Behind Closed Doors at the White House:

How Politics Trumps Protection of Public Health, Worker Safety, and the Environment

*Executive Summary**

By CPR Member Scholar Rena Steinzor, CPR Intern Michael Patoka, and CPR Policy Analyst James Goodwin

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*Full report and database of OIRA meetings are available on the CPR website, www.progressivereform.org.

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This white paper is a collaborative effort of the following individuals: **Rena Steinzor** is a Professor at the University of Maryland Francis King Carey School of Law and the President of the Center for Progressive Reform. **Michael Patoka** is a law student at the University of Maryland Francis King Carey School of Law and an intern at the Center for Progressive Reform. **James Goodwin** is a Policy Analyst with the Center for Progressive Reform. We thank **Suzann Langrall**, Coordinator for the Environmental Law Program at the University of Maryland Francis King Carey School of Law, for helping to gather and organize the data central to this report.

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Executive Summary

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, and 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.

Executive Order 12,866, issued September 30, 1993 and still in effect today

Key Findings

Tucked in a corner of the Old Executive Office Building, an obscure group of some three dozen economists exerts extraordinary power over federal rules intended to protect public health, worker and consumer safety, and the environment. Known officially as the Office of Information and Regulatory Affairs (OIRA, pronounced oh-EYE-ra), this unit reports to the director of the White House Office of Management and Budget (OMB), but operates as a free-ranging squad that pulls an astounding number of draft regulatory actions—some 6,194 over the ten-year period covered in this report—into a dragnet that operates behind closed doors. No policy that might distress influential industries, from oil production to coal mining to petrochemical manufacturing, goes into effect without OIRA's approval. A steady stream of industry lobbyists—appearing some 3,760 times over the ten-year period we studied—uses OIRA as a court of last resort when they fail to convince experts at agencies like the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA) to weaken pending regulations.

OIRA keeps secret the substance of the changes it makes to 84 percent of EPA and 65 percent of other agencies' submissions. Despite this effort to obscure the impact of its work, every single study of its performance, including this one, shows that OIRA serves as a one-way ratchet, eroding the protections that agency specialists have decided are necessary

under detailed statutory mandates, following years—even decades—of work. OIRA review is tacked on at the end of rulemakings that involve careful review of the authorizing statutes, lengthy field investigation, extended advice from scientific advisory panels, numerous meetings with affected stakeholders, days of public hearings, voluminous public comments, and thousands of hours of staff work. When all else fails, regulated industries make a bee-line for OIRA's back door. (For an illustration of how OIRA's review fits into the rulemaking process, see Figure 1.)

This report is the first comprehensive effort to unpack the dynamics of OIRA's daily work, specifically with regard to the only information that is readily available to the public about its internal review process: records of its meetings with lobbyists. These records are perhaps the only accessible accounting of OIRA's influence, and they demonstrate that OIRA has persistently ignored the unequivocal mandates of three presidents—Bill Clinton, George W. Bush, and Barack Obama—by refusing to disclose the differences between regulatory drafts as they enter review and the final versions that emerge at the end of that process. Our study reveals that OIRA routinely substitutes its judgment for that of the agencies, second-guessing agency efforts to implement specific mandates assigned to them by Congress in statutes such as the Clean Air Act, the Food Quality Protection Act, and the Occupational Safety and Health Act. In so doing, OIRA systematically undermines the clear congressional intent that such decisions be made by specified agencies' neutral experts in the law, science, engineering, and economics applicable to a given industry.

Our study covers OIRA meetings that took place between October 16, 2001 and June 1, 2011. During this decade-long period, OIRA conducted 6,194 separate "reviews" of regulatory proposals and final rules. According to the available data, these reviews triggered 1,080 meetings with OIRA staff involving 5,759 appearances by outside participants, each one representing some larger affiliation or group with an interest in the rulemaking. We placed each group into one of ten separate categories in order to make generalizations about the kinds of special interests participating in the meeting process. Table 1 introduces the kinds of groups that met with OIRA during this time period, breaking down each category into more concrete subcategories and indicating just how many of these groups are involved in the meeting process.

OIRA routinely substitutes its judgment for that of the agencies, second-guessing agency efforts to implement specific mandates assigned to them by Congress.

How OIRA's Review Fits into the Rulemaking Process

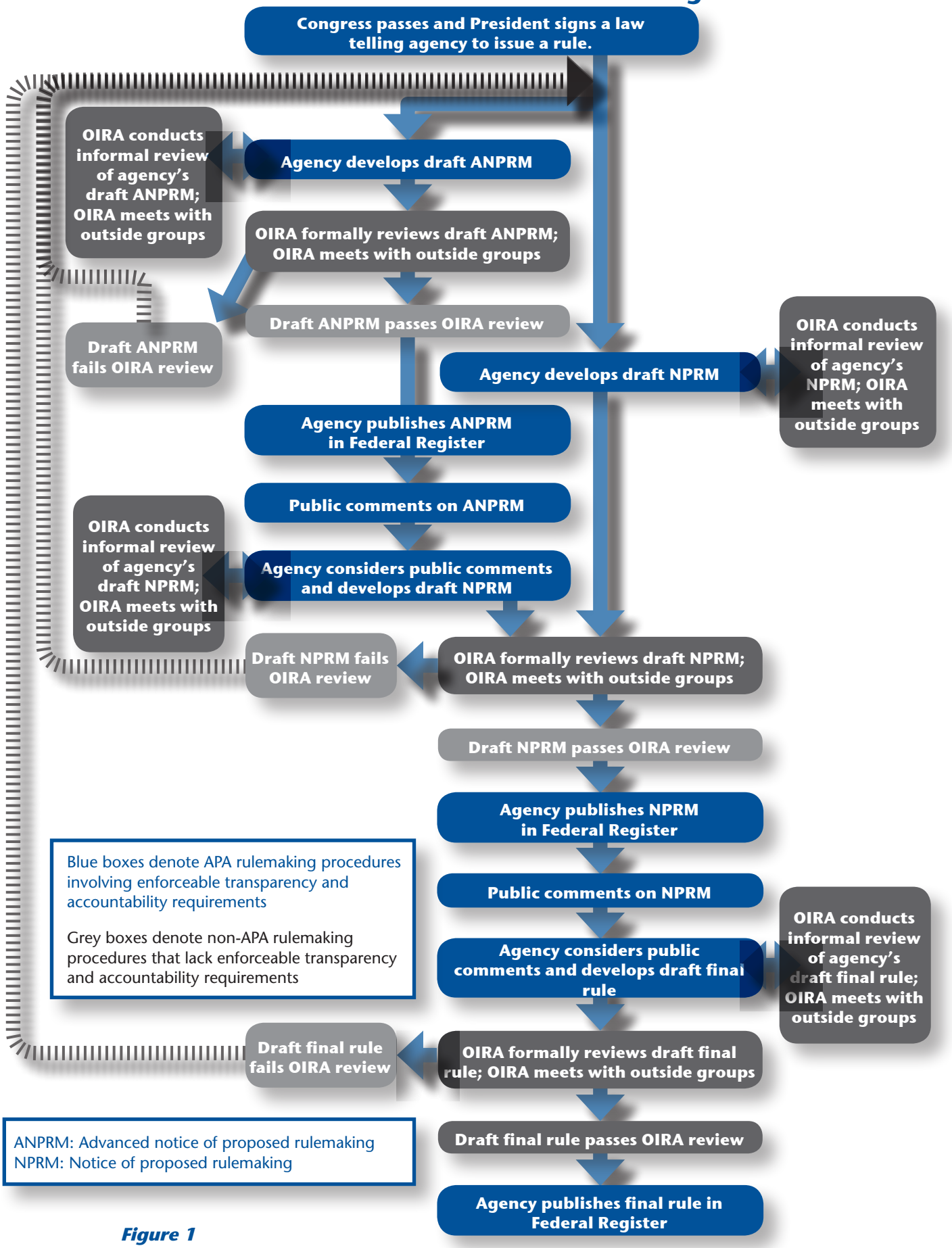

Figure 1

Category	Subcategory	Number of Distinct Groups That Met With OIRA
Industry Groups	Individual companies	550
	Trade associations and business organizations	371
	Private hospitals and healthcare systems	31
	Professional associations	22
Public Interest Groups	Environmental organizations	93
	Public health and safety organizations	34
	Education, advocacy, and research organizations	21
	Labor unions	16
	Community advocacy, public service, and citizens groups	13
	Civil and human rights organizations	10
	Consumer organizations	6
	Public interest law firms and legal-aid organizations	4
	Professional associations	8
	Individuals	4
	Public interest hospital and community-health organizations	3
	Other public interest groups	6
State Government	States and state agencies	29
	Interstate organizations	18
	Indian tribes and intertribal organizations	6
Local Government	Local governments and agencies	11
	Local-government associations	2
Other Federal Agencies	Examples: U.S. Small Business Administration, U.S. Department of Agriculture, U.S. Department of Energy	27
Members of Congress	U.S. Representatives and House Committees	32
	U.S. Senators and Senate Committees	25
Law, Consulting, and Lobbying Firms	Law firms	132
	Consulting and lobbying firms	171
Foreign or International Government	Foreign governments and embassies	11
	Multinational governmental associations	4
Higher-Education	Universities	32
	Associations of colleges and universities	9
	Professional associations	4
Other White House Offices	Examples: Council on Environmental Quality, Council of Economic Advisers, Domestic Policy Council	19

Table 1. The Kinds of Groups Involved in the OIRA Meeting Process

Our analysis, which is the most exhaustive evaluation of the impact of White House political interference on the mandates of agencies assigned to protect public health, worker safety, and the environment, reveals a highly biased process that is far more accessible to regulated industries than to public interest groups. Of course, it is possible—and senior OIRA officials

OIRA has pressed the envelope of its extraordinarily broad review authority but has routinely flouted its disclosure and deadline requirements.

have claimed—that meetings with outside parties do not drive their final decisions on agency proposals. To accept this claim, any objective observer must reject the dual assumptions that underlie the entire regulatory system: first, that a pluralistic process based on a level playing field is crucial to a wise result, and second, that experts in law, science, engineering, economics, and other disciplines are best equipped to evaluate the self-serving claims of private-sector stakeholders. Neither assumption guides OIRA. Instead, OIRA's playing field is sharply tilted toward industry interests, a process that demeans all disciplines except economists practicing OIRA's narrow brand of cost-benefit analysis, and a wide avenue that allows political considerations to trump expert judgments much of the time. As just one example of the impact of this disturbingly secretive process, consider the participation of William Daley, President Obama's Chief of Staff, in OIRA deliberations that eventually compelled EPA Administrator Lisa Jackson to promulgate a National Ambient Air Quality Standard (NAAQS) for ozone pollution that she had described as "legally indefensible" only a few months earlier.[1]

Our results tell a damning story of the relentless erosion of expert agency judgments by relatively junior White House staffers. OIRA economists use the window dressing of ostensibly objective cost-benefit analyses to camouflage politicized interventions that alter two-thirds of all regulatory drafts submitted by agencies other than EPA, and a shocking 84 percent of EPA submissions. Our specific findings include:

1. **Routine Violations of Executive Order 12,866**. In 1993, President Bill Clinton attempted to reform OIRA's most significant shortcomings by issuing Executive Order (EO) 12,866.[2] Underscoring the importance of these provisions, Presidents Bush and Obama continued EO 12,866 in effect with only minor amendments. The EO represented a compromise between regulated industries, urging strong presidential oversight of Executive Branch regulatory activities, and public interest groups, demanding greater transparency regarding the impact of such oversight on the protection of public health, worker and consumer safety, and the environment. Industry achieved broad oversight, while public interest groups achieved a set of disclosure requirements and deadlines that would allow public oversight of OIRA's work and prevent the Office from becoming a politicized sinkhole for proposals that moneyed special interests opposed.

   In the 18 years since EO 12,866 was issued, OIRA has pressed the envelope of its extraordinarily broad review authority but has routinely flouted these disclosure and deadline requirements. The twin cornerstones of the transparency intended by EO 12,866 require (1) OIRA to make available "all documents exchanged between OIRA and the agency during the review by OIRA"[3] and (2) all agencies to "identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA."[4] The Obama Administration's determined neglect of these requirements is just as bad as it was under President Bush. The most important

consequence of these secretive practices is the nondisclosure of communications between OIRA and the agencies, which makes it impossible for the public to undertake a systematic, rule-by-rule analysis of the impact of OIRA review.

2. **Blown Deadlines**. Under EO 12,866, OIRA has 90 days to complete its review from the date the originating agency (for example, EPA) submits it.[5] This period can be extended by 30 days *once*, for a total of 120 days, but only if the agency head agrees to the longer period.[6] Of the 501 completed reviews that we examined (those in which OIRA was lobbied by outside parties), 59 reviews (12 percent) lasted longer than 120 days and 22 reviews extended beyond 180 days (about six months), as Figure 2 shows below.

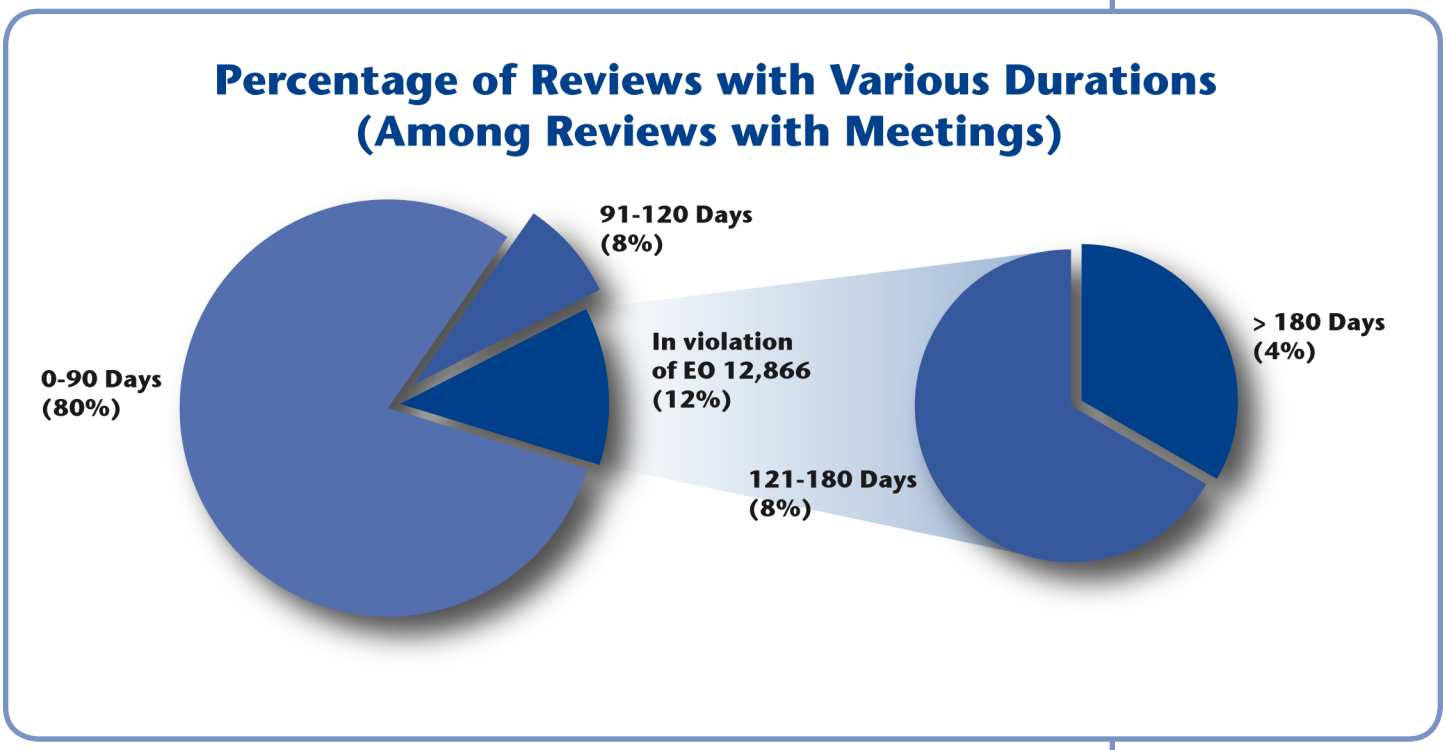

Figure 2

Among recent examples of such delays, EPA's proposed coal ash rule, written in response to the spill of 1 billion gallons of coal ash sludge in Kingston, Tennessee in 2008, was held captive at OIRA for six months. OIRA's review was so withering, and the proposal that emerged was so altered, that the rule will not come out until after the 2012 election. A proposal to issue a "chemicals of concern" list under the Toxic Substances Control Act has languished at OIRA for 17 months as of this writing. EPA's failure to regulate toxic chemicals more aggressively has landed the program on the Government Accountability Office's (GAO) short list of failed, "high risk" government initiative that should be a

priority for reform.[7] And a Department of Labor rule defining which farm work is too hazardous for children to perform gathered dust at OIRA for nine months, even though no records of meetings with concerned outside parties were ever disclosed and no interest group has publicly emerged to protest the rule. The need for the rule, which updates 40-year-old standards, became obvious in a series of gruesome accidents, including one in early August in which two Oklahoma 17-year-olds were pulled into a heavy, mechanized grain auger, badly injuring their legs.

3. **Overwhelming Industry Dominance.** As Figure 3 shows below, the industry groups participating in the meeting process outnumber the public interest groups by a ratio of 4.5 to 1—before even taking into account all the law, consulting, and lobbying firms that have met with OIRA on behalf of industry groups.

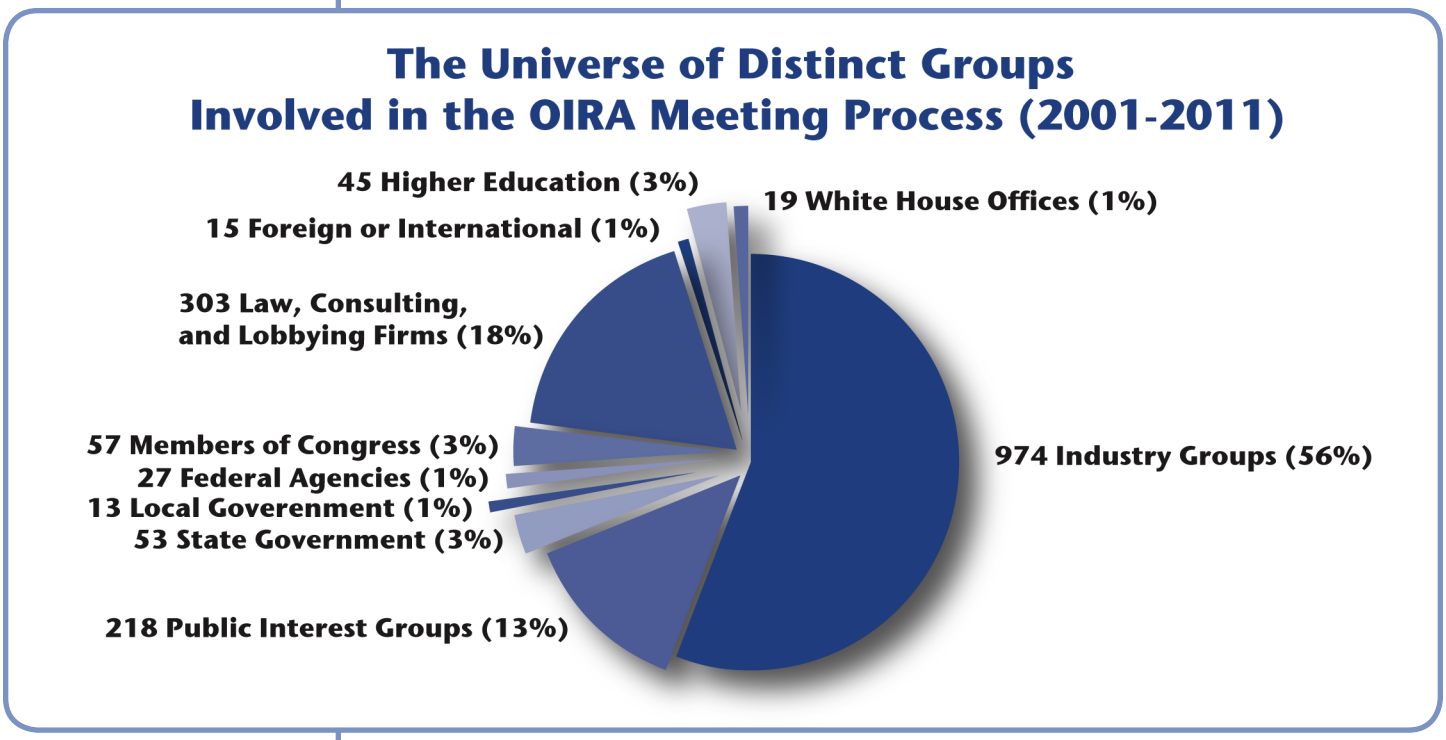

Figure 3

Table 2 below puts names to the statistics by identifying those outside parties (groups outside the federal government) that have been the most active in the meeting process. Of the 30 organizations listed here, 17 of them are industry groups, 8 are law and lobbying firms representing industry viewpoints, and 5 are public interest groups.

Rank	Group Name	Description	Number of Meetings
1	American Chemistry Council	Trade association	39
2	Natural Resources Defense Council	Environmental organization	37
3	ExxonMobil	Industry	29
4	American Forest and Paper Association	Trade association	28
5	Environmental Defense Fund	Environmental organization	26
6	Sierra Club	Environmental organization	25
7	American Petroleum Institute	Trade association	24
8	Earthjustice	Environmental organization	24
9	Edison Electric Institute	Trade association	22
10	Hunton and Williams	Law Firm	22
11	Patton Boggs	Lobbying firm	20
12	American Trucking Association	Trade association	19
13	National Association of Home Builders	Trade association	19
14	Hogan and Hartson (now Hogan Lovells)	Law firm	17
15	Air Transport Association	Trade association	16
16	National Association of Manufacturers	Trade association	16
17	National Cattlemen's Beef Association	Trade association	15
18	Crowell and Moring	Law firm	15
19	DuPont	Industry	14
20	Barnes and Thornburg	Law firm	14
21	American Farm Bureau (Federation)	Trade association	13
22	American Meat Institute	Trade association	13
23	National Mining Association	Trade association	13
24	US Chamber of Commerce	Industry association	13
25	Latham and Watkins	Law firm	13
26	Mortgage Bankers Association	Trade association	12
27	Portland Cement Association	Trade association	12
28	Venable	Law firm	12
29	EOP Group	Lobbying firm	11
30	Consumer Federation of America	Consumer organization	10

Table 2. The "Top 30" Groups Represented in the Most Meetings with OIRA

Looking more specifically at the number of individuals who attended OIRA meetings over the last decade, we found a similar degree of industry dominance: 65 percent of the 5,759 meeting participants represented regulated industry interests—about five times the number of people appearing on behalf of public interest groups (see Figure 4). President Obama's OIRA did somewhat better than President Bush's in this regard, with a 62-percent industry participation rate to Bush's 68 percent, and a 16-percent public interest group participation level to Bush's 10 percent. Nevertheless, even under this ostensibly transformative President, who pledged to rid his administration of the undue influence of well-heeled lobbyists and conduct government in the open, industry visits outnumbered public interest visits by a ratio of almost four to one.

Interests Represented by Individual Attendees

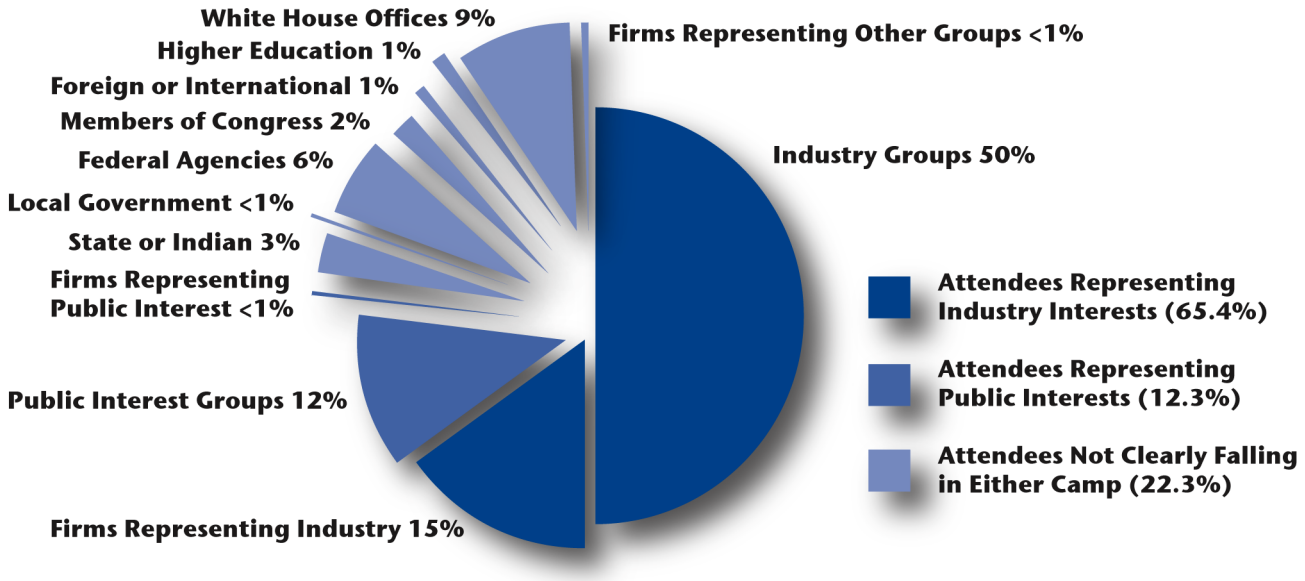

Figure 4

As disturbing, only 16 percent of rule reviews that involved meetings with outside parties garnered participation across the spectrum of interested groups, as shown in Figure 5 below. Seventy-three percent attracted participation only from industry and none from public interest organizations, while 7 percent attracted participation from public interest groups but not industry, for an overall ratio of more than ten to one in favor of industry's unopposed involvement.

Degree of Imbalanced Participation in Reviews with Meetings

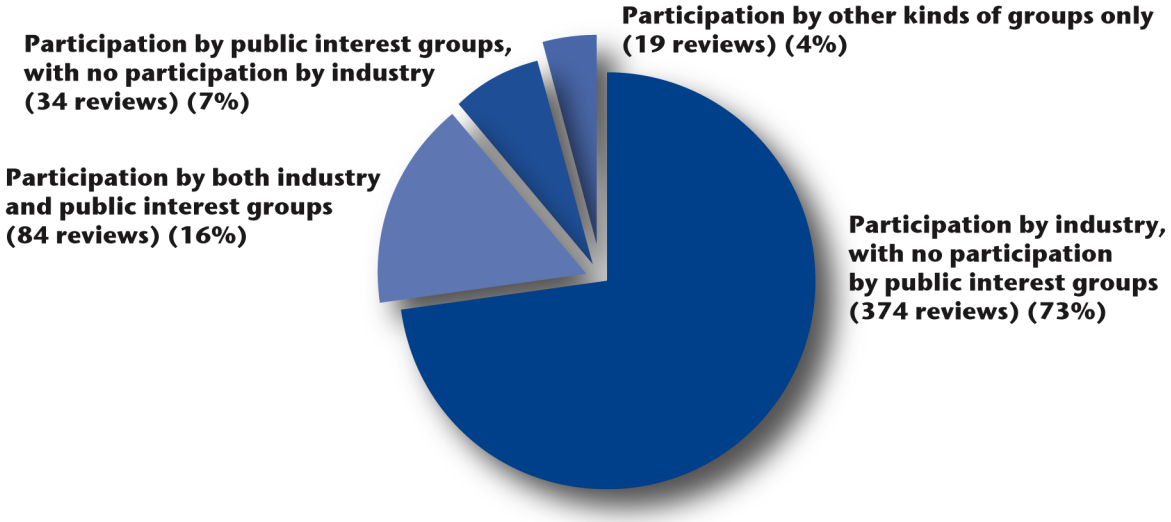

Figure 5

4. **EPA as Whipping Boy.** OIRA review is disproportionately obsessed with EPA. Fully 442 of OIRA's 1,080 meetings dealt with EPA rules. Only two other agencies had more than 100 meetings about their rules: the Department of Health and Human Services (HHS) with 137 meetings and the Department of Transportation (DOT) with 118 meetings. Compounding these disparities is the striking anomaly of this focus in the context of the overall number of rules reviewed: EPA submitted only 11 percent of the rulemaking matters reviewed by OIRA, but accounted for 41 percent of all meetings held (see Figure 6).

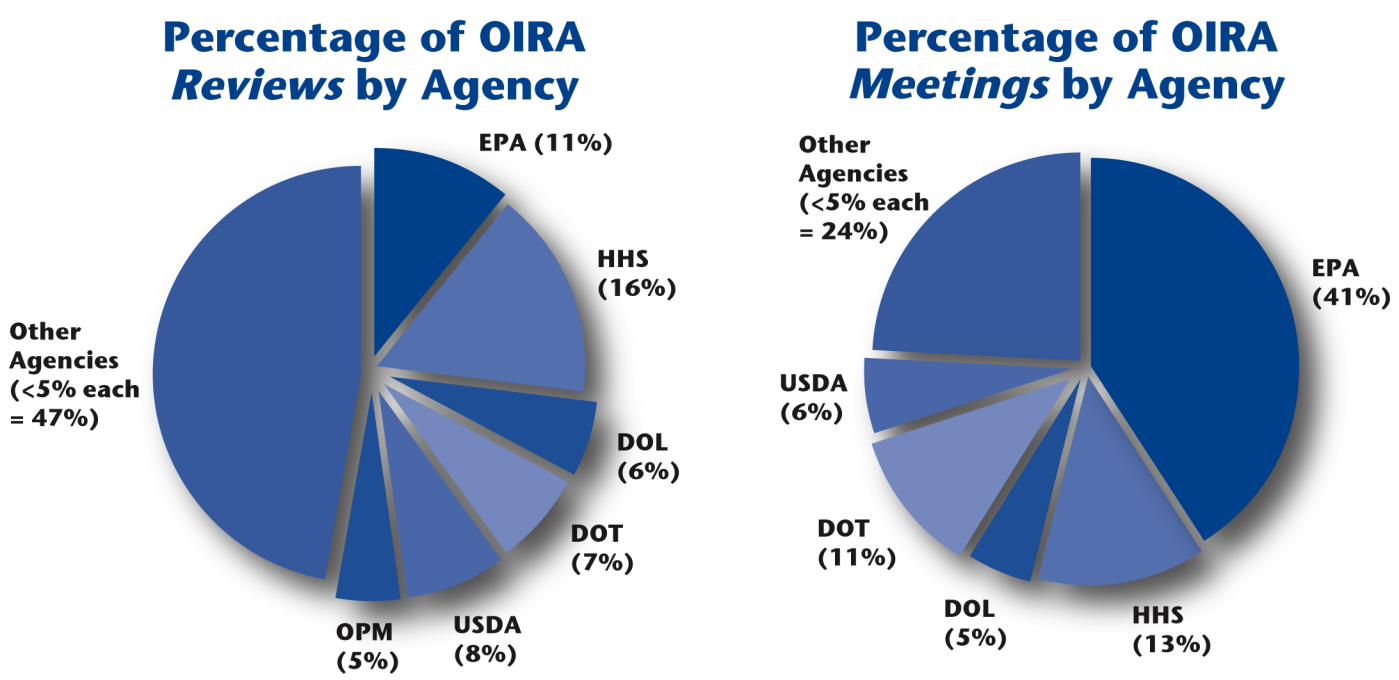

Figure 6

5. **OIRA Overreach.** EO 12,866 instructs OIRA to focus on "economically significant rules," generally defined as rules imposing more than $100 million in annual compliance costs for affected industries.[8] The order allowed OIRA to extend the scope of its review in very limited circumstances: for example, with respect to rules that interfere with other agencies' work, materially change entitlement programs, or present "novel" legal or policy issues.[9]

   For the past decade, OIRA has ignored these limits, extending its reach into every corner of EPA's and other agencies' work. While OIRA reviews approximately 500 to 700 rules each year, only about 100 are economically significant, with the remainder supposedly falling under the limited exceptions of EO 12,866. Or, in other words, "non-economically significant rules" are reviewed at a ratio of six to one with the rules that should be the primary focus of OIRA's work. It's worth noting in this regard that because OIRA has such a small staff, and rulemaking proceedings at agencies like EPA are so complex, the temptation to hold small rules hostage in order to inspire changes in more significant rules must exist, although OIRA's secretiveness about what happens during its review makes it impossible to confirm this hypothesis.

6. **One-way Ratchet**. The reasons why OIRA prefers to conduct reviews behind closed doors and agencies are too fearful to reveal these negotiations are obvious: OIRA changed 76 percent of rules submitted to it for review under President Obama, compared to a 64-percent change rate under President Bush. EPA rules were changed at a significantly higher rate—84 percent—than those of other agencies—65 percent—throughout the period of our study (see Figure 7).

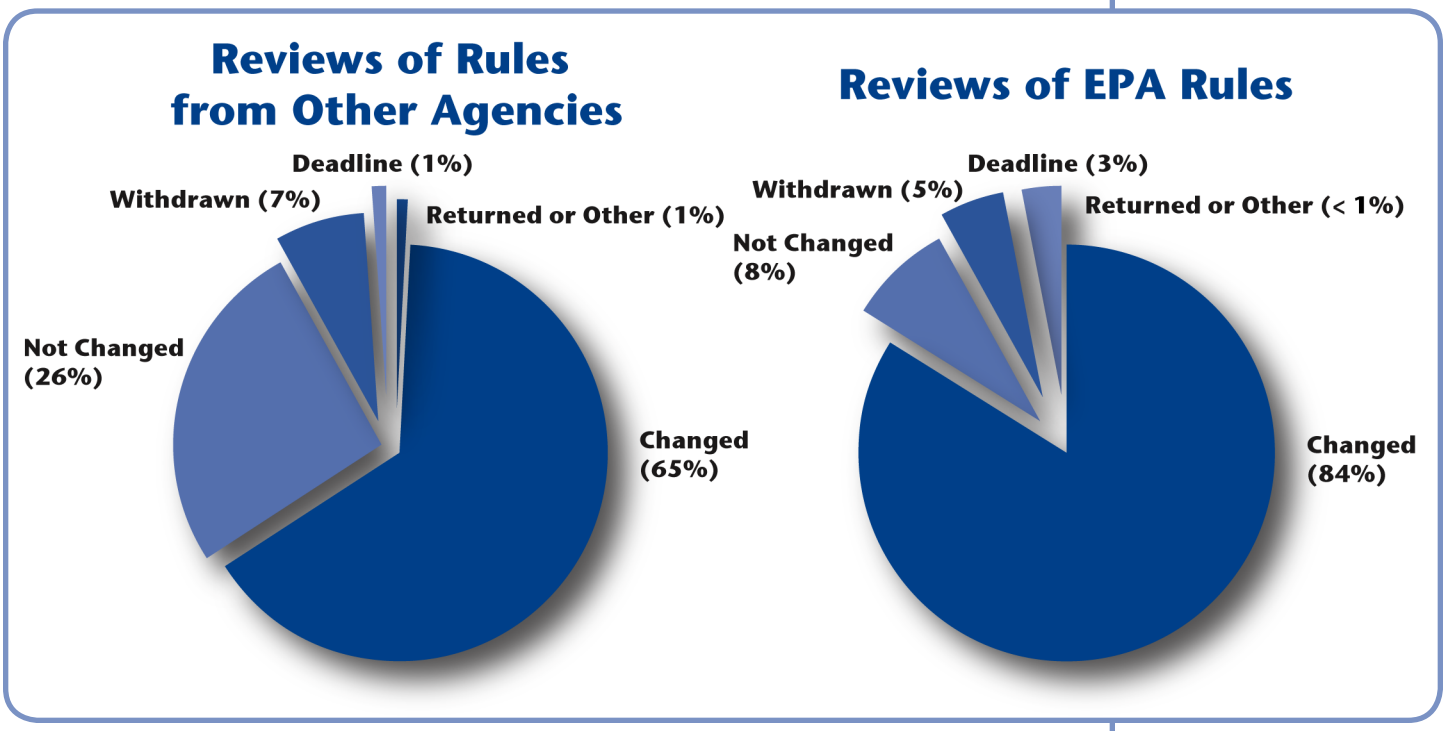

Figure 7

Moreover, rules that were the subject of meetings with stakeholders were 29 percent more likely to be changed than those that were not (85 percent divided by 66 percent, see Figure 8), although the difference is not as severe under Obama—mainly because OIRA has been changing more rules even *without* meetings than it did under Bush, thus narrowing the gap. In light of previous studies suggesting that OIRA's changes exclusively weaken agency rules,[10] as well as a number of well-known examples where OIRA altered rules in exactly the ways requested by industry lobbyists, this evidence of OIRA's frequent changes cements its reputation as an aggressive one-way ratchet.

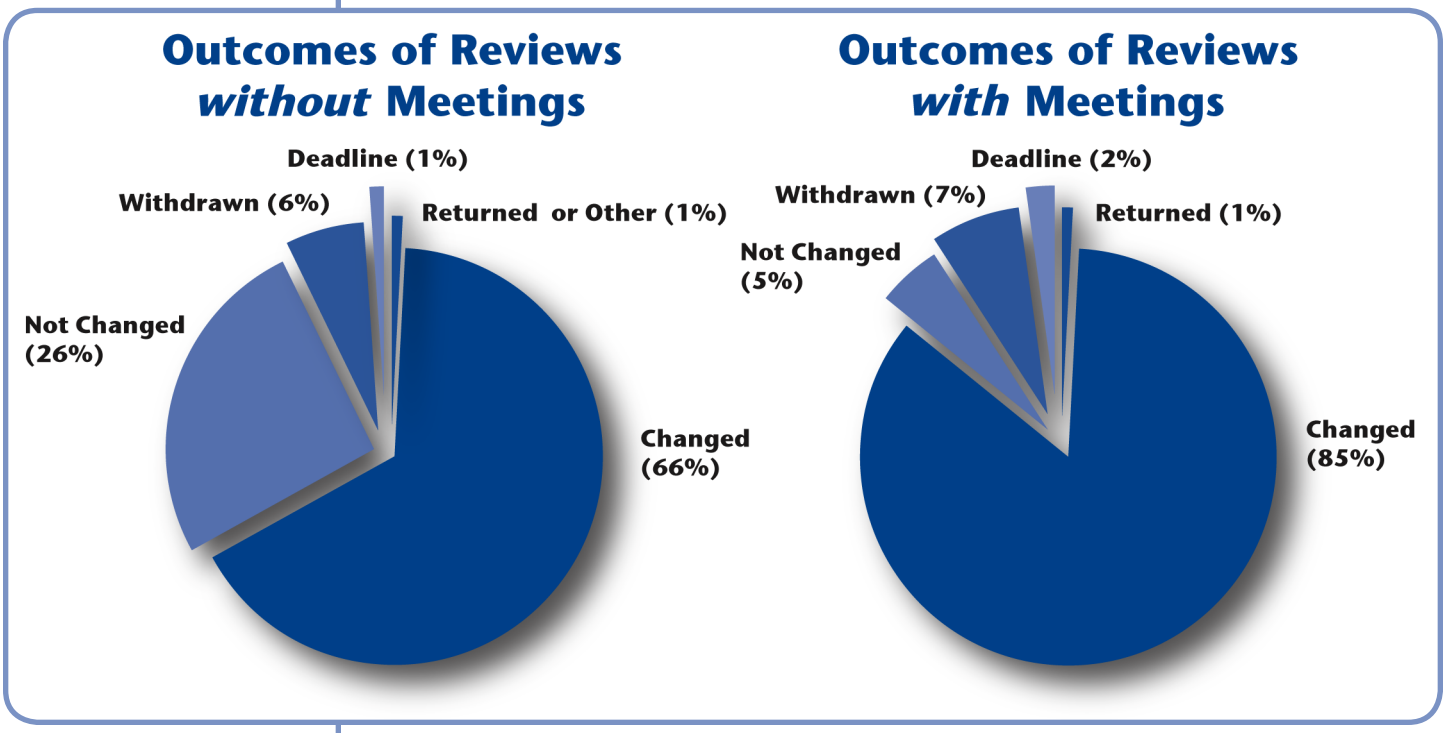

Figure 8

7. **Premature Intervention.** All of the above findings regarding industry dominance, lack of transparency, and inordinate OIRA interference with the substance of rules to protect public health and natural resources are compounded by OIRA's early interference in the formulation of regulatory policy. Of the 1,056 meetings that took place over the studied time period and that were identified with a rulemaking stage, 452 (43 percent) took place before the agency's proposal was released to the public. The percentage of meetings that occurred at this *pre-proposal* stage has actually been greater during the Obama Administration (47 percent) than it was during the Bush Administration (39 percent). Early interference frustrates transparency and exacerbates the potential for agencies to succumb to White House political pressure before they have even had the opportunity to seek public comment on more stringent proposals.

   Such secret deliberations are especially prevalent when OIRA conducts "informal reviews" of agency rules. These informal reviews, conducted through phone calls and meetings between OIRA and agency staff, are very effective in changing the agency's regulatory plans. But the public has virtually no way of knowing what happens during these reviews, or even how long they last. Of the 1,057 meetings that could be linked to a formal review period, 251 (24 percent) were held prior to the formal review—in other words, during OIRA's *informal* review. To the Obama Administration's credit, the proportion of informal-review meetings was much greater under the Bush Administration (34 percent of all meetings) than it has been over the last two and a half years (10 percent).

A Word about EO 12,866

EO 12,866 governs the process OIRA must follow in undertaking regulatory reviews. The EO is written in simple, straightforward, and highly prescriptive language, clearly stating deadlines and requirements that OIRA and the agencies "must" follow. Among the most striking findings of this report is that OIRA routinely violates these provisions. The violations are clear, not debatable, and no credible interpretation of the EO excuses them. Nevertheless, in our many years of experience watching OIRA's activities under both Presidents Bush and Obama, we have talked to numerous journalists who said that OIRA spokespeople had told them that EO 12,866 explicitly allows OIRA to behave in the manner that EO 12,866 in fact prohibits.

For example, EO 12,866 anticipates that OIRA will meet with outside parties as it reviews agency rules, and requires OIRA to disclose certain minimal information about its meetings (the date, the attendees, and the subject matter).[11] With regard to these meetings, OIRA has adopted an "open-door" policy, insisting that it is required by EO 12,866 to meet with all interested parties that request to do so.[12] In the words of OMB spokesman Tom Gavin, "The office has not refused a meeting with anyone who has asked for one."[13] No matter how many similar meetings OIRA has already agreed to, or how lopsided the process becomes when most of the meetings are requested by regulated industries to complain about pending regulations, OIRA continues to grant meeting requests.

Despite OIRA's assertion to the contrary, *nothing in the executive order requires such a policy*. In fact, all of these meetings are redundant of the extensive opportunities for regulated industries to file comments with EPA and other agencies, to testify at numerous public meetings, and to meet with agency staff innumerable times. If OIRA were truly concerned about appearing neutral and impartial, it would avoid the stampede of industry lobbyists that we have documented below. In actual practice, however, OIRA functions as little more—and nothing less—than a "fix it" shop for special interests and is oblivious to how its lopsided process and lack of transparency might appear to the American people.

We anticipate that OIRA's efforts to distort the language of the EO will recur after we issue this report, as OIRA attempts to excuse the behavior catalogued below. We hope that journalists, Members of Congress and their staff, other government agencies and departments, private sector organizations, and the public will take the time to compare these justifications to the plain language of EO 12,866.

Recommendations for Reform

At the beginning of the Obama Administration, CPR Member Scholars urged OIRA Administrator Cass Sunstein to shift OIRA's emphasis from reviewing individual rules to concentrating on cross-cutting regulatory problems, such as the threats posed by unsafe imports.[14] By the beginning of the third year of President Obama's first term, it became clear that the Administration was determined to use OIRA as the leading edge of its political efforts to placate big business in an effort to neutralize its attacks on the Administration in general and its regulatory policies in specific. The most recent example is Cass Sunstein's role as the White House official who instructed EPA Administrator Lisa Jackson to abandon efforts to tighten the NAAQS for ozone (known more familiarly as smog) that has been in effect since 1997 and is significantly weaker than the standard proposed by the Bush Administration.

So we have little hope that the Obama Administration will contemplate the fundamental overhaul of OIRA's role that is genuinely needed. For the record, however, such reform would include:

- Eliminating OIRA's review of individual regulatory proposals, and instead re-directing the Office to focus on cross-cutting regulatory problems that require coordinated actions by multiple agencies;
- Helping the agencies to develop proposals to strengthen their effectiveness administratively and legislatively; and
- Advocating targeted budget increases to enable the agencies to enforce existing laws.

Short of those meaningful, fundamental reforms, we offer here a series of more moderate proposals that should be regarded as a "first step" toward solving OIRA's burgeoning distortion of statutes like the Clean Water and Clean Air Acts, the Food, Drug, and Cosmetic Act, and the Mine Safety and Health Act. These suggested reforms are squarely within reach of the Obama Administration, certainly if it is granted a second term. Although we believe the reforms we offer fall far short of the wide-ranging reform that is needed, and even if followed, will not defuse OIRA's overly politicized process, one that trumps expert judgments on the protections Americans need and deserve, the changes below would at least eliminate blatant violations of EO 12,866 and make the review process fairer.

Transparency

1. Once OIRA has completed its review of either a proposed or final rule, the agency that originated the proposal should post on the Internet (including as part of the rule's electronic docket) a succinct explanation of the changes OIRA demanded, along with the version of the rule that was submitted to OIRA and the revised document that emerged at the end of the review period.

2. OIRA should post on the Internet (including, as part of the rule's electronic docket) all of the written communications that occurred between its staff and the originating agency during its consideration of any proposed or final rule.
3. OIRA should end the practice of undertaking "informal reviews" of agency policies before they are developed into regulatory drafts and officially submitted for review.

Level Playing Field

4. OIRA should stop meeting with outside parties during its consideration of a proposed or final rule, and instead confine its evaluation to dialogue with agency staff and, if necessary, review of the ample comments in the rulemaking record. The agency process of reviewing public comments is the appropriate venue for outside parties to make their case about how best to enforce the nation's laws via regulation.
5. Nevertheless, if OIRA continues to meet with outside parties, it should assume an active role in balancing the participation, whether through consolidating meetings with like-minded participants (seeing them all at once), reaching out to the relevant public interest groups to encourage their input, or both.

Timeliness

6. OIRA should abide by the deadlines set forth in EO 12,866 that allow a maximum of 120 days for rule review, provided that the agency head agrees to a delay beyond 90 days.
7. If OIRA asks for a 30-day extension, its request and the agency head's approval should be in writing and made public as soon as they are issued.
8. If OIRA misses these deadlines, agency heads should proceed with their rulemaking schedules and the President should support those decisions.

Economically Significant Rules

9. OIRA should focus its review on economically significant regulatory proposals and stop reviewing non-economically significant rules and guidance documents that do not fit under the exceptions provided by EO 12,866: namely, that a proposal would interfere with another agency's work, materially change entitled programs, or pose novel legal or policy issues.
10. In the rare instance when OIRA believes it must exercise its authority to pull a non-economically significant rule into its review process, it should explain in writing how the proposal fits under the exceptions set forth in EO 12,866, and it should promptly post this explanation on the Internet (both on its website and in the rule's electronic docket).

OIRA should post on the Internet all of the written communications that occurred between its staff and the originating agency during its consideration of any proposed or final rule.

Endnotes

[1] *See* Lawrence Hurley & Gabriel Nelson, *Lawyers Plot Next Steps in Legal Battle Over Ozone Rule*, N.Y. Times, Sept. 7, 2011, http://www.nytimes.com/gwire/2011/09/07/07greenwire-lawyers-plot-next-steps-in-legal-battle-over-o-59778.html; Mark Drajem & Kim Chipman, *Daley Lobbied by Business, Health Groups on U.S. Ozone Rule*, Bloomberg, Aug. 16, 2011, http://www.bloomberg.com/news/2011-08-16/daley-lobbied-by-business-environment-groups-on-u-s-ozone-rule.html.

[2] Exec. Order No. 12,866, 3 C.F.R. 638 (1993), *reprinted as amended in* 5 U.S.C.A. § 601 note (West 2010), *available at* http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf.

[3] Exec. Order No. 12,866 § 6(b)(4)(D), 3 C.F.R. at 648.

[4] *Id.* § 6(a)(3)(E)(iii), 3 C.F.R. at 646.

[5] *Id.* § 6(b)(2)(B), 3 C.F.R. at 647.

[6] *Id.* § 6(b)(2)(C), 3 C.F.R. at 647.

[7] *See* U.S. Gov't Accountability Office, High Risk Series, http://www.gao.gov/docsearch/featured/highrisk.html.

[8] *See* Exec. Order No. 12,866 § 6(b)(1), 3 C.F.R. 638 at 646 (permitting OIRA to review only "significant regulatory actions"); *id.* § 3(f)(1), 3 C.F.R. at 641 (defining regulatory actions that are significant for economic reasons). *Compare id.* § 6(a)(3)(C), 3 C.F.R. at 645-46 (requiring agencies to prepare a full cost-benefit analysis, with extensive consideration of alternatives, for economically significant rules) *with id.* § 6(a)(3)(B), 3 C.F.R. at 645 (requiring agencies to prepare only an assessment of costs and benefits for non-economically significant rules).

[9] *See id.* §§ 3(f)(2)-(4), 3 C.F.R. at 642.

[10] *See, e.g.,* Lisa Schultz Bressman & Michael P. Vandenbergh, *Inside the Administrative State: A Critical Look at the Practice of Presidential Control*, 105 Mich. L. Rev. 47, 72-73 (2006) (a survey of top political appointees at EPA under Bush I and Clinton, in which 89 percent of respondents agreed that OIRA *never or rarely* made changes that would enhance protection of human health or the environment, and *often or always* made regulations less burdensome for regulated entities); David M. Driesen, *Is Cost-Benefit Analysis Neutral?*, 77 U. Colorado L. Rev. 335, 365 (2006) (examining 25 rules identified by the GAO as "significantly changed" by OIRA between June 2001 and July 2002, and concluding that for 24 of the 25 rules, OIRA's suggested changes "would weaken environmental, health, or safety protection").

[11] Exec. Order No. 12,866 § 6(b)(4)(C)(iii), 3 C.F.R. at 648.

[12] *See* Michael Collins, *Environmentalists Critical of Number of Meetings Regulatory Office Has Had with Opponents to New Coal Ash Rules*, Knoxville News Sentinel, Mar. 19, 2010, http://www.knoxnews.com/news/2010/mar/19/environmentalists-critical-coal-ash-rules-debate; Patrick Reis, *Recycling Questions Complicate EPA Coal Ash Decision*, The New York Times, Jan. 13, 2010, http://www.nytimes.com/gwire/2010/01/13/13greenwire-recycling-questions-complicate-epa-coal-ash-de-90614.html?pagewanted=all; Patrick Reis, *GOP Superfriends Have Complicated History with Subsidies - Oil Up despite Market Tumble - DOE's Nat Gas Panel to Release Recommendations Today - NRC Facing Suit*, Politico Morning Energy, Aug. 11, 2011, http://www.politico.com/morningenergy/0811/morningenergy310.html.

[13] Collins, *supra* note 5.

[14] John S. Applegate et al., Center for Progressive Reform, *Reinvigorating Protection Health, Safety, and the Environment: The Choice Facing Cass Sunstein* (Jan. 2009), http://www.progressivereform.org/articles/SunsteinOIRA901.pdf.

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