

4 of former Title 41, Public Contracts, and was substantially repealed and restated in division C (§3101 et seq.) of subtitle I of Title 41, Public Contracts, by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Short Title of 1949 Act note set out under section 101 of Title 41 and Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 575 of this title as this section.

1990—Subsec. (c)(16). Pub. L. 101-422 added par. (16).

1982—Subsec. (c)(13). Pub. L. 97-258 substituted “section 1342 of title 31” for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))”.

1972—Subsec. (c)(10). Pub. L. 92-526, §1(a), inserted provisions authorizing contracts for the performance of such studies with any public or private persons, etc., under title III of the Federal Property and Administrative Services Act of 1949, as amended, and substituted provisions authorizing the payment of experts and consultants in accordance with rates not in excess of the maximum rate of pay for grade GS-15 as provided in section 5332 of this title, for provisions authorizing the payment of such individuals at rates not in excess of \$100 a day.

Subsec. (c)(11) to (15). Pub. L. 92-526, §1(b), added pars. (11) to (13) and redesignated former pars. (11) and (12) as (14) and (15), respectively.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see note set out preceding section 591 of this title.

§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter not more than \$3,200,000 for fiscal year 2009, \$3,200,000 for fiscal year 2010, and \$3,200,000 for fiscal year 2011. Of any amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 391, §576; Pub. L. 91-164, Dec. 24, 1969, 83 Stat. 446; Pub. L. 92-526, §2, Oct. 21, 1972, 86 Stat. 1048; Pub. L. 95-293, §1(a), June 13, 1978, 92 Stat. 317; Pub. L. 97-330, Oct. 15, 1982, 96 Stat. 1618; Pub. L. 99-470, §2(a), Oct. 14, 1986, 100 Stat. 1198; Pub. L. 101-422, §1, Oct. 12, 1990, 104 Stat. 910; renumbered §596, Pub. L. 102-354, §2(2), Aug. 26, 1992, 106 Stat. 944; Pub. L. 108-401, §3, Oct. 30, 2004, 118 Stat. 2255; Pub. L. 110-290, §2, July 30, 2008, 122 Stat. 2914.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1045e.	Aug. 30, 1964, Pub. L. 88-499, §7, 78 Stat. 618.

The word “hereby” is omitted as unnecessary. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2008—Pub. L. 110-290 amended section generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter not more than \$3,000,000 for fiscal year 2005, \$3,100,000 for fiscal year 2006, and \$3,200,000 for fiscal year 2007. Of any

amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”

2004—Pub. L. 108-401 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$2,000,000 for fiscal year 1990, \$2,100,000 for fiscal year 1991, \$2,200,000 for fiscal year 1992, \$2,300,000 for fiscal year 1993, and \$2,400,000 for fiscal year 1994. Of any amounts appropriated under this section, not more than \$1,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”

1992—Pub. L. 102-354 renumbered section 576 of this title as this section.

1990—Pub. L. 101-422 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$1,600,000 for fiscal year 1986 and not more than \$2,000,000 for each fiscal year thereafter up to and including fiscal year 1990. Of any amounts appropriated under this section, not more than \$1,000 may be made available in each fiscal year for official reception and entertainment expenses for foreign dignitaries.”

1986—Pub. L. 99-470 substituted “Authorization of appropriations” for “Appropriations” in section catchline and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter sums not to exceed \$2,300,000 for the fiscal year ending September 30, 1982, and not to exceed \$2,300,000 for each fiscal year thereafter up to and including the fiscal year ending September 30, 1986.”

1982—Pub. L. 97-330 substituted provisions authorizing appropriations of not to exceed \$2,300,000 for fiscal year ending Sept. 30, 1982, and not to exceed \$2,300,000 for each fiscal year thereafter up to and including fiscal year ending Sept. 30, 1986, for provisions that had authorized appropriations of not to exceed \$1,700,000 for fiscal year ending Sept. 30, 1979, \$2,000,000 for fiscal year ending Sept. 30, 1980, \$2,300,000 for fiscal year ending Sept. 30, 1981, and \$2,300,000 for fiscal year ending Sept. 30, 1982.

1978—Pub. L. 95-293 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982, of \$1,700,000, \$2,000,000, \$2,300,000, and \$2,300,000, respectively, for provisions authorizing appropriations for fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, and June 30, 1978, of \$760,000, \$805,000, \$850,000, \$900,000, and \$950,000, respectively, and provisions authorizing for each fiscal year thereafter such sums as may be necessary.

1972—Pub. L. 92-526 substituted provisions authorizing to be appropriated necessary sums not in excess of \$760,000 for fiscal year ending June 30, 1974, \$805,000 for fiscal year ending June 30, 1975, \$850,000 for fiscal year ending June 30, 1976, \$900,000 for fiscal year ending June 30, 1977, and \$950,000 for fiscal year ending June 30, 1978, and each fiscal year thereafter, for provisions authorizing to be appropriated necessary sums, not in excess of \$450,000 per annum.

1969—Pub. L. 91-164 substituted “\$450,000 per annum” for “\$250,000”.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(b) of Pub. L. 95-293 provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1977.”

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

- Sec. 601. Definitions.
- 602. Regulatory agenda.
- 603. Initial regulatory flexibility analysis.

Sec.	
604.	Final regulatory flexibility analysis.
605.	Avoidance of duplicative or unnecessary analyses.
606.	Effect on other law.
607.	Preparation of analyses.
608.	Procedure for waiver or delay of completion.
609.	Procedures for gathering comments.
610.	Periodic review of rules.
611.	Judicial review.
612.	Reports and intervention rights.

§ 601. Definitions

For purposes of this chapter—

(1) the term “agency” means an agency as defined in section 551(1) of this title;

(2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term “small entity” shall have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and

(7) the term “collection of information”—

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or

opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) RECORDKEEPING REQUIREMENT.—The term “recordkeeping requirement” means a requirement imposed by an agency on persons to maintain specified records.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1165; amended Pub. L. 104-121, title II, §241(a)(2), Mar. 29, 1996, 110 Stat. 864.)

REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in par. (3), is classified to section 632 of Title 15, Commerce and Trade.

AMENDMENTS

1996—Pars. (7), (8). Pub. L. 104-121 added pars. (7) and (8).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 245 of title II of Pub. L. 104-121 provided that: “This subtitle [subtitle D (§§241-245) of title II of Pub. L. 104-121, amending this section and sections 603 to 605, 609, 611, and 612 of this title and enacting provisions set out as a note under section 609 of this title] shall become effective on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996], except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.”

EFFECTIVE DATE

Section 4 of Pub. L. 96-354 provided that: “The provisions of this Act [enacting this chapter] shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.”

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104-121 provided that: “This Act [enacting sections 801 to 808 of this title, section 657 of Title 15, Commerce and Trade, and sections 1320b-15 and 1383e of Title 42, The Public Health and Welfare, amending this section and sections 504, 603 to 605, 609, 611, and 612 of this title, sections 665e and 901 of Title 2, The Congress, section 648 of Title 15, section 2412 of Title 28, Judiciary and Judicial Procedure, section 3101 of Title 31, Money and Finance, and sections 401, 402, 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of Title 42, enacting provisions set out as notes under this section and sections 504, 609, and 801 of this title and sections 401, 402, 403, 405, 902, 1305, 1320b-15, and 1382 of Title 42, amending provisions set out as a note under section 631 of Title 15, and repealing provisions set out as a note under section 425 of Title 42] may be cited as the ‘Contract with America Advancement Act of 1996’.”

SHORT TITLE

Section 1 of Pub. L. 96-354 provided: “That this Act [enacting this chapter] may be cited as the ‘Regulatory Flexibility Act’.”

REGULATORY ENFORCEMENT REPORTS

Pub. L. 107-198, § 4, June 28, 2002, 116 Stat. 732, provided that:

“(a) DEFINITION.—In this section, the term ‘agency’ has the meaning given that term under section 551 of title 5, United States Code.

“(b) IN GENERAL.—

“(1) INITIAL REPORT.—Not later than December 31, 2003, each agency shall submit an initial report to—

“(A) the chairpersons and ranking minority members of—

“(i) the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] and the Committee on Small Business and Entrepreneurship of the Senate; and

“(ii) the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Committee on Small Business of the House of Representatives; and

“(B) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

“(2) FINAL REPORT.—Not later than December 31, 2004, each agency shall submit a final report to the members and officer described under paragraph (1) (A) and (B).

“(3) CONTENT.—The initial report under paragraph (1) shall include information with respect to the 1-year period beginning on October 1, 2002, and the final report under paragraph (2) shall include information with respect to the 1-year period beginning on October 1, 2003, on each of the following:

“(A) The number of enforcement actions in which a civil penalty is assessed.

“(B) The number of enforcement actions in which a civil penalty is assessed against a small entity.

“(C) The number of enforcement actions described under subparagraphs (A) and (B) in which the civil penalty is reduced or waived.

“(D) The total monetary amount of the reductions or waivers referred to under subparagraph (C).

“(4) DEFINITIONS IN REPORTS.—Each report under this subsection shall include definitions selected at the discretion of the reporting agency of the terms ‘enforcement actions’, ‘reduction or waiver’, and ‘small entity’ as used in the report.”

ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES

Pub. L. 105-277, div. A, § 101(h) [title VI, § 654], Oct. 21, 1998, 112 Stat. 2681-480, 2681-528, as amended by Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

“(a) PURPOSES.—The purposes of this section are to—

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(b) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(c) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall assess such actions with respect to whether—

“(1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment;

“(2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children;

“(3) the action helps the family perform its functions, or substitutes governmental activity for the function;

“(4) the action increases or decreases disposable income or poverty of families and children;

“(5) the proposed benefits of the action justify the financial impact on the family;

“(6) the action may be carried out by State or local government or by the family; and

“(7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

“(d) GOVERNMENTWIDE FAMILY POLICY COORDINATION AND REVIEW.—

“(1) CERTIFICATION AND RATIONALE.—With respect to each proposed policy or regulation that may affect family well-being, the head of each agency shall—

“(A) submit a written certification to the Director of the Office of Management and Budget and to Congress that such policy or regulation has been assessed in accordance with this section; and

“(B) provide an adequate rationale for implementation of each policy or regulation that may negatively affect family well-being.

“(2) OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

“(A) ensure that policies and regulations proposed by agencies are implemented consistent with this section; and

“(B) compile, index, and submit annually to the Congress the written certifications received pursuant to paragraph (1)(A).

“(3) OFFICE OF POLICY DEVELOPMENT.—The Office of Policy Development shall—

“(A) assess proposed policies and regulations in accordance with this section;

“(B) provide evaluations of policies and regulations that may affect family well-being to the Director of the Office of Management and Budget; and

“(C) advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in the United States.

“(e) ASSESSMENTS UPON REQUEST BY MEMBERS OF CONGRESS.—Upon request by a Member of Congress relating to a proposed policy or regulation, an agency shall conduct an assessment in accordance with subsection (c), and shall provide a certification and rationale in accordance with subsection (d).

“(f) JUDICIAL REVIEW.—This section is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.”

SMALL BUSINESS REGULATORY FAIRNESS

Pub. L. 104-121, title II, §§ 201-224, Mar. 29, 1996, 110 Stat. 857-862, as amended by Pub. L. 110-28, title VIII, § 8302, May 25, 2007, 121 Stat. 204, provided that:

“SEC. 201. SHORT TITLE.

“This title [enacting sections 801 to 808 of this title and section 657 of Title 15, Commerce and Trade, amending this section, sections 504, 603 to 605, 609, 611, and 612 of this title, section 648 of Title 15, and section 2412 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and sections 504, 609, and 801 of this title, and amending provisions set out as a note under section 631 of Title 15] may be cited as the ‘Small Business Regulatory Enforcement Fairness Act of 1996’.

“SEC. 202. FINDINGS.

“Congress finds that—

“(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

“(2) small businesses bear a disproportionate share of regulatory costs and burdens;

“(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

“(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

“(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

“(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

“SEC. 203. PURPOSES.

“The purposes of this title are—

“(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

“(2) to provide for judicial review of chapter 6 of title 5, United States Code;

“(3) to encourage the effective participation of small businesses in the Federal regulatory process;

“(4) to simplify the language of Federal regulations affecting small businesses;

“(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

“(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

“(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

“SUBTITLE A—REGULATORY COMPLIANCE SIMPLIFICATION

“SEC. 211. DEFINITIONS.

“For purposes of this subtitle—

“(1) the terms ‘rule’ and ‘small entity’ have the same meanings as in section 601 of title 5, United States Code;

“(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and

“(3) the term ‘small entity compliance guide’ means a document designated and entitled as such by an agency.

“SEC. 212. COMPLIANCE GUIDES.

“(a) COMPLIANCE GUIDE.—

“(1) IN GENERAL.—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 605(b) [probably should be “section 604”] of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule and shall entitle such publications ‘small entity compliance guides’.

“(2) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

“(A) the posting of the guide in an easily identified location on the website of the agency; and

“(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

“(3) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

“(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

“(B) not later than the date on which the requirements of that rule become effective.

“(4) COMPLIANCE ACTIONS.—

“(A) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

“(B) EXPLANATION.—The explanation under subparagraph (A)—

“(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met; and

“(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements, except that, compliance with any procedures described pursuant to this section does not establish compliance with the rule, or establish a presumption or inference of such compliance.

“(C) PROCEDURES.—Procedures described under subparagraph (B)(ii)—

“(i) shall be suggestions to assist small entities; and

“(ii) shall not be additional requirements, or diminish requirements, relating to the rule.

“(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

“(6) REPORTING.—Not later than 1 year after the date of enactment of the Fair Minimum Wage Act of 2007 [May 25, 2007], and annually thereafter, the head of each agency shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and any other committee of relevant jurisdiction describing the status of the agency’s compliance with paragraphs (1) through (5).

“(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

“(c) LIMITATION ON JUDICIAL REVIEW.—An agency’s small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

“SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

“(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

“(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section [Mar. 29, 1996], utilizing existing functions and personnel of the agency to the extent practicable.

“(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency’s program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

“SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

“(a) [Amended section 648 of Title 15, Commerce and Trade.]

“(b) Nothing in this Act [see Short Title of 1996 Amendment note, above] in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

“SEC. 215. COOPERATION ON GUIDANCE.

“Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency’s area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

“SEC. 216. EFFECTIVE DATE.

“This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996].

“SUBTITLE B—REGULATORY ENFORCEMENT REFORMS

“SEC. 221. DEFINITIONS.

“For purposes of this subtitle—

“(1) the terms ‘rule’ and ‘small entity’ have the same meanings as in section 601 of title 5, United States Code;

“(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and

“(3) the term ‘small entity compliance guide’ means a document designated as such by an agency.

“SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

“[Enacted section 657 of Title 15, Commerce and Trade.]

“SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

“(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section [Mar. 29, 1996] to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

“(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

“(1) requiring the small entity to correct the violation within a reasonable correction period;

“(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

“(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

“(4) excluding violations involving willful or criminal conduct;

“(5) excluding violations that pose serious health, safety or environmental threats; and

“(6) requiring a good faith effort to comply with the law.

“(c) REPORTING.—Agencies shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section [Mar. 29, 1996] on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

“SEC. 224. EFFECTIVE DATE.

“This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996].”

EFFECTS OF DEREGULATION ON RURAL AMERICA

Pub. L. 101-574, title III, §309, Nov. 15, 1990, 104 Stat. 2831, provided that:

“(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

“(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

“(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

“(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

“(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

“(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

“(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

“(b) REPORT.—Not later than 12 months after the date of enactment of this title [Nov. 15, 1990], the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.”

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 96-354 provided that:

“(a) The Congress finds and declares that—

“(1) when adopting regulations to protect the health, safety and economic welfare of the Nation,

Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

“(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

“(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

“(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

“(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

“(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

“(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

“(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

“(b) It is the purpose of this Act [enacting this chapter] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

EXECUTIVE ORDER No. 12291

Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, which established requirements for agencies to follow in promulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER No. 12498

Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, which established a regulatory planning process by which to develop and publish a regulatory program for each year, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER No. 12606

Ex. Ord. No. 12606, Sept. 2, 1987, 52 F.R. 34188, which provided criteria for executive departments and agencies to follow in making policies and regulations to ensure consideration of effect of those policies and regulations on autonomy and rights of the family, was revoked by Ex. Ord. No. 13045, §7, Apr. 21, 1997, 62 F.R. 19888, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 12612

Ex. Ord. No. 12612, Oct. 26, 1987, 52 F.R. 41685, which set out fundamental federalism principles and policy-making criteria for executive departments and agencies to follow in formulating and implementing policies and limited the instances when executive departments and agencies could construe a Federal statute to preempt State law, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EX. ORD. NO. 12630. GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS

Ex. Ord. No. 12630, Mar. 15, 1988, 53 F.R. 8859, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

SECTION 1. *Purpose.* (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

SEC. 2. *Definitions.* For the purpose of this Order: (a) “Policies that have takings implications” refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that

require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

SEC. 3. *General Principles.* In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the

same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

SEC. 4. *Department and Agency Action.* In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

SEC. 5. *Executive Department and Agency Implementation.* (a) The head of each Executive department and

agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of the department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

SEC. 6. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. NO. 12861. ELIMINATION OF ONE-HALF OF EXECUTIVE BRANCH INTERNAL REGULATIONS

Ex. Ord. No. 12861, Sept. 11, 1993, 58 F.R. 48255, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 1111 of title 31, United States Code, and to cut 50 percent of the executive branch's internal regulations in order to streamline and improve customer service to the American people, it is hereby ordered as follows:

SECTION 1. Regulatory Reductions. Each executive department and agency shall undertake to eliminate not less than 50 percent of its civilian internal management regulations that are not required by law within 3 years of the effective date of this order. An agency internal management regulation, for the purposes of this order, means an agency directive or regulation that pertains to its organization, management, or personnel

matters. Reductions in agency internal management regulations shall be concentrated in areas that will result in the greatest improvement in productivity, streamlining of operations, and improvement in customer service.

SEC. 2. Coverage. This order applies to all executive branch departments and agencies.

SEC. 3. Implementation. The Director of the Office of Management and Budget shall issue instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

SEC. 4. Independent Agencies. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 12866. REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 12866, Sept. 30, 1993, 58 F.R. 51735, as amended by Ex. Ord. No. 13258, Feb. 26, 2002, 67 F.R. 9385; Ex. Ord. No. 13422, Jan. 18, 2007, 72 F.R. 2763; Ex. Ord. No. 13497, §1, Jan. 30, 2009, 74 F.R. 6113, provided:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Statement of Regulatory Philosophy and Principles.

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the

failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

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

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

SEC. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with

applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

SEC. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

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

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the

promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

SEC. 4. *Planning Mechanism.* In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and [former] 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

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

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

SEC. 5. *Existing Regulations.* In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within ap-

plicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

SEC. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act [see Short Title note preceding section 551 of this title], the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act [44 U.S.C. 3501 et seq.], and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working

days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

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

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

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

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

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

SEC. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

SEC. 8. Publication. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided

under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

SEC. 9. *Agency Authority.* Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

SEC. 10. *Judicial Review.* Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SEC. 11. *Revocations.* Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

[Section 1 of Ex. Ord. No. 13497, which revoked Ex. Ords. 13258 and 13422, was executed by undoing the amendments by those Ex. Ords. to Ex. Ord. 12866, set out above.]

EXECUTIVE ORDER NO. 12875

Ex. Ord. No. 12875, Oct. 26, 1993, 58 F.R. 58093, which provided for the reduction of unfunded mandates on State, local, or tribal governments and increased flexibility for State and local waivers of statutory or regulatory requirements, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13083

Ex. Ord. No. 13083, May 14, 1998, 63 F.R. 27651, which listed fundamental federalism principles and federalism policymaking criteria to guide agencies in formulating and implementing policies and required agencies to have a process to permit State and local governments to provide input into the development of regulatory policies that have federalism implications and to streamline the State and local government waiver process, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13095

Ex. Ord. No. 13095, Aug. 5, 1998, 63 F.R. 42565, which suspended Ex. Ord. No. 13083, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EX. ORD. NO. 13107. IMPLEMENTATION OF HUMAN RIGHTS TREATIES

Ex. Ord. No. 13107, Dec. 10, 1998, 63 F.R. 68991, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties concerned with the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

SECTION 1. *Implementation of Human Rights Obligations.* (a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.

(b) It shall also be the policy and practice of the Government of the United States to promote respect for

international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, *inter alia*, those of the United Nations, the International Labor Organization, and the Organization of American States.

SEC. 2. *Responsibility of Executive Departments and Agencies.* (a) All executive departments and agencies (as defined in 5 U.S.C. 101–105, including boards and commissions, and hereinafter referred to collectively as “agency” or “agencies”) shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

SEC. 3. *Human Rights Inquiries and Complaints.* Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response.

SEC. 4. *Interagency Working Group on Human Rights Treaties.* (a) There is hereby established an Interagency Working Group on Human Rights Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include:

(i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native

Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nontrivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;

(viii) making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not supplant the work of other interagency entities, including the President's Committee on the International Labor Organization, that address international human rights issues.

SEC. 5. *Cooperation Among Executive Departments and Agencies.* All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

SEC. 6. *Judicial Review, Scope, and Administration.* (a) Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch.

(c) The term "treaty obligations" shall mean treaty obligations as approved by the Senate pursuant to Article II, section 2, clause 2 of the United States Constitution.

(d) To the maximum extent practicable and subject to the availability of appropriations, agencies shall carry out the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13132. FEDERALISM

Ex. Ord. No. 13132, Aug. 4, 1999, 64 F.R. 43255, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act [of 1995, Pub. L. 104-4, see Tables for classification], it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the

States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "State and local officials" means elected officials of State and local governments or their representative national organizations.

SEC. 2. *Fundamental Federalism Principles.* In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

SEC. 3. *Federalism Policymaking Criteria.* In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is imple-

mented. Executive Order 12372 of July 14, 1982 (“Inter-governmental Review of Federal Programs”) [31 U.S.C. 6506 note] remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:

(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;

(2) where possible, defer to the States to establish standards;

(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and

(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

SEC. 4. *Special Requirements for Preemption.* Agencies, in taking action that preempts State law, shall act in strict accordance with governing law.

(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

SEC. 5. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States’ separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

SEC. 6. *Consultation.*

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency’s implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency’s consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency’s prior consultation with State and local officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency’s prior consultation with State and local officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

SEC. 7. *Increasing Flexibility for State and Local Waivers.*

(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in

connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

SEC. 8. Accountability.

(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993 [set out above], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

SEC. 9. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

SEC. 10. General Provisions.

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 (“Intergovernmental Review of Federal Programs”) [31 U.S.C. 6506 note], Executive Order 12866 (“Regulatory Planning and Review”) [set out above], Executive Order 12988 (“Civil Justice Reform”) [28 U.S.C. 519 note], and OMB Circular A-19.

(b) Executive Order 12612 (“Federalism”), Executive Order 12875 (“Enhancing the Intergovernmental Partnership”), Executive Order 13083 (“Federalism”), and Executive Order 13095 (“Suspension of Executive Order 13083”) are revoked.

(c) This order shall be effective 90 days after the date of this order.

SEC. 11. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13198. AGENCY RESPONSIBILITIES WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13198, Jan. 29, 2001, 66 F.R. 8497, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America’s communities, it is hereby ordered as follows:

SECTION 1. Establishment of Executive Department Centers for Faith-Based and Community Initiatives. (a) The Attorney General, the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall each establish within their respective

departments a Center for Faith-Based and Community Initiatives (Center).

(b) Each executive department Center shall be supervised by a Director, appointed by the department head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each department shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each department’s Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. Purpose of Executive Department Centers for Faith-Based and Community Initiatives. The purpose of the executive department Centers will be to coordinate department efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

SEC. 3. Responsibilities of Executive Department Centers for Faith-Based and Community Initiatives. Each Center shall, to the extent permitted by law: (a) conduct, in coordination with the White House OFBCI, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in department programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate department outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other department initiatives, including but not limited to Web and Internet resources.

SEC. 4. Additional Responsibilities of the Department of Health and Human Services and the Department of Labor Centers. In addition to those responsibilities described in section 3 of this order, the Department of Health and Human Services and the Department of Labor Centers shall, to the extent permitted by law: (a) conduct a comprehensive review of policies and practices affecting existing funding streams governed by so-called “Charitable Choice” legislation to assess the department’s compliance with the requirements of Charitable Choice; and (b) promote and ensure compliance with existing Charitable Choice legislation by the department, as well as its partners in State and local government, and their contractors.

SEC. 5. Reporting Requirements. (a) Report. Not later than 180 days after the date of this order and annually thereafter, each of the five executive department Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) Contents. The report shall include a description of the department’s efforts in carrying out its responsibilities under this order, including but not limited to:

(1) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(2) a summary of the technical assistance and other information that will be available to faith-based and

other community organizations regarding the program activities of the department and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for department action. Each report filed thereafter shall measure the department's performance against the objectives set forth in the initial report.

SEC. 6. *Responsibilities of All Executive Departments and Agencies.* All executive departments and agencies (agencies) shall: (a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SEC. 7. *Administration and Judicial Review.* (a) The agencies' actions directed by this Executive Order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13272. PROPER CONSIDERATION OF SMALL ENTITIES IN AGENCY RULEMAKING

Ex. Ord. No. 13272, Aug. 13, 2002, 67 F.R. 53461, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *General Requirements.* Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

SEC. 2. *Responsibilities of Advocacy.* Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended [set out above], Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

SEC. 3. *Responsibilities of Federal Agencies.* Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the

final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 [set out above] if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

SEC. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

SEC. 5. *Preservation of Authority.* Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85-09536 [Pub. L. 85-536] (15 U.S.C. 633(b)(1)).

SEC. 6. *Reporting.* For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

SEC. 7. *Confidentiality.* Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

SEC. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13279. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS

Ex. Ord. No. 13279, Dec. 12, 2002, 67 F.R. 77141, as amended by Ex. Ord. No. 13403, § 2, May 12, 2006, 71 F.R. 28543; Ex. Ord. No. 13559, Nov. 17, 2010, 75 F.R. 71319, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other other [sic] neighborhood organizations, to ensure equal protection of the laws for faith-based and other neighborhood organizations, to further the national effort to expand opportunities for, and strengthen the capacity of, faith-based and other other [sic] neighborhood organizations so that they may better meet social needs in America's communities, and to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "Federal financial assistance" means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, prop-

erty, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(b) “Social service program” means a program that is administered by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

- (i) child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);
- (ii) transportation services;
- (iii) job training and related services, and employment services;
- (iv) information, referral, and counseling services;
- (v) the preparation and delivery of meals and services related to soup kitchens or food banks;
- (vi) health support services;
- (vii) literacy and mentoring programs;
- (viii) services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and
- (ix) services related to the provision of assistance for housing under Federal law.

(c) “Policies that have implications for faith-based and other neighborhood organizations” refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) “Agency” means a department or agency in the executive branch.

- (e) “Specified agency heads” means:
- (i) the Attorney General;
 - (ii) the Secretary of Agriculture;
 - (iii) the Secretary of Commerce;
 - (iv) the Secretary of Labor;
 - (v) the Secretary of Health and Human Services;
 - (vi) the Secretary of Housing and Urban Development;
 - (vii) the Secretary of Education;
 - (viii) the Secretary of Veterans Affairs;
 - (ix) the Secretary of Homeland Security;
 - (x) the Administrator of the Environmental Protection Agency;
 - (xi) the Administrator of the Small Business Administration;
 - (xii) the Administrator of the United States Agency for International Development; and
 - (xiii) the Chief Executive Officer of the Corporation for National and Community Service.

SEC. 2. *Fundamental Principles.* In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation’s social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.

(d) All organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.

(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character. Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other chartering or governing documents.

(h) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall offer protections for beneficiaries of such programs pursuant to the following principles:

(i) *Referral to an Alternative Provider.* If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

(ii) *Agency Responsibilities.* Each agency responsible for administering a social service program or supporting a social service program with Federal financial assistance shall establish policies and procedures designed to ensure that (1) appropriate and timely referrals are made to an alternative provider; (2) all referrals are made in a manner consistent with all applicable privacy laws and regulations; (3) the organization subject to subsection (h)(i) notifies the agency of any referral; (4) such organization has established a process for determining whether the beneficiary has contacted the alternative provider; and (5) each beneficiary of a social service program receives written notice of the protections set forth in this subsection prior to enrolling in or receiving services from such program.

(i) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidance documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance for provision of social service programs, consistent with law and pursuant to guidance set forth in paragraph (c) of section 3 of this order.

(j) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.

SEC. 3. *Ensuring Uniform Implementation Across the Federal Government.* In order to promote uniformity in agencies' policies that have implications for faith-based and other neighborhood organizations and in related guidance, and to ensure that those policies and guidance are consistent with the fundamental principles set forth in section 2 of this order, there is established an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group).

(a) *Mission and Function of the Working Group.* The Working Group shall meet periodically to review and evaluate existing agency regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations. Where appropriate, specified agency heads shall, to the extent permitted by law, amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles set forth in section 2 of this order.

(b) *Uniform Agency Implementation.* Within 120 days of the date of this order, the Working Group shall submit a report to the President on amendments, changes, or additions that are necessary to ensure that regulations and guidance documents associated with the distribution of Federal financial assistance for social service programs are consistent with the fundamental principles set forth in section 2 of this order. The Working Group's report should include, but not be limited to, a model set of regulations and guidance documents for agencies to adopt in the following areas:

(i) prohibited uses of direct Federal financial assistance and separation requirements; (ii) protections for religious identity; (iii) the distinction between "direct" and "indirect" Federal financial assistance; (iv) protections for beneficiaries of social service programs; (v) transparency requirements, consistent with and in furtherance of existing open government initiatives; (vi) obligations of nongovernmental and governmental intermediaries; (vii) instructions for peer reviewers and those who recruit peer reviewers; and (viii) training on these matters for government employees and for Federal, State, and local governmental and nongovernmental organizations that receive Federal financial assistance under social service programs. In developing this report and in reviewing agency regulations and guidance for consistency with section 2 of this order, the Working Group shall consult the March 2010 report and recommendations prepared by the President's Advisory Council on Faith-Based and Neighborhood Partnerships on the topic of reforming the Office of Faith-Based and Neighborhood Partnerships.

(c) *Guidance.* The Director of the Office of Management and Budget (OMB), following receipt of a copy of the report of the Working Group, and in coordination with the Department of Justice, shall issue guidance to agencies on the implementation of this order, including in particular subsections 2(h)–(j).

(d) *Membership of the Working Group.* The Director of the Office of Faith-Based and Neighborhood Partnerships and a senior official from the OMB designated by the Director of the OMB shall serve as the Co-Chairs of the Working Group. The Co-Chairs shall convene regular meetings of the Working Group, determine its agenda, and direct its work. In addition to the Co-Chairs, the Working Group shall consist of a senior official with knowledge of policies that have implications for faith-based and other neighborhood organizations from the following agencies and offices:

- (i) the Department of State;
- (ii) the Department of Justice;
- (iii) the Department of the Interior;
- (iv) the Department of Agriculture;
- (v) the Department of Commerce;
- (vi) the Department of Labor;
- (vii) the Department of Health and Human Services;
- (viii) the Department of Housing and Urban Development;
- (ix) the Department of Education;
- (x) the Department of Veterans Affairs;
- (xi) the Department of Homeland Security;
- (xii) the Environmental Protection Agency;
- (xiii) the Small Business Administration;
- (xiv) the United States Agency for International Development;
- (xv) the Corporation for National and Community Service; and
- (xvi) other agencies and offices as the President, from time to time, may designate.

(e) *Administration of the Initiative.* The Department of Health and Human Services shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

SEC. 4. *Amendment of Executive Order 11246.*

Pursuant to section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to further the strong Federal interest in ensuring that the cost and progress of Federal procurement contracts are not adversely affected by an artificial restriction of the labor pool caused by the unwarranted exclusion of faith-based organizations from such contracts, section 204 of Executive Order 11246 of September 24, 1965, as amended, [42 U.S.C. 2000e note] is hereby further amended to read as follows:

"SEC. 204 (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of

a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.”

SEC. 5. *General Provisions.*

(a) This order supplements but does not supersede the requirements contained in Executive Orders 13198 [set out above] and 13199 [3 U.S.C. note prec. 101] of January 29, 2001.

(b) The agencies shall coordinate with the White House OFBCI concerning the implementation of this order.

(c) Nothing in this order shall be construed to require an agency to take any action that would impair the conduct of foreign affairs or the national security.

SEC. 6. *Responsibilities of Executive Departments and Agencies.* All executive departments and agencies (agencies) shall:

(a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SEC. 7. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any person.

EX. ORD. NO. 13280. RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND THE AGENCY FOR INTERNATIONAL DEVELOPMENT WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13280, Dec. 12, 2002, 67 F.R. 77145, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America's communities, it is hereby ordered as follows:

SECTION 1. *Establishment of Centers for Faith-Based and Community Initiatives at the Department of Agriculture and the Agency for International Development.* (a) The Secretary of Agriculture and the Administrator of the Agency for International Development shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Executive Branch Centers for Faith-Based and Community Initiatives.* The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

SEC. 3. *Responsibilities of the Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other

community organizations in the delivery of social services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. *Reporting Requirements.*

(a) *Report.* Not later than 180 days from the date of this order and annually thereafter, each of the two Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) *Contents.* The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

SEC. 5. *Responsibilities of the Secretary of Agriculture and the Administrator of the Agency for International Development.* The Secretary and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SEC. 6. *Administration and Judicial Review.* (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13342. RESPONSIBILITIES OF THE DEPARTMENTS OF COMMERCE AND VETERANS AFFAIRS AND THE SMALL BUSINESS ADMINISTRATION WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13342, June 1, 2004, 69 F.R. 31509, provided: By the authority vested in me as President by the Constitution and the laws of the United States of

America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

SECTION 1. *Establishment of Centers for Faith-Based and Community Initiatives at the Departments of Commerce and Veterans Affairs and the Small Business Administration.*

(a) The Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Executive Branch Centers for Faith-Based and Community Initiatives.* The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SEC. 3. *Responsibilities of the Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. *Reporting Requirements.* (a) *Report.* Not later than 180 days from the date of this order and annually thereafter, each of the three Centers described in section 1 of this order shall prepare and submit a report to the President through the White House OFBCI.

(b) *Contents.* The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding

the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report, filed pursuant to section 4(a) of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

SEC. 5. *Responsibilities of the Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration.* The Secretaries and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SEC. 6. *Administration and Judicial Review.* (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13397. RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13397, Mar. 7, 2006, 71 F.R. 12275, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

SECTION 1. *Establishment of a Center for Faith-Based and Community Initiatives at the Department of Homeland Security.*

(a) The Secretary of Homeland Security (Secretary) shall establish within the Department of Homeland Security (Department) a Center for Faith-Based and Community Initiatives (Center).

(b) The Center shall be supervised by a Director appointed by [the] Secretary. The Secretary shall consult with the Director of the White House Office of Faith-Based and Community Initiatives (WHOFBCI Director) prior to making such appointment.

(c) The Department shall provide the Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Center.* The purpose of the Center shall be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SEC. 3. *Responsibilities of the Center for Faith-Based and Community Initiatives.* In carrying out the purpose set forth in section 2 of this order, the Center shall:

(a) conduct, in coordination with the WHOFBCI Director, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the Department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that unlawfully discriminate against, or otherwise discourage or disadvantage the participation

of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in Department programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate Departmental outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. Reporting Requirements.

(a) *Report.* Not later than 180 days from the date of this order and annually thereafter, the Center shall prepare and submit a report to the WHOFBCI Director.

(b) *Contents.* The report shall include a description of the Department's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report shall include annual performance indicators and measurable objectives for Departmental action. Each report filed thereafter shall measure the Department's performance against the objectives set forth in the initial report.

SEC. 5. Responsibilities of the Secretary. The Secretary shall:

(a) designate an employee within the department to serve as the liaison and point of contact with the WHOFBCI Director; and

(b) cooperate with the WHOFBCI Director and provide such information, support, and assistance to the WHOFBCI Director as requested to implement this order.

SEC. 6. General Provisions. (a) This order shall be implemented subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13406. PROTECTING THE PROPERTY RIGHTS OF THE AMERICAN PEOPLE

Ex. Ord. No. 13406, June 23, 2006, 71 F.R. 36973, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the rights of the American people against the taking of their private property, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the United States to protect the rights of Americans to their private property, including by limiting the taking of private property by the Federal Government to situations in which the taking is for public use, with just compensation, and for the purpose of benefiting the general pub-

lic and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken.

SEC. 2. Implementation. (a) The Attorney General shall:

(i) issue instructions to the heads of departments and agencies to implement the policy set forth in section 1 of this order; and

(ii) monitor takings by departments and agencies for compliance with the policy set forth in section 1 of this order.

(b) Heads of departments and agencies shall, to the extent permitted by law:

(i) comply with instructions issued under subsection (a)(i); and

(ii) provide to the Attorney General such information as the Attorney General determines necessary to carry out subsection (a)(ii).

SEC. 3. Specific Exclusions. Nothing in this order shall be construed to prohibit a taking of private property by the Federal Government, that otherwise complies with applicable law, for the purpose of:

(a) public ownership or exclusive use of the property by the public, such as for a public medical facility, roadway, park, forest, governmental office building, or military reservation;

(b) projects designated for public, common carrier, public transportation, or public utility use, including those for which a fee is assessed, that serve the general public and are subject to regulation by a governmental entity;

(c) conveying the property to a nongovernmental entity, such as a telecommunications or transportation common carrier, that makes the property available for use by the general public as of right;

(d) preventing or mitigating a harmful use of land that constitutes a threat to public health, safety, or the environment;

(e) acquiring abandoned property;

(f) quieting title to real property;

(g) acquiring ownership or use by a public utility;

(h) facilitating the disposal or exchange of Federal property; or

(i) meeting military, law enforcement, public safety, public transportation, or public health emergencies.

SEC. 4. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented in a manner consistent with Executive Order 12630 of March 15, 1988.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13497. REVOCATION OF CERTAIN EXECUTIVE ORDERS CONCERNING REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 13497, Jan. 30, 2009, 74 F.R. 6113, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that:

SECTION 1. Executive Order 13258 of February 26, 2002, and Executive Order 13422 of January 18, 2007, concerning regulatory planning and review, which amended Executive Order 12866 of September 30, 1993, are revoked.

SEC. 2. The Director of the Office of Management and Budget and the heads of executive departments and agencies shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13258 or Executive Order 13422, to the extent consistent with law.

SEC. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13563. IMPROVING REGULATION AND REGULATORY REVIEW

Ex. Ord. No. 13563, Jan. 18, 2011, 76 F.R. 3821, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

SEC. 2. *Public Participation.* (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any pro-

posed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

SEC. 3. *Integration and Innovation.* Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

SEC. 4. *Flexible Approaches.* Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

SEC. 5. *Science.* Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

SEC. 6. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) 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, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

SEC. 7. *General Provisions.* (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the

United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. No. 13579. REGULATION AND INDEPENDENT REGULATORY AGENCIES

Ex. Ord. No. 13579, July 11, 2011, 76 F.R. 41587, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, “Improving Regulation and Regulatory Review,” directed to executive agencies, was meant to produce a regulatory system that protects “public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

SEC. 2. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

SEC. 3. *General Provisions.* (a) For purposes of this order, “executive agency” shall have the meaning set forth for the term “agency” in section 3(b) of Executive Order 12866 of September 30, 1993, and “independent regulatory agency” shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

REGULATORY REFORM—WAIVER OF PENALTIES AND REDUCTION OF REPORTS

Memorandum of President of the United States, Apr. 21, 1995, 60 F.R. 20621, provided:

Memorandum for
The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of the Interior
The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Labor
The Secretary of Health and Human Services
The Secretary of Housing and Urban Development
The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Administrator, Environmental Protection Agency
The Administrator, Small Business Administration
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Director, Federal Emergency Management Agency
The Administrator, National Aeronautics and Space Administration
The Director, National Science Foundation
The Acting Archivist of the United States
The Administrator of General Services
The Chair, Railroad Retirement Board
The Chairperson, Architectural and Transportation Barriers Compliance Board
The Executive Director, Pension Benefit Guaranty Corporation

On March 16, I announced that the Administration would implement new policies to give compliance officials more flexibility in dealing with small business and to cut back on paperwork. These Governmentwide policies, as well as the specific agency actions I announced, are part of this Administration’s continuing commitment to sensible regulatory reform. With your help and cooperation, we hope to move the Government toward a more flexible, effective, and user friendly approach to regulation.

A. *Actions:* This memorandum directs the designated department and agency heads to implement the policies set forth below.

1. *Authority to Waive Penalties.* (a) To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions in paragraph 1(a) of this memorandum shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director of the Office of Management and Budget (“Director”) describing the actions it will take to implement the policies in paragraph 1(a) of this memorandum. The plan shall provide that the agency will implement the policies described in paragraph 1(a) of this memorandum on or before July 14, 1995. Plans should include information on how notification will be given to frontline workers and small businesses.

2. *Cutting Frequency of Reports.* (a) Each agency shall reduce by one-half the frequency of the regularly scheduled reports that the public is required, by rule or

by policy, to provide to the Government (from quarterly to semiannually, from semiannually to annually, etc.), unless the department or agency head determines that such action is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of the agency's program. The duty to make such determinations shall be non-delegable.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director describing the actions it will take to implement the policies in paragraph 2(a), including a copy of any determination that certain reports are excluded.

B. *Application and Scope:* 1. The Director may issue further guidance as necessary to carry out the purposes of this memorandum.

2. This memorandum does not apply to matters related to law enforcement, national security, or foreign affairs, the importation or exportation of prohibited or restricted items, Government taxes, duties, fees, revenues, or receipts; nor does it apply to agencies (or components thereof) whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. This memorandum is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

4. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

[References to the Director of the Federal Emergency Management Agency to be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.]

PLAIN LANGUAGE IN GOVERNMENT WRITING

Memorandum of President of the United States, June 1, 1998, 63 F.R. 31885, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Vice President and I have made reinventing the Federal Government a top priority of my Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public.

The Federal Government's writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

- common, everyday words, except for necessary technical terms;
- "you" and other pronouns;
- the active voice; and
- short sentences.

To ensure the use of plain language, I direct you to do the following:

- By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.
- By January 1, 1999, use plain language in all proposed and final rulemaking documents published in

the Federal Register, unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts.

I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office of Management and Budget will publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

PREEMPTION

Memorandum of President of the United States, May 20, 2009, 74 F.R. 24693, provided:

Memorandum for the Heads of Executive Departments and Agencies

From our Nation's founding, the American constitutional order has been a Federal system, ensuring a strong role for both the national Government and the States. The Federal Government's role in promoting the general welfare and guarding individual liberties is critical, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in longstanding practices by executive departments and agencies, which have shown respect for the traditional prerogatives of the States. In recent years, however, notwithstanding Executive Order 13132 of August 4, 1999 (Federalism), executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, "[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

1. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

2. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt

State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget's Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REGULATORY COMPLIANCE

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3825, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government's activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at ogesdw.dol.gov and www.epa-echo.gov), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

First, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable,

and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

Second, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

Third, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies' risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REGULATORY FLEXIBILITY, SMALL BUSINESS, AND JOB CREATION

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3827, provided:

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing "differences in the scale and resources of regulated entities" and of considering "alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions." 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibil-

ity analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, "Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations."

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.

Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

- extended compliance dates that take into account the resources available to small entities;
- performance standards rather than design standards;
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- different requirements for large and small firms; and
- partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other

person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking,¹ and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1166.)

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In

¹ So in original. The comma probably should be a semicolon.

the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1166; amended Pub. L. 104-121, title II, §241(a)(1), Mar. 29, 1996, 110 Stat. 864; Pub. L. 111-203, title X, §1100G(b), July 21, 2010, 124 Stat. 2112.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 added subsec. (d).

1996—Subsec. (a). Pub. L. 104-121, §241(a)(1)(B), inserted at end “In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.”

Pub. L. 104-121, §241(a)(1)(A), which directed the insertion of “, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States” after “proposed rule” was executed by making the insertion where those words appeared in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6)¹ a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and

(6)¹ for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, §241(b), Mar. 29, 1996, 110 Stat. 864; Pub. L. 111-203, title X, §1100G(c), July 21, 2010, 124 Stat. 2113; Pub. L. 111-240, title I, §1601, Sept. 27, 2010, 124 Stat. 2551.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-240, §1601(1), struck out “succinct” before “statement”.

Subsec. (a)(2). Pub. L. 111-240, §1601(2), substituted “statement” for “summary” before “of the significant issues” and “of the assessment”.

Subsec. (a)(3), (4). Pub. L. 111-240, §1601(3), (4), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111-240, §1601(3), redesignated par. (4) as (5). Former par. (5), relating to description of steps taken to minimize the significant economic impact on small entities, redesignated (6).

Pub. L. 111-203, §1100G(c)(1), which directed amendment of par. (4) by striking “and” at the end, was executed to par. (5) to reflect the probable intent of Congress and the intervening redesignation of par. (4) as (5) by Pub. L. 111-240, §1601(3). See above.

Subsec. (a)(6). Pub. L. 111-240, §1601(3), redesignated par. (5), relating to description of steps taken to minimize the significant economic impact on small entities, as (6).

Pub. L. 111-203, §1100G(c)(3), added par. (6) relating to description of steps taken to minimize any additional cost of credit for small entities.

Pub. L. 111-203, §1100G(c)(2), which directed amendment of par. (5) by substituting “; and” for period at end, was executed to par. (6), relating to description of steps taken to minimize the significant economic impact on small entities, to reflect the probable intent of Congress and the intervening redesignation of par. (5) as (6) by Pub. L. 111-240, §1601(3). See above.

1996—Subsec. (a). Pub. L. 104-121, §241(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

“(1) a succinct statement of the need for, and the objectives of, the rule;

“(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

“(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.”

Subsec. (b). Pub. L. 104-121, §241(b)(2), substituted “such analysis or a summary thereof.” for “at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, §243(a), Mar. 29, 1996, 110 Stat. 866.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-121 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a cer-

¹ So in original. Two pars. (6) have been enacted.

tification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory

flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term “covered agency” means—

- (1) the Environmental Protection Agency;
- (2) the Consumer Financial Protection Bureau of the Federal Reserve System; and
- (3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rule-making record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

- (1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
- (2) Special circumstances requiring prompt issuance of the rule.
- (3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168; amended Pub. L. 104-121, title II, §244(a), Mar. 29, 1996, 110 Stat. 867; Pub. L. 111-203, title X, §1100G(a), July 21, 2010, 124 Stat. 2112.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 substituted “means—” for “means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.” and added pars. (1) to (3).

1996—Pub. L. 104-121, §244(a)(2), (3), designated existing provisions as subsec. (a) and inserted “including soliciting and receiving comments over computer networks” after “entities” in par. (4).

Pub. L. 104-121, §244(a)(1), which directed insertion of “the reasonable use of” before “techniques,” in introductory provisions, was executed by making the insertion in text which did not contain a comma after the word “techniques” to reflect the probable intent of Congress.

Subsecs. (b) to (e). Pub. L. 104-121, §244(a)(4), added subsecs. (b) to (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to inter-

pretative rules for which a notice of proposed rule-making was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

SMALL BUSINESS ADVOCACY CHAIRPERSONS

Section 244(b) of Pub. L. 104-121 provided that: “Not later than 30 days after the date of enactment of this Act [Mar. 29, 1996], the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency’s review panels established pursuant to this section.”

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

- (1) the continued need for the rule;
- (2) the nature of complaints or comments received concerning the rule from the public;
- (3) the complexity of the rule;
- (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is Jan. 1, 1981. See Effective Date note set out under section 601 of this title.

§ 611. Judicial review

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to—

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169; amended Pub. L. 104-121, title II, §242, Mar. 29, 1996, 110 Stat. 865.)

AMENDMENTS

1996—Pub. L. 104-121 amended section generally. Prior to amendment, section read as follows:

“(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

“(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

“(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rule-making was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as *amicus curiae* in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1170; amended Pub. L. 104-121, title II, §243(b), Mar. 29, 1996, 110 Stat. 866.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-121, §243(b)(1), which directed substitution of “the Committees on the Judiciary and Small Business of the Senate and House of Rep-

representatives” for “the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives”, was executed by making the substitution for “the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 104-121, §243(b)(2), substituted “his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the” for “his views with respect to the”.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

CHAPTER 7—JUDICIAL REVIEW

Sec.	
701.	Application; definitions.
702.	Right of review.
703.	Form and venue of proceeding.
704.	Actions reviewable.
705.	Relief pending review.
706.	Scope of review.

SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 11, 1946, ch. 423, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

§ 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

- (1) statutes preclude judicial review; or
- (2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
- (F) courts martial and military commissions;
- (G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103-272, §5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, §5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 1009 (introductory clause).	June 11, 1946, ch. 324, §10 (introductory clause), 60 Stat. 243.

In subsection (a), the words “This chapter applies, according to the provisions thereof,” are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702-706.

Subsection (b) is added on authority of section 2 of the Act of June 11, 1946, ch. 324, 60 Stat. 237, as amended, which is carried into section 551 of this title.

In subsection (b)(1)(G), the words “or naval” are omitted as included in “military”.

In subsection (b)(1)(H), the words “functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947” are omitted as executed. Reference to the “Selective Training and Service Act of 1940” is omitted as that Act expired on Mar. 31, 1947. Reference to the “Sugar Control Extension Act of 1947” is omitted as that Act expired on Mar. 31, 1948. References to the “Housing and Rent Act of 1947, as amended” and the “Veterans’ Emergency Housing Act of 1946” have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87-256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87-256.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 1891-1902 of title 50, appendix, referred to in subsec. (b)(1)(H), were omitted from the Code as executed.

AMENDMENTS

2011—Subsec. (b)(1)(H). Pub. L. 111-350 struck out “chapter 2 of title 41;” after “title 12;”.

1994—Subsec. (b)(1)(H). Pub. L. 103-272 substituted “subchapter II of chapter 471 of title 49; or sections” for “or sections 1622.”.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be