EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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MEMORANDUM FOR: REGULATORY POLICY OFFICERS AT DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF COMMISSIONS AND BOARDS

FROM: Jeffrey Bossert Clark, Sr., Acting Administrator
Office of Information and Regulatory Affairs

SUBJECT: Streamlining the Review of Deregulatory Actions

Purpose

President Trump has prioritized, through many bold Executive Orders and presidential memoranda, the timely and efficient execution of his deregulatory agenda. Chief among these is Executive Order 14192, *Unleashing Prosperity Through Deregulation* (Feb. 6, 2025), which requires that for every one new regulation issued, at least ten existing regulations must be repealed. Further, Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative* (Feb. 19, 2025), seeks to restore the constitutional separation of powers by ensuring regulations are squarely authorized by federal statutes, ending federal bureaucratic overreach.

As established by the Presidential Memorandum *Directing the Repeal of Unlawful Regulations* (April 9, 2025) ("April 9 Memo"), President Trump has ordered agencies to aggressively and quickly withdraw regulations that are facially unlawful in light of recent Supreme Court precedent, and agencies should redouble their efforts in this area, as set out in greater detail in Section II below. In other cases, however, deregulation will involve the development of a record, including reasoned decision making, potential consideration of tradeoffs and alternatives, and the forms of public participation required by the Administrative Procedure Act (APA) or agency organic statutes.

The goal of this Memorandum is to offer guidance to the agencies as to how to bolster, streamline, and speed ***both*** **(1)** the deregulation of facially unlawful prior government regulations ***and*** **(2)** those types of deregulatory activity that will continue to require the development of more extensive agency record-building. Additionally, this Memorandum establishes new presumptive timelines and guidelines for review by the Office of Information and Regulatory Affairs (OIRA) to make OIRA your partner in the deregulation agenda.

I. GENERAL PROVISIONS DESIGNED TO SPEED AND STREAMLINE OIRA REVIEW

A. Counteracting the Ossification of Rulemaking by Speeding up the OIRA Review Period

Administrative law is highly complex. One area of administrative law scholarship relevant to deregulation is known as "ossification" — the idea that rulemaking is overly burdened with too many procedural requirements.[1] It is imperative for the Administration to recognize and be prepared to minimize the significant costs associated with the ossification of the regulatory process, which slows down agency action and ultimately places significant burdens on this Administration's agenda.

The sometimes rigid and burdensome procedural requirements characteristic of the rulemaking process can result in significant procedural delay, ultimately disincentivizing agency action. OIRA is well aware of this issue, and is committed to streamlining this process to pave the way for deregulation.

While OIRA may still need to take more time for technically complex or highly impactful reviews that deregulate entire sectors of the economy or for rulemakings that can be expected to generate significant litigation, **OIRA is imposing a presumptive maximum 28-day OIRA review period for deregulatory actions that are executed with factual records (see part III infra) and a presumptive maximum 14-day OIRA review period for facially unlawful rules (see part II infra).**[2]

As always, OIRA reminds agencies that submitting complete regulatory packages facilitates the timely interagency review of any form of regulatory action, including the analysis and discussion adhering to both the principles of this Memorandum, as well as the principles of EO 12866. By contrast, incomplete submissions will frustrate moving

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[1] *See, e.g.*, Richard J. Pierce, Jr., *Rulemaking Ossification Is Real: A Response to "Testing the Ossification Hypothesis,"* 80 GEO. WASH. L. REV. 1493, 1498 (2012) ("Every study of economically significant rulemakings has found strong evidence of ossification — a decisionmaking process that takes many years to complete and that requires an agency to commit a high proportion of its scarce resources to a single task."); Aaron L. Nielson, *Optimal Ossification*, 86 GEO. WASH. L. REV. 1209, 1209 (2018) ("One of the dirtiest words in administrative law is 'ossification' — the term used for the notion that procedural requirements force agencies to take too long to promulgate rules …."). The flip-side of the problem of ossified regulation (*i.e.*, the process burdens placed on ***deregulation***) can be even worse: "Imagine that in a given time period, an agency promulgates a rule. And imagine further that in a later period, a new administration comes into power and concludes that the rule is bad policy. It thus seeks to eliminate the rule and, while doing so, stays it so that regulated parties do not have to comply with it. Yet soon afterwards, a reviewing court decides that the rule nonetheless must go into effect — even though the current agency leadership does not want the regulation, and even though the regulation, if it were proposed as legislation, certainly would not be enacted by the current Congress." Nielson at 1224 (going on to explain how this precise scenario happened in connecting with President Trump's efforts in his first term to revise methane regulation).

[2] The status quo under EO 12866 provides that OIRA shall review regulatory actions within 90 days (or 45 days as to actions based on largely unchanged information that OIRA had previously received and reviewed), with the ability once to extend that period for 30 days upon the written approval of the OMB Director or at the request of the agency head. *See* EO 12866, Section 6(b)(2)(B).

deregulatory rules (especially those requiring detailed factual records) through the centralized review process this rapidly.

B. Streamlining Compliance with Executive Orders That Impose Extensive Regulatory Processes on Agencies

Many Executive Orders governing the regulatory system were issued to ensure that particular interests were taken into account before agencies engage in positive regulation; they were not designed with deregulation specifically in mind. These requirements tend not be as relevant when agencies deregulate. Accordingly, in these cases, OIRA is authorizing agencies to streamline their compliance. OIRA is establishing in this guidance some presumptions for how to efficiently combine compliance with several overarching administrative processes applying to both consultation and deregulatory analysis.

For example, EOs on Federalism (13132), Tribal Consultation (13175), and Takings (12630) call for agencies to engage in specific consultations on rules with potential impacts imposed on state and local governments, as well as tribes. Additionally, agencies are required to consider whether new regulation of the national economy will take private property unconstitutionally. Agencies should consider deregulatory actions as presumptively not triggering these consultation or substantive analytic requirements. If there exists a particular reason for specific government-to-government consultations, then agencies should also presume that any consultations should take place as part of the normal opportunity for stakeholder participation in EO 12866 review and the Administrative Procedure Act commenting process. And as to takings analysis, deregulatory activities will relieve burdens on property rights, not impose new ones.

As two other examples, longstanding EOs on the Energy Supply (13211) and Small Entity considerations (13272) were issued to address concerns arising when regulations imposing costs could have a disproportionate impact on these areas of the economy. Agencies can appropriately presume that deregulatory rulemakings either do not trigger these EOs' analytical responsibilities, or that any such obligations can be handled through the standard review and analysis required by EO 12866 and the Regulatory Flexibility Act.

Furthermore, agencies should not consider these examples as exhaustive and should presumptively consider the OIRA review process and APA notice and comment procedures as adequate for compliance with any other consultation and analysis EOs that are analogous to the ones covered in this section of the Memorandum. Agencies should thus consolidate and streamline these requirements as much as possible.

Accordingly, as a point of emphasis, any waiver of procedural requirements granted as to deregulatory actions will likely apply to all other ancillary requirements for regulatory analysis. For instance, beyond the previous examples used (EOs 13132, 13175, and 12630), other examples of EOs imposing ancillary requirements include EO

13609 (Promoting International Regulatory Cooperation) and EO 12372 (Intergovernmental Review of Federal Programs).

C. Engaging in Early and Substantive Discussions with OIRA on Deregulatory Actions

OIRA encourages agencies to work with OMB, the public, and the interagency community to identify, preview, and develop deregulatory actions that adhere to the requirements of EO 14192. As always, a thorough and transparent Regulatory Agenda, adequate public solicitation of deregulatory ideas initiated through GSA, use of Policy Coordination Committees ("PCCs"), and development of a strong regulatory record are examples of actions that will lead to long-lasting and successful deregulation of the economy, as well as an increase of economic freedom and liberty for American businesses and the American people.[3]

II. PROVISIONS DIRECTED AT REPEALING FACIALLY UNLAWFUL REGULATIONS

In EO 14219 and the April 9 Memo, President Trump directed federal agencies to review their regulations, identify any unlawful regulatory requirements, and repeal facially unlawful regulations "without notice and comment" under the Administrative Procedure Act's "good cause" exception. To date, agencies do not appear to be fully maximizing their energy in carrying out these directives. Accordingly, in this section of the Memorandum, guidance is provided to agencies on their obligations under EO 14219 and April 9 Memo as they relate to **(1)** evaluating the applicability of the APA's "good cause" exception when repealing unlawful regulations; and **(2)** determining whether a regulation is unlawful.

A. The APA's "Good Cause" Exception and Direct Repeal of Unlawful Regulations

This Administration is committed to deregulating at an unprecedented scale and ensuring that the regulations it retains and promulgates are lawful. In furtherance of these objectives, federal agencies are required to ensure that existing regulations are consistent with the law and to repeal unlawful regulations expeditiously. The April 9 Memo listed ten Supreme Court decisions to guide this review and directed the repeal of any "facially unlawful regulations" "without notice and comment, where doing so is consistent with the 'good cause' exception in the Administrative Procedure Act."

The APA's good cause exception provides that compliance with notice and comment rulemaking may be bypassed when an "agency for good cause finds" that doing so would be "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(4)(B). The APA's plain language and logic confirm that facially unlawful regulations satisfy the bar. Indeed, where a regulation is unlawful under the plain language of the controlling statute, the Constitution, or prevailing Supreme Court precedent, the agency lacks discretion and authority to retain it, even during the pendency

[3] https://www.regulations.gov/deregulation

of notice and comment proceedings and notwithstanding that the regulation might have engendered reliance interests or made good policy sense at adoption. Because the regulation is contrary to law and nothing that might emerge during the comment period can cure the regulation's unlawfulness or overcome the agency's non-discretionary inability to retain or enforce it, notice and comment are superfluous and "unnecessary" within the meaning of the APA. Likewise, where notice and comment would delay a repeal that is legally required and necessitate expenditure of resources and taxpayer dollars in service of retaining a regulation that is inconsistent with controlling law and cannot be lawfully enforced, they are "contrary to the public interest" under that separate prong of the APA's "good cause" exception as well.

Courts have applied the good cause exception in cases ranging from those involving emergent safety or security concerns to minor technical amendments to legal compulsions or administrative necessity. *See, e.g.*, *Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877 (3d Cir. 1982) (upholding the agency's reliance on good cause because the statute imposed a deadline that did not afford time for notice and comment); *United States Steel Corp. v. EPA*, 605 F.2d 283 (7th Cir. 1979) (same). Repealing unlawful regulations is most closely analogous to compliance with a statutory deadline or directive. Where a regulation contravenes a duly-enacted statute, the Constitution, or prevailing Supreme Court precedent, Congress cannot have intended for agencies to delay repeal in favor of a futile notice and comment process.

The April 9 Memo endorses this view and directs agencies to apply the "good cause" exception where appropriate. Those directives reflect the reasoned judgment that reflexive adherence to the APA's default process requirements is improper for facially unlawful regulations. All agencies should be adhering to the plain text of the APA and the President's directives.

We also flag for your attention 5 U.S.C. § 553(d)(1), which allows "substantive rule[s]" to become effective without waiting for the 30-day period to elapse where "a substantive rule … grants an exemption or relieves a restriction." For rules that are entirely deregulatory, the APA thus opens up a path to make rules effective more rapidly and agencies should take advantage of this benefit wherever possible.

B. Determining Whether a Regulation Is Unlawful

Before determining the appropriate process for repealing a regulatory requirement, agencies must determine whether a regulation is unlawful. In conducting this inquiry, it is important to bear in mind that you should not set the bar for unlawfulness so high as to render the President's April 9 Memo a nullity. To start with the obvious: this review will not be useful if your agency sets the bar for unlawfulness at regulations that a court has already ruled are unlawful. To be sure, agencies should repeal regulations without notice and comment under such circumstances, but such repeals are ministerial and only a small part of what the EO 14219 and April 9 Memo contemplate and direct.

The real target of this review is regulations that are, in the agency's current view, facially unlawful — that is to say, where the unlawfulness is apparent to the agency after reviewing the text of the relevant regulation, the statute it implements, and other sources of law, such as the ten Supreme Court cases identified in the April 9 Memo. If the regulation is unlawful, as — for example — where the rule is inconsistent with the "single, best meaning" of the statute under *Loper Bright*, direct repeal under the APA's "good cause" exception is appropriate. Or, if someone challenging the merits of the rescission would be relying on pure legal arguments for their challenge (*e.g.*, arguing that the prior regulation did, in fact, reflect the best meaning of the statute), that fact reinforces the appropriateness of bypassing notice and comment.

Another example of a facially unlawful regulation is where a rule violates the major questions doctrine explicated in *West Virginia v. EPA*, 597 U.S. 697 (2022). The major questions doctrine requires especially clear statutory text delegating authority to an agency the power to issue a rule in an area of vast economic and political significance before an agency can plausibly claim such authority. *See id*. at 721. Hence, an agency concluding that it has current regulations on its books rooted in statutory ambiguity but which resolve questions of that high a level of significance can act to immediately repeal such regulations because they flunk the major questions doctrine.

In short, your agency should identify and rescind regulations where (a) the question is clearly one of lawfulness or unlawfulness under the ten Supreme Court cases listed by in the April 9 Presidential Memorandum, and (b) where the agency has determined that the best interpretation is that the regulation is unlawful. Where the agency is convinced that the regulation is unlawful and that position has a reasonably good chance of success on the merits, the regulation should be repealed. Nevertheless, the agency should provide a ***brief*** statement of why the identified regulation is unlawful and good cause exception applies.

It is true that once the agency has identified a regulation that is unlawful as a matter of law, there might be additional policy or fact-bound arguments one could advance as to why a rule should be repealed. Indeed, it is often the case that something that is illegal would also represent bad policy or be impracticable for one or more factually related reasons. If the agency wishes to preserve these additional arguments, then it would typically need to afford notice and an opportunity to comment to flesh out the wisdom of those judgments. Agencies have the Supreme Court's full endorsement to use the interim final rule process to put out rules having legal effectiveness first and then proceed to address comments later. The Supreme Court stressed that such situations would be reviewed deferentially applying the rule of prejudicial error contained in the APA's 5 U.S.C. § 706. *See generally Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 684 (2020).

Consistent with the remainder of this Memorandum, we would also urge agencies to engage in robust cost-benefit analysis (where such quantification is conceptually possible and useful data exists) as a way to buttress records in facially illegal deregulatory situations. But, as a general matter, it is a policy question for the agency

whether the delay entailed by undergoing notice and comment procedures is worth the gain of this additional defense against litigation.

Surely, however, where the purely legal argument is the principal ground for repeal and likely to prevail in litigation, the dictates of efficient government, fidelity to the law, and the President's directives all point toward moving as expeditiously as possible on legal grounds to bypass notice and comment under the APA's "good cause" exception.

III. PROVISIONS DIRECTED AT DEVELOPING BETTER DEREGULATORY RECORDS WHERE NECESSARY OR VOLUNTARILY OPTED FOR BY AGENCIES

A. The Benefits of Deregulation

"An 'EO 13771 deregulatory action' is an action that has been finalized and has total costs less than zero." Memorandum for Regulatory Policy Officers at Executive Departments and Agencies, etc. from Dominic J. Mancini, OIRA, *Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs."*

While OMB Circular A-4 encourages agencies to quantify and monetize impacts, it also allows for the consideration of qualitative impacts, if there are important decision-making advantages to doing so. As just one example, consider that the reestablishment of freedom of choice in the marketplace may not be fully captured by marginal economic impacts, but could nevertheless prove a very important qualitative advantage of deregulation in a variety of circumstances.

By the same token, agencies should not eschew quantification when quantification is possible, and attempt to rely only on qualitative grounds for repealing rules. Doing so would not be consistent either with specific demands for cost-benefit analysis contained in many agency statutes themselves or with the emphasis the Supreme Court has placed on cost quantification. *See, e.g., Michigan v. EPA*, 576 U.S. 743, 749, 759 (2015) ("***The Agency must consider cost***—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary.") (emphasis added). *Michigan* also stresses considering all relevant factors, which obviously includes considering benefits. *Id.* at 750.

Most importantly, the President stressed adherence to these principles in his April 9 Memo. Indeed, meaningful compliance with Section 3 of EO 14192 necessitates agencies engaging in cost-benefit quantification, as that EO requires a quantitative netting of regulatory vs. deregulatory rules.[4]

[4] *See, e.g., id.* Section 3 "*Regulatory Cap for Fiscal Year 2025*"; *id.* Section 3(b) ("For fiscal year 2025, which is in progress, the heads of all agencies are directed to ensure that the total incremental cost of all new regulations,

Consulting with OIRA early and often can help agencies to decide when (1) quantified cost-benefit analysis is required (potentially as further supplemented by qualitative analysis) versus when (2) only qualitative analysis is possible. For instance, a regulation concerning pesticide disposal is a paradigmatic example of a rule that requires quantitative cost-benefit analysis because the costs of disposal can be readily calculated and compared to the benefits of avoiding the harm pesticides cause when not properly disposed of. (It is also a type of rule that would not seem to call for weighing very much in the way of qualitative variables.) By contrast, a regulation concerning use or misuse of the American flag on wine or spirit beverage labels would likely implicate only dignatarian interests and thus be appropriate for an exclusively qualitative approach to cost-benefit analysis.

B. The Uniqueness of Deregulation and Its Benefits

Deregulation has important, unique impacts that could be given weight in decision making, which agencies often do not consider. For example, although deregulatory actions at a high level of abstraction are subject in court to the same "arbitrary and capricious" standard of review under the APA as regulatory actions, looking deeper, it is elementary that deregulation is different than regulation in various dimensions. Agencies are encouraged to take into account the following when building their deregulatory records:

- ***Private-Conduct Liberty Benefits.***
  Deregulation increases the scope of private freedom, which can sometimes be quantified (and thus should be, whenever possible), but in other cases the value of deregulation can only be assessed qualitatively. In both situations, moreover, deregulation will leave more individuals and firms free to pursue their own self-defined interests, unfettered by regulation.

- ***Aggregated Impacts.***
  The collective value of a group of deregulatory actions and the synergies between deregulation across multiple areas of the law and across the entire web of ensuing causal effects as they spread throughout the national economy may be greater than the sum of its parts. For instance, deregulating the energy sector will not simply make driving cars and use of electricity to power our homes less costly, it also benefits America's tech sector, increasing AI innovation and improving the development of new cryptocurrency assets — benefits that in turn would further profit consumers in a virtuous cycle.

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including repealed regulations, being finalized this year, shall be significantly less than zero, as determined by the Director of the Office of Management and Budget (Director), unless otherwise required by law or instructions from the Director."); Section 3(a) & (c) (providing, to support the 10-for-1 requirement that "In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."). *See also id.* Section 3(d) (providing issuance of implementing guidance, which has been issued); Memorandum for Regulatory Policy Officers at Executive Departments and Agencies, etc. from Jeffrey B. Clark Sr., OIRA, *Guidance Implementing Section 3 of Executive Order 14192, Titled "Unleashing Prosperity Through Deregulation."*

- ***Past Regulation Is Always Inherently Imposed Under Conditions of Uncertainty.*** Regulations are almost always implemented under uncertain conditions. Indeed, by definition, the analysis made to propose and then finalize rules must inherently be prospective. Whenever agencies can see that the predictions of costs and benefits it made when it once stood at the door to new regulation have not been borne out by experience, and that this experience shows that costs exceed benefits or that costs plus qualitative decision-making factors exceed benefits, it can make a powerful case for deregulation.

- ***Deregulation Viewed as a Codification, in Effect, of Voluntary Enforcement Priorities.***
  "To begin with, when the Executive Branch elects not to arrest or prosecute, it does not exercise coercive power over an individual's liberty or property, and thus does not infringe upon interests that courts often are called upon to protect." *United States v. Texas*, 599 U.S. 670, 678 (2023) (emphasis in original). By deregulating, the agency essentially codifies an enforcement policy as to a defined class or set of cases. Courts have generally been more deferential to agency enforcement decisions made under resource constraints, and may consider a reasoned enforcement rationale to carry weight. This circles back, as well, to avoiding the dangers of ossification, as there are obvious interactions between agency choices of procedural mode (rulemaking vs. adjudication) — where that choice can properly be exercised — especially where rulemaking is afflicted with ossification. Additionally, enforcement history under the regulatory regime being departed from can always be consulted and, if that history shows few (if any) violations, a reasonable case can be made that the regulation was unnecessary from the outset.

Agencies should consider in any of their deregulatory actions it chooses to support with factual records whether its rationales and record-building can make use of one or more of the four categories of pro-deregulatory considerations set out above.