

## NEW PRESIDENTIAL EXECUTIVE ORDER PROPOSES CHANGES TO ADMINISTRATIVE AGENCIES' REGULATORY REVIEW PROCESS



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By: Regulated Products Section Chair [Richard Blau](#)

President Joe Biden issued a [directive](#) to modernize regulatory review on the first day of his presidency. Today, the President has issued a new Executive Order, [Modernizing Regulatory Review](#). The Office of Information and Regulatory Affairs (OIRA) has released its proposed revisions to OMB Circular [No. A-4: Regulatory Analysis](#) and the [preamble](#) to the proposed Circular.

The President's Executive Order takes important steps to improve the effectiveness of the regulatory review process:

1. It raises the monetary threshold for which rules require more rigorous benefit-cost analyses, allowing OIRA and agencies to better prioritize their analytic resources.
2. It helps bring new voices into the regulatory process by enhancing public participation.
3. It reaffirms the principles of E.O. 12866 and E.O. 13563, including their direction that agencies should recognize distributive impacts and equity as relevant considerations when analyzing the benefits and costs of regulations.

Circular A-4, which guides agencies on how to conduct regulatory analysis, has not been revised since it was first issued in 2003. The proposed revisions to the Circular reflect new developments in economic and other scientific understanding. To that end, the proposed revisions address a range of issues, including:

- **DISCOUNT RATES:** Revisions to material on discounting help ensure that agencies properly value future benefits and costs and better account for the relationship of capital and risk to discounting;
- **DISTRIBUTIONAL ANALYSIS:** New material on distributional analysis will help facilitate efforts by agencies that are seeking to account for the effects of regulations on different groups; and

- **ACCOUNTING FOR UNCERTAINTY:** New material on uncertainty, such as moving away from a default assumption of risk neutrality, will help agencies to capture the value of regulations that reduce risk more accurately.

OIRA will be taking public comment on the proposed revisions, which will also undergo peer review. In addition, OIRA is releasing two guidance documents: (i) FAQs to assist agencies in implementing the E.O. and (ii) proposed guidance on how OIRA will implement the provisions of the E.O. that address its meetings with the public during regulatory review. Again, OIRA will be taking public comment on this latter document before finalizing it.

Almost every stream of commerce in America is subject to some sort of federal agency oversight. This is especially true of heavily regulated products such as pharmaceuticals, foods, beverages (including alcohol), tobacco and non-tobacco products, firearms and explosives, and cannabis. For Administrative Lawyers, these new proposals are a pretty big deal.

To learn more or to offer public comment, access the [Federal Register's webpage](#) for Request for Comments on Proposed OMB Circular No. A-4, "Regulatory Analysis."

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