



A Framework for Addressing Delayed Regulatory Reviews at OIRA

While OIRA has achieved a laudatory record for thorough and efficient regulatory review, occasionally rules remain under OIRA review for far longer than the 90-day timeframe set by Executive Order. For example, OIRA has been reviewing a worker safety rule on silica for nearly 850 days. More than 70 rules currently under review have been pending longer than 90 days.

Careful centralized review is essential to the regulatory process, to ensure that policies maximize social welfare and to facilitate inter-agency coordination. Sometimes conducting an effective regulatory review will take longer than the 90 days allotted by Executive Order. The costs of such delay must be balanced against the potential benefit that additional review may produce better rules. Unjustified delay can harm the public, the agency, and OIRA's reputation:

- Undue delay imposes costs on the public. If OIRA is slow to reject rules that will not ultimately be cost-benefit justified, then it prevents agencies from developing better, more efficient alternatives. If OIRA delays releasing rules that are cost-benefit justified, then intended beneficiaries lose out on vital benefits. For example, the silica rule (and a related mining rule) could help address the hundreds of annual silicosis cases and deaths.
- Delay also creates uncertainty for the regulated industry. Uncertainty can chill otherwise productive investments—including investments in safer, cleaner, more efficient equipment—while investors wait for more information about the future regulatory climate.
- Moreover, delay can damage public perception of OIRA. Some groups continue to view OIRA as an anti-regulatory “black hole,” given its past history. Though OIRA has greatly improved its track record for transparency, unexplained delay may undermine that new reputation.

At times, OIRA may need more than 90 days to conduct thorough and effective regulatory reviews. However, OIRA should take steps to prevent unjustified delays and to explain unavoidable ones:

If insufficient information is causing delay, return the rule to the agency to collect more data. Sending the rule back allows the promulgating agency to issue a public request for information and later to resubmit the rule to OIRA after gathering sufficient supporting data. This way, the public can participate in the regulatory process and rulemaking can continue.

If complexity is causing delay, publicly set a new timeline for review. OIRA may need more than 90 days to review particularly complex rules that feature myriad elements and challenging methodological problems. OIRA should publicly acknowledge these delays, explain the need for additional time, and provide an updated, achievable schedule for completing review. Such actions would increase transparency and signal to the public that OIRA has not simply lost track of the rule.

If insufficient resources are causing delay, disclose the shortfall to the public and to Congress. A lack of resources may be temporary due to staff turnover, or longer lasting, as in the case of a constrained budget. Publicizing these situations would increase transparency and help build the case for allocating to OIRA the resources necessary to carry out its review duties.

It is unacceptable to hold rules indefinitely at OIRA for political reasons or due to pressure from special interests. Politically-motivated delays undermine the credibility both of OIRA as a neutral reviewing body and of cost-benefit analysis as a neutral tool for evaluating regulatory policies. Such delays particularly erode OIRA's credibility given its institutional history.

By following these simple steps, OIRA can reduce its backlog of regulatory reviews and mitigate the social costs of undue delay.