

Last week marked the 20th anniversary of [Executive Order 12866](#), *Regulatory Planning and Review*, which was signed by President Clinton on September 30, 1993 and published in the Federal Register on October 4, 1993. EO 12866 built on [previous regulatory oversight](#) executive orders in establishing the process through which federal regulatory actions are reviewed by the Office of Information and Regulatory Affairs (OIRA) to ensure the consistency of agency actions with Presidential priorities, to coordinate regulatory policy between agencies, and to provide a [dispassionate and analytical “second opinion”](#) on agency actions.

In addition to setting forth the process for regulatory review, EO 12866 articulated a regulatory philosophy regarding the purposes of federal regulations and the cases in which agencies are justified in regulating:

“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.”

EO 12866 also laid out 12 principles of regulation to ensure that agencies’ regulatory programs are consistent with the regulatory philosophy quoted above. These principles recommend that, before regulating, agencies identify the problem that a regulation attempts to solve, identify and assess alternative solutions to the problem identified, and assess both the costs and the benefits of regulating. EO 12866 §6 instructs OIRA to review executive branch regulations to ensure that they are promulgated in accordance with these principles.

In his first term, President Obama published a [memorandum](#) on Regulatory Review stating his intent to revisit the regulatory principles outlined in EO 12866:

“Years of experience have also provided lessons about how to improve the process of regulatory review. In this time of fundamental transformation, that process—and the principles governing regulation in general—should be revisited.”



The memo additionally instructed the Director of the Office of Management and Budget (OMB) to produce a set of recommendations for a new Executive Order on federal regulatory review, either to supplement or to replace EO 12866. In response to the memo, the OMB Director [sought comments](#) from the public on recommendations to be submitted to the President. In total, OMB received [183 comments](#) from individuals, academics, think tanks, and former government staff with recommendations for OIRA’s interaction with agencies, public participation in the rulemaking process, the role of cost-benefit analysis, and the role of behavioral science in policymaking.

On January 18, 2011, President Obama signed [Executive Order 13563](#), *Improving Regulation and Regulatory Review*, which reaffirmed the regulatory principles and philosophy outlined in EO 12866. In addition, EO 13563 instructed agencies to “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.”

For twenty years, the regulatory philosophy and regulatory principles stated in EO 12866 have guided agencies’ regulatory activity and regulatory review. These principles encourage analysis, consideration of alternatives, and attention to the costs and benefits of agency activity.

