

Sen. Tester

Please outline the mission of the permit streamlining task force led by the Council for Environmental Quality and OMB's Office of Performance and Personnel Management, including an indication of when its recommendations will be released.

As the OIRA Administrator, I do not have primary responsibility for working on permitting issues. That said, I look forward to working with the appropriate CEQ and OMB offices where there is a nexus between regulations and the efforts to improve the effectiveness and efficiency of the Federal permitting and review processes. I am aware that the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee) facilitates improvements in Federal permitting and review processes for infrastructure projects, including identifying a set of best practices for efficient review and permitting. Last month the Administration identified modernizing infrastructure permitting as one of its 15 Cross-Agency Priority Goals, which are designed to support coordination on priority areas which cut across multiple agencies and programs. As a Cross-Agency Priority Goal, the Administration will regularly report progress on this effort through Performance.gov.

Sen. Tester

What are the legal and/or practical obstacles to publicly posting summaries of discussions conducted between OIRA and outside parties, in addition to names of parties and printed documents?

During conversations with outside parties, OIRA remains in listening mode, so the only information relayed comes from the outside parties themselves. Outside parties can bring printed documents to the meetings, which are then posted online for the public to see. Those written materials often contain a good summary of the subject and content of the meeting. As a practical matter, the need to summarize, fact check, and gain approval of such notes would delay the posting of notice to the public that the meeting took place.

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What are the legal and/or practical obstacles to adjusting the \$100 million standard for “economically significant” rules to current dollars, or roughly \$500 million?

While there are no legal hurdles to making such an adjustment, this would require a change to the Executive Order governing regulatory review. Any such changes would need to be discussed and vetted with the regulatory agencies. Another practical consideration is that such a change would make the monetary definition of an “economically significant” rule under the Executive Orders different from the definition of “major” under the Congressional Review Act (CRA). Agencies must report to Congress on their analysis conducted for all major rules under the CRA. Also, Executive Order 12866 still requires agencies to assess the potential costs and benefits of regulatory actions, even if they are not designated as “economically significant.”

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Executive order directs disclosure of all “substantive” changes to a rule during the review process, which includes the informal review process. What are the legal and/or practical obstacles to identifying substantive changes between submitted and final rules to the public, whether through “redlining” or some other format?

Changes to a rule during OIRA’s interagency review process, whether changes made by OIRA, the drafting agency, or anyone else in the Federal government, can be seen after the rule is published by comparing the published version to the draft that was submitted to OIRA for review.

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To what extent does OIRA coordinate with the Small Business Administration's Office of Advocacy to ensure regulations take the challenges faced by small businesses into account? Are there additional opportunities in these areas to help lighten the regulatory burden on small businesses? How can Congress be a partner in this effort?

The Small Business Administration Office of Advocacy regularly gives comments on rules that are under review and is a valuable partner in helping to consider ways to reduce regulatory burdens on small businesses. Small businesses are critical to our economic growth and job creation and this Administration is committed to eliminating excessive or unjustified burdens on small businesses. President Obama issued a Memorandum the same day he issued EO 13563 in which he directed Federal agencies to consider ways to reduce regulatory burdens on small businesses and provide justifications when such flexibilities are not included in proposed regulations. There are many ways that agencies implement this memorandum, including providing exemptions for small businesses or phasing in requirements for small businesses. The Administration has also launched a government-wide review of regulations on the books – a “regulatory look-back” -- to streamline, modify, or repeal regulations and reduce unnecessary burdens and costs, with particular attention to rules that impact small businesses.

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To what extent does OIRA disclose the justification for breaking the 90-day review deadline for a particular rule? What level of disclosure is currently required by law?

The 90-day review period is not a legal deadline, but is instead a normative period set out in Executive Order 12866. Executive Order 12866 explicitly contemplates that this review period can be extended. The length of the review depends substantially on the rule under review—for example, its level of complexity or the number of agencies with substantial equities in the rulemaking. I am committed to ensuring that OIRA reviews rules as expediently as possible, consistent with maintaining the level of careful analytical rigor required by the Executive Order.

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Does OIRA dictate when agencies can submit rules for formal review? To what extent does OIRA engage with agencies before the 90-day “clock” starts ticking?

Agencies often have discussions with OIRA about the regulations they are considering sending to OIRA for interagency review. In order to ensure that OIRA, other offices within the Executive Office of the President, and other interested Federal agencies have sufficient time and resources to properly review a rule, we do also sometimes discuss with agencies the sequencing of the submission of their various rulemakings.