



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
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ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

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M-11-19

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Cass R. Sunstein  
Administrator

SUBJECT: Retrospective Analysis of Existing Significant Regulations

On January 18, 2011, the President issued Executive Order 13563, which requires retrospective review of significant rules: "Within 120 days of the date of this order [May 18], each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan...under which the agency will periodically review its existing significant regulations ...."

The purpose of this Memorandum is to offer guidance on the processes through which preliminary plans will become finalized. Agencies are encouraged, to the extent feasible, to take the following steps **after the initial 120-day period**:

- **Immediately after May 18.** Executive Order 13563 emphasizes the value of public participation in the rulemaking process. To promote public participation and transparency, agencies should make their preliminary plans available to the public within a reasonable period (not to exceed two weeks) after May 18.<sup>1</sup> For example, agencies may wish to publish their plans online on the agency's Open Government Webpage ([www.agency.gov/open](http://www.agency.gov/open)). Publication of plans should be in an open format that enables the public to download, analyze, and visualize any information and data.<sup>2</sup>
- **Days 1 through 30 after releasing preliminary plans.** Because members of the public are likely to have useful information and perspectives, agencies should promote public consultation about the plans. Agencies are encouraged to use the first thirty days after releasing their plans to engage in such public consultation. Consultation may take the

<sup>1</sup> See Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, M-11-10, "Executive Order 13563, 'Improving Regulation and Regulatory Review'" (February 2, 2011) ("Agencies are encouraged to consider providing a period of public comment after drafts of preliminary plans are written and/or after such plans have been submitted to OIRA.")

<sup>2</sup> See Memorandum for the Heads of Executive Departments and Agencies, M-10-06, Open Government Directive (Dec. 8, 2009) (requiring each agency to create an "/open" webpage), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

form of public meetings, *Federal Register* notices, social media, or other kinds of outreach to the public.<sup>3</sup> To ensure that diverse views are considered, agencies are particularly encouraged to reach out to stakeholders with an interest in the initial list of rules in the preliminary plans. The list of rules for review should be reconsidered during the period between the preliminary and final plans.

- **Days 31 through 60 after releasing preliminary plans.** After receiving public input, agencies are encouraged to revise their plans in ways that are responsive to the public input received.
- **Days 61 through 80 after releasing preliminary plans.** Agencies are encouraged to finalize their plans no later than 80 days after releasing their preliminary plans. Agencies are encouraged to make these final plans available to the public and, again, may wish to publish their plans online on the agency’s Open Government Webpage ([www.agency.gov/open](http://www.agency.gov/open)).
- **Future retrospective reviews.** With its emphasis on “periodic review of existing significant regulations,” Executive Order 13563 recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. To promote that culture, future regulations should be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses. To the extent consistent with law, agencies should give careful consideration to how best to promote empirical testing of the effects of rules both in advance and retrospectively.<sup>4</sup> Plans should also be periodically reviewed and updated.

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<sup>3</sup> Consistent with the Paperwork Reduction Act (PRA), agencies may consider general efforts to obtain public feedback, including town hall meetings and online equivalents, to be exempt from PRA requirements. For further explanation of the scope of the Paperwork Reduction Act, please see Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Information Collection under the Paperwork Reduction Act (April 7, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf) and Office of Information and Regulatory Affairs, Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act (April 7, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf).

<sup>4</sup> An emerging literature explores potential methods of evaluation, including randomized trials and quasi-experimental methods. See Michael Greenstone, “Toward a Culture of Persistent Regulatory Experimentation and Evaluation,” in *New Perspectives on Regulation*, David Moss and John Cisternino (Eds.). Cambridge, MA: The Tobin Project, Inc., 2009.