

105TH CONGRESS  
2D SESSION

# H. R. 4863

To ensure the incorporation of risk assessment and cost benefit analysis  
in the rulemaking process.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1998

Mr. CONDIT (for himself and Mr. JOHN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To ensure the incorporation of risk assessment and cost  
benefit analysis in the rulemaking process.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Government Regu-  
5 latory Improvement and Performance Act of 1998”.

6 **SEC. 2. STATEMENT OF REGULATORY PHILOSOPHY AND**  
7 **PRINCIPLES.**

8 (a) **THE REGULATORY PHILOSOPHY.**—Federal agen-  
9 cies (in this Act referred to as “agencies”) should promul-

1 gate only such regulations as are required by law, are nec-  
2 essary to interpret the law, or are necessary to protect  
3 and promote or improve the health and safety of the pub-  
4 lic, the environment, or the well-being of the American  
5 people. In deciding whether and how to regulate, agencies  
6 should assess all costs and benefits of available regulatory  
7 alternatives, including the alternative of not regulating.  
8 Costs and benefits shall be understood to include both  
9 quantifiable measures (to the fullest extent that these can  
10 be usefully estimated) and qualitative measures of costs  
11 and benefits that are difficult to quantify, but nevertheless  
12 essential to consider. Further, in choosing among alter-  
13 native regulatory approaches, agencies should select those  
14 approaches that maximize net benefits (including potential  
15 economic, environmental, public health and safety, and  
16 other advantages, distributive impacts, and equity), unless  
17 a statute requires another regulatory approach.

18 (b) THE PRINCIPLES OF REGULATION.—To ensure  
19 that the agencies' regulatory programs are consistent with  
20 the philosophy set out in subsection (a), agencies shall ad-  
21 here to the following principles in promulgating any regu-  
22 lation, to the extent permitted by law and where applica-  
23 ble:

24 (1) Each agency shall identify the problem that  
25 it intends to address by the regulation (including,

1 where applicable, the failures of private markets or  
2 public institutions that warrant new agency action),  
3 assess the significance of that problem, and if pos-  
4 sible conduct a risk analysis regarding the regula-  
5 tion.

6 (2) Each agency shall examine whether existing  
7 regulations (or other law) have created, or contrib-  
8 uted to, the problem that a new regulation is in-  
9 tended to correct and whether those regulations (or  
10 other law) should be modified to achieve the in-  
11 tended goal of regulation more effectively.

12 (3) Each agency shall identify and assess avail-  
13 able alternatives to direct regulation, including pro-  
14 viding economic incentives to encourage the desired  
15 behavior, such as user fees or marketable permits or  
16 providing information upon which choices can be  
17 made by the public.

18 (4) In setting regulatory priorities, each agency  
19 shall consider, to the extent permitted by law, the  
20 degree and nature of the risks posed by various sub-  
21 stances or activities within its jurisdiction.

22 (5) When an agency determines that a regula-  
23 tion is necessary, it shall design its regulations in  
24 the most cost-effective manner to achieve the regu-  
25 latory objective. In doing so, each agency shall con-

1       sider incentives for innovation, consistency, predict-  
2       ability, the costs of enforcement and compliance (to  
3       the government, regulated entities, and the public),  
4       flexibility, distributive impacts, and equity.

5               (6) Each agency shall assess both the costs and  
6       the benefits of the intended regulation and, recogniz-  
7       ing that some costs and benefits are difficult to  
8       quantify, propose or adopt a regulation only upon a  
9       reasoned determination that the benefits of the in-  
10      tended regulation justify its costs.

11              (7) Each agency shall base its decisions on the  
12      best reasonably obtainable scientific, technical, eco-  
13      nomic, and other information concerning the need  
14      for, and consequences of, the intended regulation.

15              (8) Each agency shall identify and assess alter-  
16      native forms of regulation and shall, to the extent  
17      feasible, specify performance objectives, rather than  
18      specifying the behavior or manner of compliance  
19      that regulated entities must adopt.

20              (9) Wherever feasible, agencies shall seek views  
21      of appropriate State, local, and tribal officials before  
22      imposing regulatory requirements that might signifi-  
23      cantly or uniquely affect those governmental entities.  
24      Each agency shall assess the effects of Federal regu-  
25      lations on State, local, and tribal governments, in-

1 cluding specifically the availability of resources to  
2 carry out those mandates, and seek to minimize  
3 those burdens that uniquely or significantly affect  
4 such governmental entities, consistent with achieving  
5 regulatory objectives. In addition, as appropriate,  
6 agencies shall seek to harmonize Federal regulatory  
7 actions with related State, local, and tribal regu-  
8 latory and other governmental functions.

9 (10) Each agency shall avoid regulations that  
10 are inconsistent, incompatible, or duplicative with its  
11 other regulations or those of other Federal agencies.

12 (11) Each agency shall tailor its regulations to  
13 impose the least burden on society, including individ-  
14 uals, businesses of differing sizes, and other entities  
15 (including small communities and governmental enti-  
16 ties), consistent with obtaining the regulatory objec-  
17 tives, taking into account, among other things, and  
18 to the extent practicable, the costs of cumulative  
19 regulations.

20 (12) Each agency shall draft its regulations to  
21 be simple and easy to understand, with the goal of  
22 minimizing the potential for uncertainty and litiga-  
23 tion arising from such uncertainty.

1 **SEC. 3. ORGANIZATION.**

2 (a) **THE AGENCIES.**—Because Federal agencies are  
3 the repositories of significant substantive expertise and ex-  
4 perience, they are responsible for developing regulations  
5 and assuring that the regulations are consistent with ap-  
6 plicable law, the President’s priorities, and the principles  
7 set forth in this Act.

8 (b) **THE OFFICE OF MANAGEMENT AND BUDGET.**—  
9 Coordinated review of agency rulemaking is necessary to  
10 ensure that regulations are consistent with applicable law,  
11 the President’s priorities, and the principles set forth in  
12 this Act, and that decisions made by one agency do not  
13 conflict with the policies or actions taken or planned by  
14 another agency. The Office of Management and Budget  
15 (in this Act referred to as “OMB”) shall carry out that  
16 review function. Within OMB, the Office of Information  
17 and Regulatory Affairs (in this Act referred as as  
18 “OIRA”) is the repository of expertise concerning regu-  
19 latory issues, including methodologies and procedures that  
20 affect more than one agency, this Act, and the President’s  
21 regulatory policies. To the extent permitted by law, OMB  
22 shall provide guidance to agencies and assist the Presi-  
23 dent, the Administrator of OIRA, and other regulatory  
24 policy advisers to the President in regulatory planning and  
25 shall be the entity that reviews individual regulations, as  
26 provided by this Act.

1           (c) THE ADMINISTRATOR OF OIRA.—The Adminis-  
2 trator of OIRA shall coordinate the development and pres-  
3 entation of recommendations concerning, regulatory pol-  
4 icy, planning, and review, as set forth in this Act. In ful-  
5 filling their responsibilities under this Act, the President  
6 and the Administrator of OIRA shall be assisted by the  
7 regulatory policy advisers within the Executive Office of  
8 the President and by such agency officials and personnel  
9 as the President and the Administrator of OIRA may,  
10 from time to time, consult.

11 **SEC. 4. PLANNING MECHANISM.**

12           (a) AGENCIES' POLICY MEETING.—Early in each  
13 year's planning cycle, the Administrator of OIRA shall  
14 convene a meeting of the Advisers and the heads of agen-  
15 cies to seek a common understanding of priorities and to  
16 coordinate regulatory efforts to be accomplished in the up-  
17 coming year.

18           (b) UNIFIED REGULATORY AGENDA.— Each agency  
19 shall prepare an agenda of all regulations under develop-  
20 ment or review, at a time and in a manner specified by  
21 the Administrator of OIRA. The description of each regu-  
22 latory action shall contain, at a minimum, a regulation  
23 identifier number, a brief summary of the action, the legal  
24 authority for the action, any legal deadline for the action,  
25 and the name and telephone number of a knowledgeable

1 agency official. Agencies may incorporate the information  
2 required under section 602 of title 5, United States Code,  
3 into these agendas.

4 (c) THE REGULATORY PLAN.—

5 (1) As part of the Unified Regulatory Agenda,  
6 beginning in 1994, each agency shall prepare a Reg-  
7 ulatory Plan (in this Act referred to as a “Plan”)  
8 of the most important significant regulatory actions  
9 that the agency reasonably expects to issue in pro-  
10 posed or final form in that fiscal year or thereafter.  
11 The Plan shall be approved personally by the agency  
12 head and shall contain at a minimum—

13 (A) a statement of the agency’s regulatory  
14 objectives and priorities and how they relate to  
15 the philosophy and principles set forth in sec-  
16 tions 2(a) and 2(b), respectively;

17 (B) a summary of each planned significant  
18 regulatory action including, to the extent pos-  
19 sible, alternatives to be considered and prelimi-  
20 nary estimates of the anticipated costs and ben-  
21 efits;

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

1 (D) a statement of the need for each such  
2 action and, if applicable, how the action will re-  
3 duce risks to public health, safety, or the envi-  
4 ronment, as well as how the magnitude of the  
5 risk addressed by the action relates to other  
6 risks within the jurisdiction of the agency;

7 (E) the agency's schedule for action, in-  
8 cluding a statement of any applicable statutory  
9 or judicial deadlines; and

10 (F) the name, address, and telephone num-  
11 ber of a person the public may contact for addi-  
12 tional information about the planned regulatory  
13 action.

14 (3) The Plans developed by the issuing agency  
15 shall be published annually in the October publica-  
16 tion of the Unified Regulatory Agenda. This publica-  
17 tion shall be made available to the Congress; State,  
18 local, and tribal governments; and the public. Any  
19 views on any aspect of any agency Plan, including  
20 whether any planned regulatory action might conflict  
21 with any other planned or existing regulation, im-  
22 pose any unintended consequences on the public, or  
23 confer any unclaimed benefits on the public, should  
24 be directed to the issuing agency, with a copy to  
25 OIRA.

1 (d) REGULATORY WORKING GROUP.—Within 30  
2 days after the date of the enactment of this Act, the Ad-  
3 ministrator of OIRA shall convene a Regulatory Working  
4 Group (“Working Group”), which shall consist of rep-  
5 resentatives of the heads of each agency that the Adminis-  
6 trator determines to have significant domestic regulatory  
7 responsibility and the Advisers. The Administrator of  
8 OIRA shall chair the Working Group and shall periodically  
9 advise the President and the Congress on the activities  
10 of the Working Group. The Working Group shall serve  
11 as a forum to assist agencies in identifying and analyzing  
12 important regulatory issues (including, among others (1)  
13 the development of innovative regulatory techniques, (2)  
14 the methods, efficacy, and utility of comparative risk as-  
15 sessment in regulatory decision-making, and (3) the devel-  
16 opment of short forms and other streamlined regulatory  
17 approaches for small businesses and other entities). The  
18 Working Group shall meet at least quarterly and may  
19 meet as a whole or in subgroups of agencies with an inter-  
20 est in particular issues or subject areas. To inform its dis-  
21 cussions, the Working Group may commission analytical  
22 studies and reports by OIRA, the Administrative Con-  
23 ference of the United States, or any other agency.

24 (e) CONFERENCES.—The Administrator of OIRA and  
25 the heads of agencies shall meet quarterly with representa-

1 tives of State, local, and tribal governments to identify  
2 both existing and proposed regulations that may uniquely  
3 or significantly affect those governmental entities. The  
4 Administrator of OIRA shall also convene, periodically  
5 conferences with representatives of businesses, nongovern-  
6 mental organizations, and the public to discuss regulatory  
7 issues of common concern.

8 (f) DEFINITION.—For purposes of this section, the  
9 term “agency” includes independent regulatory agencies,  
10 as defined in section 3502(10) of title 44 United States  
11 Code.

12 **SEC. 5. EXISTING REGULATIONS.**

13 (a) OBJECTIVES.—The objectives of this section are  
14 to reduce the regulatory burden on the American people,  
15 their families, their communities, their State, local, and  
16 tribal governments, and their industries, to determine  
17 whether regulations promulgated by the executive branch  
18 of the Federal Government have become unjustified or un-  
19 necessary as a result of changed circumstances, to confirm  
20 that regulations are both compatible with each other and  
21 not duplicative or inappropriately burdensome in the ag-  
22 gregate, to ensure that all regulations are consistent with  
23 the President’s priorities and the principles set forth in  
24 this Act, within applicable law, and to otherwise improve  
25 the effectiveness of existing regulations.

1           (b) PROGRAM FOR REVIEW.—Within 90 days after  
2 the date of the enactment of this Act, each agency shall  
3 submit to OIRA a program, consistent with its resources  
4 and regulatory priorities, under which the agency will peri-  
5 odically review its existing significant regulations to deter-  
6 mine whether any such regulations should be modified or  
7 eliminated so as to make the agency’s regulatory program  
8 more effective in achieving the regulatory objectives, less  
9 burdensome, or in greater alignment with the President’s  
10 priorities and the principles set forth in this Act. Any sig-  
11 nificant regulations selected for review shall be included  
12 in the agency’s annual Plan. The agency shall also identify  
13 any legislative mandates that require the agency to pro-  
14 mulgate or continue to impose regulations that the agency  
15 believes are unnecessary or outdated by reason of changed  
16 circumstances.

17           (c) FUNCTION OF ADMINISTRATOR OF OIRA.—The  
18 Administrator of OIRA shall work with the Regulatory  
19 Working Group and other interested entities to pursue the  
20 objectives of this section. State, local, and tribal govern-  
21 ments are specifically encouraged to assist in the identi-  
22 fication of regulations that impose significant or unique  
23 burdens on those governmental entities, and that result  
24 in the compliance costs that are not funded by the Federal

1 Government, appear to have outlived their justification, or  
2 are otherwise inconsistent with the public interest.

3 (d) OTHER REGULATIONS FOR REVIEW.—The Ad-  
4 ministrator of OIRA, in consultation with the Advisers,  
5 may identify for review by the appropriate agency or agen-  
6 cies other existing regulations of an agency or groups of  
7 regulations of more than one agency that affect a particu-  
8 lar group, industry, or sector of the economy, or may iden-  
9 tify legislative mandates that may be appropriate for re-  
10 consideration by the Congress.

11 **SEC. 6. CENTRALIZED REVIEW OF REGULATIONS.**

12 (a) APPLICATION.—The requirements set forth in  
13 this section shall apply to all regulatory actions (including  
14 both new and existing regulations) by agencies other than  
15 those agencies specifically exempted by the Administrator  
16 of OIRA.

17 (b) AGENCY RESPONSIBILITIES.—

18 (1) Each agency shall (consistent with its own  
19 rules, regulations, or procedures) provide the public  
20 with meaningful participation in the regulatory proc-  
21 ess. In particular, before issuing a notice of pro-  
22 posed rulemaking, each agency should, where appro-  
23 priate, seek the involvement of those who are in-  
24 tended to benefit from and those expected to be bur-  
25 dened by any regulation (including, specifically,

1 State, local, and tribal officials). In addition, each  
2 agency should afford the public a meaningful oppor-  
3 tunity to comment on any proposed regulation,  
4 which in most cases should include a comment pe-  
5 riod of not less than 60 days. Each agency also is  
6 directed to explore and, where appropriate, use con-  
7 sensual mechanisms for developing regulations, in-  
8 cluding negotiated rulemaking.

9 (2) Within 60 days of the date of the enactment  
10 of this Act, each agency head shall designate a Reg-  
11 ulatory Policy Officer who shall report to the agency  
12 head. The Regulatory Policy Officer shall be involved  
13 at each stage of the regulatory process to foster the  
14 development of effective, innovative, and least bur-  
15 densome regulations and to further the principles set  
16 forth in this Act.

17 (3) In addition to adhering to its own rules and  
18 procedures and to the requirements of chapters 5, 6,  
19 and 7 of title 5, United States Code, the Paperwork  
20 Reduction Act of 1980, and other applicable law,  
21 each agency shall develop its regulatory actions in a  
22 timely fashion and adhere to the following proce-  
23 dures with respect to a regulatory action:

24 (A) Each agency shall provide OIRA, at  
25 such times and in the manner specified by the

1 Administrator of OIRA, with a list of its  
2 planned regulatory actions, indicating those  
3 which the agency believes are significant regu-  
4 latory actions within the meaning of this Act.  
5 Absent a material change in the development of  
6 the planned regulatory action, those not des-  
7 ignated as significant will not be subject to re-  
8 view under this section unless, within 10 work-  
9 ing days of receipt of the list, the Administrator  
10 of OIRA notifies the agency that OIRA has de-  
11 termined that a planned regulation is a signifi-  
12 cant regulatory action within the meaning of  
13 this Act. The Administrator of OIRA may  
14 waive review of any planned regulatory action  
15 designated by the agency as significant, in  
16 which case the agency need not further comply  
17 with subparagraph (B) or (C).

18 (B) For each matter identified as, or de-  
19 termined by the Administrator of OIRA to be,  
20 a significant regulatory action, the issuing  
21 agency shall provide to OIRA—

22 (i) the text of the draft regulatory ac-  
23 tion, together with a reasonably detailed  
24 description of the need for the regulatory

1 action and an explanation of how the regu-  
2 latory action will meet that need; and

3 (ii) an assessment of the potential  
4 costs and benefits of the regulatory action,  
5 including an explanation of the manner in  
6 which the regulatory action is consistent  
7 with a statutory mandate and, to the ex-  
8 tent permitted by law, promotes the philos-  
9 ophy and principles set forth in sections  
10 2(a) and 2(b), respectively, and avoids  
11 undue interference with State, local, and  
12 tribal governments in the exercise of their  
13 governmental functions.

14 (C) For those actions identified as, or de-  
15 termined by the Administrator of OIRA to be,  
16 a significant regulatory action, the agency shall  
17 conduct an analysis that includes the following:

18 (i) An assessment, including the un-  
19 derlying analysis, of benefits anticipated  
20 from the regulatory action (including the  
21 promotion of the efficient functioning of  
22 the economy and private markets, the en-  
23 hancement of health and safety, the pro-  
24 tection of the natural environment, and the  
25 elimination or reduction of discrimination

1 or bias) together with, to the extent fea-  
2 sible, a quantification of those benefits.

3 (ii) An assessment, including the un-  
4 derlying analysis, of costs anticipated from  
5 the regulatory action (including the direct  
6 cost to the Federal Government and State  
7 and local governments in administering the  
8 regulation and to businesses and others in  
9 complying with the regulation, and any ad-  
10 verse effects on the efficient functioning of  
11 the economy, private markets (including  
12 productivity, employment, and competitive-  
13 ness), health, safety, and the natural envi-  
14 ronment), together with, to the extent fea-  
15 sible, a quantification of those costs.

16 (iii) An assessment, including the un-  
17 derlying analysis, comparing costs and  
18 benefits of potentially effective and reason-  
19 ably feasible alternatives to the planned  
20 regulation and to the extent feasible a  
21 quantitative comparison of costs and bene-  
22 fits (including improving the current regu-  
23 lation and reasonably viable nonregulatory  
24 actions), and an explanation why the

1           planned regulatory action is preferable to  
2           the identified potential alternatives.

3           (D) In emergency situations or when an  
4           agency is obligated by law to act more quickly  
5           than normal review procedures allow, the agen-  
6           cy shall notify OIRA as soon as possible and,  
7           to the extent practicable, comply with subpara-  
8           graphs (B) and (C). For those regulatory ac-  
9           tions that are governed by a statutory or court-  
10          imposed deadline, the agency shall, to the ex-  
11          tent practicable, schedule rulemaking proceed-  
12          ings so as to permit sufficient time for OIRA  
13          to conduct its review, as set forth in subsection  
14          (c)(2) through (4).

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

18                  (i) make available to the public the in-  
19                  formation set forth in subparagraphs (B)  
20                  and (C);

21                  (ii) identify for the public, in a com-  
22                  plete, clear, and simple manner, the sub-  
23                  stantive changes between the draft submit-  
24                  ted to OIRA for review and the action sub-  
25                  sequently announced; and

1 (iii) identify for the public those  
2 changes in the regulatory action that were  
3 made at the suggestion or recommendation  
4 of OIRA.

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

8 (c) OIRA RESPONSIBILITIES.—The Administrator of  
9 OIRA shall provide meaningful guidance and oversight so  
10 that each agency’s regulatory actions are consistent with  
11 applicable law and the philosophy and principles set forth  
12 in sections 2(a) and 2(b) and do not conflict with the poli-  
13 cies or actions of another agency. OIRA shall, to the ex-  
14 tent permitted by law, adhere to the following guidelines:

15 (1) OIRA may review only actions identified by  
16 the agency or by OIRA as significant regulatory ac-  
17 tions under subsection (b)(3)(A).

18 (2) OIRA shall waive review or notify the agen-  
19 cy in writing of the results of its review within the  
20 following time periods:

21 (A) For any notices of inquiry, advance no-  
22 tices of proposed rulemaking, or other prelimi-  
23 nary regulatory actions prior to a notice of pro-  
24 posed rulemaking, within 10 calendar days after

1 the date of submission of the draft action to  
2 OIRA.

3 (B) For all other regulatory actions, within  
4 90 calendar days after the date of submission  
5 of the information set forth in subparagraphs  
6 (B) and (C) of this section, except that if OIRA  
7 has previously reviewed this information and,  
8 since that review, there has been no material  
9 change in the facts and circumstances upon  
10 which the regulatory action is based, OIRA  
11 shall complete its review within 45 days after  
12 the date of submission of such information.

13 (C) The review process may be extended  
14 (i) once by no more than 30 calendar days upon  
15 the written approval of the Director, and (ii) at  
16 the request of the agency head.

17 (3) For each regulatory action that the Admin-  
18 istrator of OIRA returns to an agency for further  
19 consideration of some or all of its provisions, the Ad-  
20 ministrator of OIRA shall provide the issuing agency  
21 a written explanation for such return, setting forth  
22 the pertinent provision of this Act on which OIRA  
23 is relying. If the agency head disagrees with some or  
24 all of the bases for the return, the agency head shall  
25 so inform the Administrator of OIRA in writing.

1           (4) Except as otherwise provided by law or re-  
2           quired by a court, in order to ensure greater open-  
3           ness, accessibility, and accountability in the regu-  
4           latory review process, OIRA shall be governed by the  
5           following disclosure requirements:

6                   (A) All substantive communications be-  
7                   tween OIRA personnel and persons not em-  
8                   ployed by the executive branch of the Federal  
9                   Government regarding a regulatory action  
10                  under review shall be documented and governed  
11                  by the following requirements:

12                           (i) A representative from the issuing  
13                           agency shall be invited to any meeting be-  
14                           tween OIRA personnel and such persons.

15                           (ii) OIRA shall forward to the issuing  
16                           agency, within 10 working days of receipt  
17                           of the communications, all written commu-  
18                           nications, regardless of format, between  
19                           OIRA personnel and any person who is not  
20                           employed by the executive branch of the  
21                           Federal Government, and the dates and  
22                           names of individuals involved in all sub-  
23                           stantive oral communications (including  
24                           meetings to which an agency representative  
25                           was invited, but did not attend, and tele-

1 phone conversations between OIRA person-  
2 nel and any such persons).

3 (iii) OIRA shall publicly disclose rel-  
4 evant information about such communica-  
5 tions, as set forth in subparagraph (B).

6 (B) OIRA shall maintain a publicly avail-  
7 able log that shall contain, at a minimum, the  
8 following information pertinent to regulatory  
9 actions under review:

10 (i) The status of all regulatory ac-  
11 tions, including if (and if so, when and by  
12 whom) Vice Presidential and Presidential  
13 consideration was requested.

14 (ii) A notation of all written commu-  
15 nications forwarded to an issuing agency  
16 under subparagraph (A)(ii).

17 (iii) The dates and names of individ-  
18 uals involved in all substantive oral com-  
19 munications, including meetings and tele-  
20 phone conversations, between OIRA per-  
21 sonnel and any person not employed by the  
22 executive branch of the Federal Govern-  
23 ment, and the subject matter discussed  
24 during such communications.

1 (C) After the regulatory action has been  
2 published in the Federal Register or otherwise  
3 issued to the public, or after the agency has an-  
4 nounced its decision not to publish or issue the  
5 regulatory action, OIRA shall make available to  
6 the public all documents exchanged between  
7 OIRA and the agency during the review by  
8 OIRA under this section.

9 (5) All information provided to the public by  
10 OIRA shall be in plain, understandable language.

11 **SEC. 7. RESOLUTION OF CONFLICTS.**

12 To the extent permitted by law, disagreements or  
13 conflicts between or among agency heads or between OMB  
14 and any agency that cannot be resolved by the Adminis-  
15 trator of OIRA shall be resolved by the President or a  
16 designee of the President.

17 **SEC. 8. PUBLICATION.**

18 Except to the extent required by law, an agency shall  
19 not publish in the Federal Register or otherwise issue to  
20 the public any regulatory action that is subject to review  
21 under section 6 until—

22 (1) the Administrator of OIRA notifies the  
23 agency that OIRA has waived its review of the ac-  
24 tion or has completed its review without any re-  
25 quests for further consideration, or

1           (2) the applicable time period in section 6(b)(2)  
2           expires without OIRA having notified the agency  
3           that it is returning the regulatory action for further  
4           consideration under section 6(b)(3),  
5           whichever occurs first. If the terms of the preceding sen-  
6           tence have not been satisfied and an agency wants to pub-  
7           lish or otherwise issue a regulatory action, the head of that  
8           agency may request Presidential consideration through the  
9           Administrator of OIRA, as provided under section 8. Upon  
10          receipt of this request, the Administrator of OIRA shall  
11          notify the Advisers. The guidelines and time period set  
12          forth in section 8 shall apply to the publication of regu-  
13          latory actions for which Presidential consideration has  
14          been sought.

15          **SEC. 9. AGENCY AUTHORITY.**

16          Nothing in this Act shall be construed as displacing  
17          the agencies' authority or responsibilities, as authorized  
18          by law.

19          **SEC. 10. JUDICIAL REVIEW.**

20          Nothing in this Act shall affect any otherwise avail-  
21          able judicial review of agency action. This Act is intended  
22          only to improve the internal management of the Federal  
23          Government and does not create any right or benefit, sub-  
24          stantive or procedural, enforceable at law or equity by a

1 party against the United States, its agencies or instrumen-  
2 talities, its officers or employees, or any other person.

3 **SEC. 11. DEFINITIONS.**

4 For purposes of this Act:

5 (1) The term “Advisers” refers to such regu-  
6 latory policy advisers to the President as the Presi-  
7 dent and the Administrator of OIRA may from time  
8 to time consult, including, among others—

9 (A) the Director of OMB;

10 (B) the Chair (or another member) of the  
11 Council of Economic Advisers;

12 (C) the Assistant to the President for Eco-  
13 nomic Policy;

14 (D) the Assistant to the President for Do-  
15 mestic Policy;

16 (E) the Assistant to the President for Na-  
17 tional Security Affairs;

18 (F) the Assistant to the President for  
19 Science and Technology;

20 (G) the Assistant to the President for  
21 Intergovernmental Affairs;

22 (H) the Assistant to the President and  
23 Staff Secretary;

24 (I) the Assistant to the President and  
25 Chief of Staff to the Administrator of OIRA;

1           (J) the Assistant to the President and  
2           Counsel to the President; and

3           (K) the Deputy Assistant to the President  
4           and Director of the White House Office on En-  
5           vironmental Policy.

6           (2) Except as provided in section 4(f), the term  
7           “agency” means any authority of the United States  
8           that is an “agency” under section 3502(1) of title  
9           44, United States Code, other than those considered  
10          to be independent regulatory agencies, as defined in  
11          section 3502(10) of title 44, United States Code.

12          (3) The term “Director” means the Director of  
13          OMB.

14          (4) The term “regulation” or “rule” means an  
15          agency statement of general applicability and future  
16          effect, which the agency intends to have the force  
17          and effect of law, that is designed to implement, in-  
18          terpret, or prescribe law or policy or to describe the  
19          procedure or practice requirements of an agency. It  
20          does not, however, include—

21                 (A) regulations or rules issued in accord-  
22                 ance with the formal rulemaking provisions of  
23                 sections 556 and 557 of title 5, United States  
24                 Code;

1 (B) regulations or rules that pertain to a  
2 military or foreign affairs function of the  
3 United States, other than procurement regula-  
4 tions and regulations involving the import or  
5 export of non-defense articles and services;

6 (C) regulations or rules that are limited to  
7 agency organization, management, or personnel  
8 matters; or

9 (D) any other category of regulations ex-  
10 empted by the Administrator of OIRA.

11 (5) The term “regulatory action” means any  
12 substantive action by an agency (normally published  
13 in the Federal Register) that promulgates or is ex-  
14 pected to lead to the promulgation of a final rule or  
15 regulation, including notices of inquiry, advance no-  
16 tices of proposed rulemaking, and notices of pro-  
17 posed rulemaking.

18 (6) The term “significant regulatory action”  
19 means any regulatory action that is likely to result  
20 in a rule that may—

21 (A) have an annual effect on the economy  
22 of \$100 million or more or adversely affect in  
23 a material way the economy, a sector of the  
24 economy, productivity, competition, jobs, the

1 environment, public health or safety, or State,  
2 local, or tribal governments or communities;

3 (B) create a serious inconsistency or other-  
4 wise interfere with an action taken or planned  
5 by another agency;

6 (C) materially alter the budgetary impact  
7 of entitlements, grants, user fees, or loan pro-  
8 grams or the rights and obligations of recipi-  
9 ents thereof; or

10 (D) raise novel legal or policy issues aris-  
11 ing out of legal mandates, the President's prior-  
12 ities, or the principles set forth in this Act.

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