

Memorandum of Agreement
The Department of the Treasury and the Office of Management and Budget
Review of Tax Regulations under Executive Order 12866

Executive Order 13789 directed the Department of the Treasury and the Office of Management and Budget (OMB) to “review and, if appropriate, reconsider the scope and implementation of the existing exemption for certain tax regulations from the review process set forth in Executive Order 12866 and any successor order.” Treasury and OMB share a commitment to reducing regulatory burdens and providing timely guidance to taxpayers. Accordingly, this Memorandum of Agreement (MOA) provides the general terms under which the Office of Information and Regulatory Affairs (OIRA) within OMB will review tax regulatory actions.¹

1. *OIRA review of tax regulatory actions.* A tax regulatory action will be subject to review by OIRA under section 6 of Executive Order 12866 if it is likely to result in a rule that may:
 - (a) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (b) raise novel legal or policy issues, such as by prescribing a rule of conduct backed by an assessable payment; or
 - (c) have an annual non-revenue effect on the economy of \$100 million or more, measured against a no-action baseline.

2. *Analysis of tax regulatory actions.*
 - (a) Tax regulatory actions within the scope of paragraph 1 will be subject to the analytical requirements applicable to significant regulations under section 6(a)(3)(B) of Executive Order 12866.
 - (b) Tax regulatory actions with likely effects described in paragraph 1(c) will also be subject to the analytical requirements applicable to economically significant regulations under section 6(a)(3)(C) of Executive Order 12866.

3. *Notification of upcoming tax regulatory actions.* To facilitate the determinations set forth in paragraph 1, Treasury will submit to OIRA a quarterly notice of planned tax regulatory actions that describes each regulatory action; identifies any significant policy changes proposed or resulting from the regulatory action; and articulates the basis for determining whether the regulatory action is covered by paragraph 1 of this MOA. At the election of the OIRA Administrator, Treasury will engage in substantive consultation with OIRA regarding any such regulatory action.

4. *Timing of review.*
 - (a) To provide timely guidance to taxpayers, generally, OIRA review under paragraph 1 of this MOA will conclude 45 days after submission of the

¹ A “tax regulatory action” is a regulatory action (as defined by Executive Order 12866) issued pursuant to Title 26 of the United States Code.

information set forth in section 6(a)(3)(B) or (C) of Executive Order 12866, as applicable, subject to extensions mutually agreed upon by Treasury and OMB.

- (b) To ensure timely implementation of the Tax Cuts and Jobs Act of 2017, the Secretary or Deputy Secretary of the Treasury, on a nondelegable basis, may with the concurrence of the OIRA Administrator (not to be unreasonably withheld) designate certain tax regulatory actions for expedited release. Such actions will be reviewed by OIRA for no more than 10 business days, subject to extensions mutually agreed upon by Treasury and OMB.
 - (c) Treasury will respond in a timely manner to requests for information from OIRA during the review period, and any delays attributable to Treasury will be considered in determining whether to extend the review period.
5. Treasury will not publish in the Federal Register or otherwise publicly release any tax regulatory action within the scope of paragraph 1 unless OIRA notifies Treasury that it has waived or concluded its review. In the rare event of a policy disagreement that could not be resolved during the review process, OIRA will facilitate a principals meeting to resolve any remaining issues and, if needed, elevate those issues to the President.
6. This MOA supersedes the 1983 Memorandum of Agreement between Treasury and OMB with respect to tax regulatory actions, and the 1993 letter exchange between the OIRA Administrator and Treasury General Counsel reaffirming that agreement. Further, this MOA supersedes the Guidance for Implementing EO 12866 (M-94-3), Appendix C: Regulatory Actions Exempted from Centralized Regulatory Review, Department of the Treasury (Oct. 12, 1993).
7. The provisions of Executive Order 12866 not explicitly modified in this MOA will apply to the regulatory actions in paragraph 1. In addition, any Treasury regulatory action not discussed above shall be subject to the standard centralized review process under Executive Order 12866 (including the analytical requirements of OMB Circular No. A-4), except that the following regulatory actions will not be subject to such review process:
- (a) All circulars, regulations, and rulings issued by the Bureau of the Fiscal Service that implement, through the exercise of the general borrowing power, the fiscal policies of the United States.
 - (b) Regulations issued by the Office of Foreign Assets Control (OFAC) that implement the President's foreign policy by blocking assets and imposing sanctions on foreign countries or persons, and general and specific licenses issued by OFAC.
 - (c) Regulations concerning the review of transactions by the Committee on Foreign Investment in the United States.
 - (d) Treasury regulations concerning the periodic reporting of portfolio capital positions and transactions pursuant to the International Investment and Trade in Services Survey Act and the Bretton Woods Agreement Act, and the reporting of foreign currency positions of large U.S. business enterprises and their foreign affiliates pursuant to 31 U.S.C. § 5315.

- (e) U.S. Customs and Border Protection regulations restricting the importation of particular articles.
 - (f) Alcohol and Tobacco Tax and Trade Bureau regulations concerning the establishment or designation of geographical viticultural areas.
8. This MOA will have immediate effect, except that paragraph 2(b) will take effect on the earlier of 12 months from the date of this Agreement or when Treasury obtains reasonably sufficient resources (with the assistance of OMB) to perform the required analyses. Until the effective date of paragraph 2(b), Treasury will provide OIRA with Treasury's economic analysis (rather than full Regulatory Impact Analysis) and provide notification pursuant to paragraph 3.
9. Treasury and OIRA will work in good faith to ensure the practices under this MOA conform to the intent of the signatories.



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