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ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

M-11-25

June 14, 2011

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Cass R. Sunstein *CAS*
Administrator

SUBJECT: Final Plans for Retrospective Analysis of Existing Rules

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, 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."

On April 25, 2011, the Office of Information and Regulatory Affairs established guidance on the processes through which preliminary plans will become finalized.¹ The guidance encouraged agencies to "make their preliminary plans available to the public within a reasonable period (not to exceed two weeks) after May 18." It also encouraged agencies to seek public comments during the thirty-day period after releasing their plans; to revise their plans after receiving such comments; and to finalize their plans within eighty days after releasing them to the public. As of May 26, 2011, numerous preliminary plans are now complete and available to the public.²

The purpose of this Memorandum is to offer additional guidance on finalizing the preliminary plans. As agencies were encouraged to make their preliminary plans available to the public no later than June 1 (two weeks after May 18), plans should be finalized, and released to the public, on or about August 22. In order to allow for a brief period of interagency comment, drafts of final plans should be submitted to the Office of Information and Regulatory Affairs by August 1. Consistent with the general goals of Executive Order 13563, agencies are particularly encouraged to identify, in their final plans, specific reforms and initiatives that will significantly reduce existing regulatory burdens and promote economic growth and job creation. To the

¹ See Memorandum for the Heads of Executive Departments and Agencies, "Retrospective Analysis of Existing Significant Regulations," M-11-19, available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-19.pdf>.

² See "Regulation Reform," available at <http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system>. Many agencies will also publish their plans online on the agency's Open Government Webpages (www.agency.gov/open).

extent feasible, agencies should attempt to quantify burden and cost reductions. Also to the extent feasible, agencies should provide specific timelines and deadlines for implementation, particularly for high-priority reforms that promise significant savings in terms of costs.

The release of final plans should be seen as one step in a continuing process. Executive Order 13563 calls for the “periodic review of existing significant regulations” and emphasizes the need to “protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” It states that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.” To that end, it recognizes the importance of continuing scrutiny of the effects of regulations.

To promote that goal, plans should be periodically reviewed and updated. Moreover, future regulations should be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses and measurement of “actual results.” To the extent permitted by law, agencies should therefore give careful consideration to how best to promote empirical testing of the effects of rules both in advance and retrospectively.³

³ There are many 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.