

(B) best practices for international regulatory cooperation with respect to regulatory development, and, where appropriate, information exchange and other regulatory tools; and

(C) factors that agencies should take into account when determining whether and how to consider other regulatory approaches under section 3(d) of this order.

(b) As Chair of the Working Group, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) shall convene the Working Group as necessary to discuss international regulatory cooperation issues as described above, and the Working Group shall include a representative from the Office of the United States Trade Representative and, as appropriate, a representative from the Office of the Trade Representative.

(c) The activities of the Working Group, consistent with law, shall not duplicate the efforts of existing interagency bodies when appropriate.

(d) To inform its discussions, and pursuant to section 4 of Executive Order 12866, the Working Group may commission analytical reports and studies by OIRA, the Administrative Conference of the United States, or any other relevant agency, and the Administrator of OIRA may solicit input, from time to time, from representatives of business, nongovernmental organizations, and the public.

(e) The Working Group shall develop and issue guidelines on the applicability and implementation of sections 2 through 4 of this order.

(f) For purposes of this order, the Working Group shall operate by consensus.

SISC. 3. Responsibilities of Federal Agencies. To the extent permitted by law, and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each agency shall:

(a) if required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on Regulations.gov, and, on Regulations.gov, the Working Group shall consult with existing interagency bodies when appropriate.

(c) in selecting which regulations to include in its retrospective review plan, as required by Executive Order 12866, consider:

(i) reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) such reforms in other circumstances as the agency deems appropriate; and

(d) for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

SISC. 4. Definitions. For purposes of this Order:

(a) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3522(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3522(5).

(b) “International impact” is a direct effect that a proposed or final regulation is expected to have on international trade and investment, or that otherwise may be of significant interest to the trading partners of the United States.

(c) “International regulatory cooperation” refers to a bilateral, regional, or multilateral process, other than processes that are covered by section 8(a)(ii), (iii), and (v) of this order, in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

(d) “Regulation” shall have the same meaning as “regulation” or “rule” in section 3(d) of Executive Order 12866.

(e) “Significant regulation” is a proposed or final regulation that constitutes a significant regulatory action.

(f) “Significant regulatory action” shall have the same meaning as in section 3(d) of Executive Order 12866.

SISC. 5. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

SISC. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof;

(ii) the coordination and development of international trade policy and negotiations pursuant to section 411 of the Trade Agreements Act of 1979 (19 U.S.C. 2451 (2451) and section 141 of the Trade Act of 1974 (19 U.S.C. 2171);


(iv) the authorization process for the negotiation and conclusion of international agreements pursuant to 1 U.S.C. 112(b) and its implementing regulations (22 C.F.R. 181.4) and implementing procedures (11 FAM 720);

(v) activities in connection with subchapter II of chapter 33 of title 26 of the United States Code, title 26 of the United States Code, or Public Law 111–203 and other laws relating to the international regulation of OPEC [sic] [sic] the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.
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TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13610. IDENTIFYING AND REDUCING REGULATORY BURDENS

Ex. Ord. No. 13610, May 10, 2012, 77 F.R. 28469, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

SECTION 1. Policy. Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.” To promote this goal, Executive Order requires agencies not merely to conduct a single exercise, but to engage in “periodic review of existing significant regulations.” Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to “determine whether any such regulations should be modified, streamlined, expanded, or repealed.” The purpose of this requirement is to “make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

In response to Executive Order 13563, agencies have developed and made available for public comment retrospective review plans that identify over five hundred initiatives that will produce significant quantifiable benefits and savings. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

SECTION 2. Public Participation in Retrospective Review. Members of the public, including those directly and indirectly affected by regulations, may participate in periodic review of existing regulations prior to the issuance of Executive Order 13563. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

SECTION 3. Setting Priorities. In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

SECTION 4. Accountability. Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

SECTION 5. General Provisions. (a) For purposes of this order, “agency” 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(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof, or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

REGRULATORY REFORM—WAIVER OF PENALTIES AND REDUCTION OF REPORTS

Memorandum of President of the United States, Apr. 21, 1995, 60 F.R. 20621, provided:

Memorandum for:

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of the Interior
The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Labor
The Secretary of Health and Human Services
The Secretary of Housing and Urban Development
The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Administrator, Environmental Protection Agency
The Administrator, Small Business Administration
The Secretary of the Army

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The Secretary of the Navy
The Secretary of the Air Force
The Director, Federal Emergency Management Agency
The Administrator, National Aeronautics and Space Administration
The Director, National Science Foundation
The Acting Archivist of the United States
The Administrator of General Services
The Chair, Railroad Retirement Board
The Chairperson, Architectural and Transportation Barriers Compliance Board
The Executive Director, Pension Benefit Guaranty Corporation

Barriers Compliance Board

On March 16, I announced that the Administration would implement new policies to give compliance officials more flexibility in dealing with small business and to cut back on paperwork. These Governmentwide policies, as well as the specific agency actions I announced, are part of this Administration’s continuing commitment to sensible regulatory reform. With your help and cooperation, we hope to move the Government toward a more flexible, effective, and user friendly approach to regulation.

A. Actions: This memorandum directs the designated department and agency heads to implement the policies set forth below.

1. Authority to Waive Penalties. (a) To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions in paragraph 1(a) of this memorandum shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director of the Office of Management and Budget (“Director”) describing the actions it will take to implement the policies described in paragraph 1(a) of this memorandum. The plan shall provide that the agency will implement the policies described in paragraph 1(a) of this memorandum on or before July 14, 1995. Plans should include information on how notification will be given to frontline workers and small businesses.

2. Cutting Frequency of Reports. (a) Each agency shall reduce by one-half the frequency of the regularly scheduled reports that the public is required, by rule or by policy, to provide to the Government (from quarterly semianually, from annually, etc.), unless the department or agency head determines that such action is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of the agency’s program. The duty to make such determinations shall be non-delegable.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director describing the actions it will take to implement the policies in paragraph 2(a), including a copy of any determination that certain reports are excluded.

B. Application and Scope: 1. The Director may issue further guidance as necessary to carry out the purposes of this memorandum.

2. This memorandum does not apply to matters related to law enforcement, national security, or foreign affairs, the importation or exportation of prohibited or restricted items, Government taxes, duties, revenues, or receipts; nor does it apply to agencies (or components thereof) whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. This memorandum is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

4. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

PLAIN LANGUAGE IN GOVERNMENT WRITING

Memorandum of President of the United States, June 1, 1998, 63 F.R. 31885, provided: Memorandum for the Heads of Executive Departments and Agencies

The Vice President and I have made reinventing the Federal Government a top priority of my Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public. The Federal Government’s writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

• common, everyday words, except for necessary technical terms;
• “you” and other pronouns;
• the active voice; and
• short sentences.

To ensure the use of plain language, I direct you to do the following:

• By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.

• By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the Federal Register, unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts. I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office of Management and Budget will publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

PREEMPTION

Memorandum of President of the United States, May 20, 2009, 74 F.R. 24603, provided: Memorandum for the Heads of Executive Departments and Agencies

From our Nation’s founding, the American constitutional order has been a Federal system, ensuring a
strong role for both the national Government and the States. The Federal Government's role in promoting the general welfare and guarding individual liberties is crucial, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in long-standing practices by executive departments and agencies, which have shown respect for the traditional prerogatives of the States. In recent years, however, not without controversy, the national Government has, through the Federalism, executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sound legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is inappropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, ‘‘[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.’’

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

1. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement intended by the department or agency to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

2. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement intended by the department or agency to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult, as necessary with the Attorney General and the Office of Management and Budget’s Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

Barack Obama.

REGULATORY COMPLIANCE

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3825, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government’s activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at ogesdw.doI.gov and www.epa-echo.gov), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

First, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities, accessible, downloadable, and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

Second, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

Third, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies’ risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural,
enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REGULATORY FLEXIBILITY, SMALL BUSINESS, AND JOB CREATION

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3827, provided:

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of new jobs in the Nation. Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, “Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the cost of cumulative regulations.”

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation. Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

• extended compliance dates that take into account the resources available to small entities;
• performance standards rather than design standards;
• simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
• different requirements for large and small firms; and
• partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that it is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

MODERNIZING FEDERAL INFRASTRUCTURE REVIEW AND PERMITTING REGULATIONS, POLICIES, AND PROCEDURES

Memorandum of President of the United States, May 17, 2013, 78 F.R. 30733, provided:

Memorandum for the Heads of Executive Departments and Agencies

Reliable, safe, and resilient infrastructure is the backbone of an economy built to last. Investing in our Nation’s infrastructure serves as an engine for job creation and economic growth, while bringing immediate and long-term economic benefits to communities across the country. The quality of our infrastructure is critical to maintaining our Nation’s competitive edge in a global economy and to securing our path to energy independence. In taking steps to improve our infrastructure, we must remember that the protection and continued enjoyment of our Nation’s environmental, historical, and cultural resources remain an equally
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projects and reduce aggregate timelines for major in-

coming improvements to enhance effi-

ciencies in the application of regulations and processes

information, facilitating targeted and relevant envi-

ronmental and cultural practices as set forth in existing

Based on the process and policy improvements that

are already being implemented across the Federal Gov-

government, we can continue to modernize the Federal

Government's review and permitting of infrastructure

projects and reduce aggregate timelines for major in-

frastructure projects by half, while also improving out-

comes for communities and the environment by insti-
tutionalizing these best-management practices, and by

making additional improvements to enhance effi-

ciences in the application of regulations and processes

involving multiple agencies—including expanding the

use of web-based techniques for sharing project-related

information, facilitating targeted and relevant envi-

ronmental reviews, and providing meaningful opportu-
nities for public input through stakeholder engage-

ment.

By the authority vested in me as President by the Constitu-
tion and the laws of the United States of America, and to

advance the goal of cutting aggregate timelines for major in-

frastructure projects in half, while also improving outcomes for communities and the

environment, I hereby direct the following:

The modernization plan prepared pursuant to this section shall take into account funding and resource constraints and shall prioritize implementation accord-

ingly.

(c) Infrastructure sectors covered by the moderniza-
tion effort include: surface transportation, such as

roadways, bridges, railroads, and transit; aviation;

ports and related infrastructure, including naviga-
tional channels; water resources projects; renewable

energy generation; conventional energy production in

high-demand areas; electricity transmission; broad-

band; pipelines; storm water infrastructure; and other

sectors as determined by the Steering Committee.

(d) The following agencies or offices and their rel-

vant sub-divisions shall engage in the modernization

effort:

(i) the Department of Defense;

(ii) the Department of the Interior;

(iii) the Department of Agriculture;

(iv) the Department of Commerce;

(v) the Department of Transportation;

(vi) the Department of Energy;

(vii) the Department of Homeland Security;

(viii) the Environmental Protection Agency;

(ix) the Advisory Council on Historic Preservation;

(x) the Department of the Army;

(xi) the Council on Environmental Quality; and

(xii) such other agencies or offices as the CPO may

invite to participate.
§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking;

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.


§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 533 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

So in original. The comma probably should be a semicolon.
(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).


AMENDMENTS


1996—Subsec. (a). Pub. L. 104–121, §241(a)(1)(B), inserted at end “In the case of an interpretative rule in this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.”

Pub. L. 104–121, §241(a)(1)(A), which directed the insertion of “, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States,” after “proposed rule” was executed by making the insertion where those words appeared in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100Fh of Pub. L. 111–203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104–121, set out as a note under section 601 of this title.

§604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.


AMENDMENTS


Subsec. (a)(2). Pub. L. 111–240, § 1601(2), substituted “statement” for “summary” before “of the significant issues” and “of the assessment”.

Subsec. (a)(3), (4), Pub. L. 111–240, § 1601(3), (4), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5), Pub. L. 111–240, § 1601(3), redesignated par. (4) as (5). Former par. (5), relating to description of steps taken to minimize the significant economic impact on small entities, redesignated (6).

Pub. L. 111–240, § 1601(3), which directed amendment of par. (4) by striking “and” at the end, was executed to par. (5) to reflect the probable intent of Congress and the intervening redesignation of par. (4) as (5) by Pub. L. 111–240, § 1601(5). See above.

Subsec. (a)(6), Pub. L. 111–240, § 1601(3), redesignated par. (5), relating to description of steps taken to mini-

So in original. Two pars. (6) have been enacted.
mize the significant economic impact on small entities, as (6).

Pub. L. 111–203, §1100G(c)(3), added par. (6) relating to description of steps taken to minimize any additional cost of credit for small entities.

Pub. L. 111–203, §1100G(c)(2), which directed amendment of par. (5) by substituting "; and" for period at end, was executed to par. (6), relating to description of steps taken to minimize the significant economic impact on small entities, to reflect the probable intent of Congress and the intervening redesignation of par. (5) as (6) by Pub. L. 111–240, §1601(c). See above.

1996—Subsec. (a). Pub. L. 104–121, §241(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—"

"(1) a succinct statement of the need for, and the objectives of, the rule;"

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and"

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected."

Subsec. (b). Pub. L. 104–121, §241(b)(2), substituted "such analysis or a summary thereof." for "at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies."

Effective Date of 2010 Amendment
Amendment by Pub. L. 111–330 effective on the designated transfer date, see section 1190B of Pub. L. 111–330, set out as a note under section 552a of this title.

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104–121, set out as a note under section 601 of this title.

§ 608. Avoidance of duplicative or unnecessary analyses
(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration."

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104–121, set out as a note under section 601 of this title.

§ 606. Effect on other law
The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.


§ 607. Preparation of analyses
In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.


§ 608. Procedure for waiver or delay of completion
(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date
§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;
(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;
(3) the direct notification of interested small entities;
(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and
(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;
(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;
(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;
(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);
(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and
(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term "covered agency" means—

(1) the Environmental Protection Agency;
(2) the Consumer Financial Protection Bureau of the Federal Reserve System; and
(3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
(2) Special circumstances requiring prompt issuance of the rule.
(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.


AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 substituted "means—" for "means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor." and added pars. (1) to (3).
§610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.


§611. Judicial review

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 606(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to
take corrective action consistent with this chapter and chapter 7, including, but not limited to—

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.


AMENDMENTS

1996—Pub. L. 104–121 amended section generally. Prior to amendment, section read as follows:

“(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

“(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.”

 EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104–121, set out as a note under section 601 of this title.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).


AMENDMENTS

1996—Subsec. (a). Pub. L. 104–121, § 243(b)(1), which directed substitution of “the Committees on the Judiciary and Small Business of the Senate and House of Representatives” for “the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives”, was executed by making the substitution for “the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 104–121, § 243(b)(2), substituted “his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the” for “his views with respect to the”.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104–121, set out as a note under section 601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103–7.

CHAPTER 7—JUDICIAL REVIEW

Sec. 701. Application; definitions.

702. Right of review.

703. Form and venue of proceeding.

704. Actions reviewable.

705. Relief pending review.

706. Scope of review.

SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 21, 1946, ch. 423, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89–554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

§ 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—