

Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review): Explanation and Response to Public Input

December 20, 2023

On April 6, 2023, the Office of Information and Regulatory Affairs (OIRA) published draft guidance to implement Section 2(e) of Executive Order (E.O.) 14094 and solicited public comments, including through written submissions as well as a virtual public listening session.¹ OIRA received 38 written submissions during the public comment period and undertook an interagency review process. This process led to revised guidance to implement Section 2(e) of E.O. 14094, which incorporates many of the perspectives and suggestions offered during the comment period.²

I. Facilitation of E.O. 12866 Meetings

The draft guidance proposed a variety of strategies to facilitate the initiation of meeting requests from those that have not historically requested E.O. 12866 meetings, including those from underserved communities. These strategies included providing tools to help members of the public request and effectively participate in meetings; offering periodic and accessible public training on effective participation; improving notice of meeting opportunities; identifying and removing or mitigating barriers to meaningful participation; improving data collection and disclosure; and implementing potential website improvements.

Most commenters were generally supportive of these efforts and offered concrete implementation suggestions. For example, several commenters suggested that OIRA publish an overview of the regulatory review and meeting request process, as well as information on how to request meetings and effectively participate in them. To this end, OIRA has posted an overview of E.O. 12866 meetings as well as a video (also translated into Spanish) on its website, including step-by-step instructions on how to schedule meetings; what to expect during meetings; and some suggestions for how to prepare for meetings.³

OIRA also appreciated the suggestion offered by some commenters to make the meeting request form more prominent. OIRA has done so by more clearly setting it off from other links as well as making it available through more avenues on OIRA's website, RegInfo.gov. For example, outside parties can now request meetings without locating a regulatory action's Regulatory

¹ Written comments on the draft guidance are available at "EO 12866 Meetings Guidance," Office of Management & Budget, <https://www.regulations.gov/docket/OMB-2022-0011/comments>. For a recording of the listening session, see "Hearing from You: How OIRA Meets with the Public," The White House, <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/hearing-from-you-how-oira-meets-with-the-public/>.

² Office of Information & Regulatory Affairs, *Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review)* (December 22, 2023).

³ See "Meetings on a Regulatory Action under Review with the Office of Information and Regulatory Affairs (E.O. 12866 meetings)," Office of Information & Regulatory Affairs, <https://www.reginfo.gov/public/do/eo/eomHowTo>.

Identification Number. In particular (and as described in more detail on OIRA’s website),⁴ meeting requesters can now schedule meetings directly from the list of all actions currently pending review as well as through the individual entry for a regulatory action by clicking “pending review” and then clicking the link to schedule a meeting. After OIRA receives a meeting request, the requester will be sent an email from a scheduler to confirm the meeting. OIRA will continue to consider further improvements to its website and update the website accordingly.

Regarding the scheduling of meetings, a number of commenters requested further clarity on when meetings could be scheduled and offered suggestions for the scheduling process. Some commenters suggested that OIRA set a minimum window of time during which review requests would be accepted or otherwise set up a calendar with timeslots and strict deadlines. OIRA is unfortunately unable to implement these suggestions given the varied and dynamic nature of the regulatory review process, and thus continues to encourage requesters to make meeting requests as soon as possible after a regulatory action enters review. Indeed, meetings cannot be requested or granted after OIRA has concluded review on a regulatory action and may be cancelled in the event that OIRA concludes review on the regulatory action in advance of the meeting date. Nonetheless, OIRA will make every effort to notify meeting requesters as soon as possible if meetings will be cancelled or need to be rescheduled. OIRA endeavors to grant all E.O. 12866 meeting requests, and early submission of such requests facilitates prompt scheduling.

Some commenters noted that, without frequently checking OIRA’s main website at RegInfoRegInfo.gov, it can be difficult to know when OIRA formally accepts a significant regulatory action for review (and therefore when it becomes possible to request an E.O. 12866 meeting). OIRA encourages members of the public to consider downloading OIRA’s mobile application version of RegInfo.gov, RegInfo Mobile. RegInfo Mobile permits members of the public to subscribe to individual regulatory entries for updates on progress, including when regulatory actions formally arrive at OIRA for review. RegInfo.gov now features this option more prominently in addition to direct download options. OIRA will also continue to explore other technological options to provide automated alerts to interested parties.

A number of commenters noted that meeting schedules should accommodate barriers to participation such as work or family care obligations. While OIRA is unable to offer meetings outside of regular business hours, it is eager to accommodate scheduling conflicts if they arise. If a scheduled meeting time is inconvenient, requesters can add a note in the automated system under their request asking to reschedule and OIRA will endeavor to accommodate such requests.

Some commenters suggested that OIRA proactively reach out to community leaders, civil society organizations, and other institutions to provide training on how to submit meeting requests and prepare for meetings. OIRA will be providing periodic trainings to the public and will seek to ensure information regarding those trainings is widely disseminated. For example, on May 4, 2023, OIRA held a public listening session where it presented materials on the meeting process,

⁴ *Id.*

including an overview of the process as well as instructions for scheduling meetings. In response to comments suggesting that trainings should be available as video presentations, that session was recorded and is available online.⁵ In addition, as mentioned, OIRA is providing further information and a video (also translated into Spanish) on RegInfo.gov regarding E.O. 12866 meetings, including the types of information that are most helpful to provide in those meetings.⁶

Prior to the COVID-19 pandemic, OIRA primarily hosted E.O. 12866 meetings in-person in Washington, D.C. During the COVID-19 pandemic, OIRA switched to virtual E.O. 12866 meetings exclusively (currently on WebEx or Zoom), usually in an audio-only format. A number of commenters called for OIRA to also offer on-video and in-person meetings. Given OIRA's goals of facilitating broader participation in the E.O. 12866 process, including for requesters who have not historically requested such meetings or face challenges in traveling to Washington, D.C., OIRA retains virtual meetings as the exclusive format for meetings, though it may revisit this decision in the future. OIRA will generally continue to maintain an audio-only format in virtual meetings, which has been found to be more technologically reliable (e.g., less susceptible to lagging or freezing), though OIRA will continue to consider alternative formats in the future.

More broadly, other commenters suggested that E.O. 12866 meetings should be more accessible for individuals with disabilities, individuals with limited English proficiency, and individuals with limited internet access and technological capabilities. OIRA is committed to the inclusion of people with disabilities. Requesters with disabilities who may need a reasonable accommodation should include that information in their request or, if the need is not apparent at that time, as soon afterward as is feasible. In addition, in response to comments about potential language barriers, OIRA is currently reviewing how interpretation services can be made available for E.O. 12866 meetings. Until further information is provided, a requester should note needing interpretation services as far in advance as possible when submitting a meeting request. OIRA will consider those requests on a case-by-case basis. Finally, OIRA will continue to offer the option to conduct E.O. 12866 meetings with a dial-in capability for those who lack access to the internet.

One commenter requested a written analogue to E.O. 12866 meetings—a means through which those interested in or affected by a regulatory action under review could provide written information to OIRA and others involved in the review about that action. OIRA declines the suggestion given the additional resources required that would detract from current E.O. 12866 meetings. Moreover, E.O. 12866 meetings are not a substitute for submitting written comments during the action agency's notice-and-comment period.⁷ OIRA typically reviews regulatory actions, such as rules, undertaken by other agencies. Accordingly, OIRA is not the action agency and views shared only through the E.O. 12866 review process would not be considered submitted during the action agency's notice-and-comment period. If a commenter wants to ensure an issue is considered by the action agency and is part of the action agency's administrative record, the

⁵ See "Hearing from You: How OIRA Meets with the Public," The White House, <https://www.whitehouse.gov/omb/information-regulatory-affairs/modernizing-regulatory-review/hearing-from-you-how-oira-meets-with-the-public/>.

⁶ See "Meetings on a Regulatory Action under Review with the Office of Information and Regulatory Affairs (E.O. 12866 meetings)," Office of Information & Regulatory Affairs, <https://www.reginfo.gov/public/do/eo/eomHowTo>.

⁷ The action agency is the agency taking the regulatory action.

issue must be raised with the action agency during the action agency's notice-and-comment period under its applicable regulatory procedures.

Relatedly, another commenter requested that OIRA provide written summaries of how issues in a rulemaking have been resolved. In addition to requiring substantial resources, those written summaries are unnecessary given that action agencies author explanatory regulatory preambles, which interested parties are encouraged to consult. Finally, some commenters asked for more active engagement in meetings by desk officers or the OIRA Administrator. OIRA officials in general may ask clarifying questions, but cannot share deliberative or pre-decisional information about the regulatory action under review.

II. Efforts to ensure access for meeting requesters who have not historically requested such meetings

Executive Order 14094 calls for the OIRA Administrator to “[i]mplement reforms to improve procedures and policies with respect to OIRA’s consideration of meeting requests initiated by persons not employed by the executive branch of the Federal Government,” including potential “efforts to ensure access for meeting requesters who have not historically requested such meetings.” In its draft guidance, OIRA proposed that the term “not historically requested” be used to describe a subset of members of the public, including organizations and individuals, who have not previously participated in the E.O. 12866 meeting process within the last three years. OIRA explained that “[t]hese requesters are less likely to be regular participants” given general rulemaking timelines.

One commenter suggested that OIRA expand its definition of organizations or individuals who “have not historically requested” meetings to look back at overall participation “over a greater time span,” though the commenter did not specify that time span. The commenter gave the example of a local government that “may only have the capacity to participate in 12866 meetings on a very limited basis” and a hypothetical example of a rulemaking change by EPA every three years. OIRA acknowledges that the three-year time span may cover participants who comment more regularly on three-year intervals. However, no commenter provided data suggesting that there was a large number of such participants and OIRA believes that even to the extent there is potential to include such requesters, any potential risks are outweighed by OIRA’s efforts to increase the efficiency of the process and reach as many historically underrepresented requesters as possible. OIRA thus continues to believe that a three-year time span adequately weighs the potential tradeoffs in OIRA’s efforts to capture requesters who are not traditional participants in E.O. 12866 meetings.

A number of commenters expressed concern that OIRA’s efforts to facilitate the initiation of meeting requests from potential participants who have not historically requested such meetings would erect barriers for those that have historically requested such meetings. Another commenter suggested that OIRA is legally prohibited from prioritizing some groups “at the expense of others based on their identity.” First, OIRA emphasizes that it does not schedule or prioritize E.O. 12866 meetings based on identity (for example, size or status of a requesting organization or

political affiliation) or viewpoint (for example, whether the requester supports or opposes the regulatory action under review).

Second, OIRA anticipates that the instances in which it will not be able to accommodate all meeting requests — and thus will prioritize requests from those that have not historically participated or from self-consolidated groups⁸ — will be exceedingly rare. While there are a number of factors that inform the decision of whether it is not possible to accommodate all meeting requests, OIRA will note on its website when such prioritization has taken place. Even in these likely-to-be-rare instances, groups that have historically requested such meetings can self-consolidate and therefore have their requests prioritized as well. For this purpose, a [list](#) of currently scheduled meetings with meeting requester information (organization and name) is available to the public to use for self-consolidation.⁹ Based on how rare these instances are likely to occur and the self-consolidating option, OIRA believes that the impact of facilitating non-traditional participants will be minimal for those who traditionally participate in this process. But OIRA will regularly monitor the situation and reassess as needed.

III. Duplication of meeting requests

In its draft guidance, to improve the efficiency of the meeting process, OIRA stated that it would “not schedule multiple E.O. 12866 meetings for the same meeting requester during a single E.O. 12866 review of the same regulatory action at the same stage of the regulatory process.” However, OIRA welcomes participation “at different stages of a rulemaking, such as during OIRA’s review of a proposed rule and again during OIRA’s review of a final rule.” Some commenters expressed support for disallowing duplicative meetings at the same stage of rulemaking in light of OIRA’s resource constraints and the likely marginal value of duplicative meetings for the same parties at the same stage of rulemaking.

Others, however, advocated for allowing duplicative meetings on the grounds that new information could arise requiring further meetings on the same regulatory action. While OIRA acknowledges this possibility, based on its experience, OIRA does not believe that the speculative benefits of duplicative meetings outweigh the substantial resource costs. OIRA also emphasizes again that if a commenter wants to ensure an issue is considered by the action agency and is part of the action agency’s administrative record, the issue must be raised with the action agency during the action agency’s notice-and-comment period under its applicable regulatory procedures.

Commenters also asked for more clarity on the disallowance of duplicative meetings. For example, one urged OIRA to “expressly state that the intent to discourage duplicative meetings does not apply to regulatory actions that may recur in future but separate postings.” OIRA believes this is already clear from its reference to the disallowance of duplicative meetings during a “single” rulemaking: requesters can request two different sets of meetings for regulatory actions

⁸ See Section IV for more information on self-consolidation.

⁹ See “EO 12866 Meetings,” Office of Management & Budget, Office of Information & Regulatory Affairs, <https://www.reginfo.gov/public/do/eom12866Search>.

that recur, but are part of separate rulemakings. OIRA also reiterates that separate meetings can be requested for a single rulemaking at different stages of the rulemaking process (for example, for a proposed and then a final rule).

Some commenters pointed out that two separate meetings from the same requester may represent more than one constituency or a specific demographic. For example, an industry coalition or union may represent various entities who may have overlapping but unique interests. OIRA recognizes the concern and will not consider meeting requests from an umbrella coalition or federation as duplicative of requests from individual members of that coalition or federation. As discussed below, OIRA will collect information that will facilitate OIRA's assessment of these requests.

IV. Consolidation

While there was some support for the concept of consolidation as a means to improve the efficiency of the process, numerous commenters expressed concerns about mandatory consolidation, including the potential for inappropriate or ineffective consolidation. OIRA is not planning mandatory consolidation of meeting requesters at this time. As proposed in its draft guidance, OIRA will instead prioritize requests from groups of requesters that self-consolidate if the volume of meeting requests is beyond what is feasible to accommodate under current resource constraints. Requesters can self-consolidate and then submit a joint meeting request. Some commenters suggested that consolidated meetings should be longer than 30 minutes in length; however, OIRA declines this suggestion given the difficulties in scheduling blocks for longer times; the desire to use resources efficiently; and the presumed commonality of interests and perspectives that could be shared in the allotted amount of time.

V. Information Collection

In its draft guidance, OIRA proposed the disclosure of additional information about specific E.O. 12866 meetings that may be helpful to OIRA, to agencies, and to the general public. These information categories included:

- brief narrative descriptions accompanying meeting requests;
- primary meeting requesters, that is, the parties with interests in the regulatory action, as opposed to those representing them;
- meeting requester types, such as an individual member of the public; a state, local, territorial, or Tribal government; a business or trade association; a union; or a non-profit, among other relevant categorizations;
- lobbyist status; and
- additional information from meeting requesters for OIRA internal purposes, including whether the meeting requester is the interested person or entity, if the requester is represented by counsel or an organization or is requesting a meeting on behalf of multiple groups; plans to share sensitive information during a meeting (such as highly personal narratives or sensitive business information), so

that the meeting would not be a good candidate for consolidation; has previously requested or participated in an E.O. 12866 meeting on any regulatory action within the last three years; and; has previously requested or participated in an E.O. 12866 meeting associated with this specific regulatory action (at the same stage of the regulatory process).

Any changes to the information requested and collected from E.O. 12866 meeting requesters on the meeting request form are subject to the requirements of the Paperwork Reduction Act (PRA) of 1995¹⁰ and the Privacy Act of 1974.¹¹ Subject to those requirements, OIRA has decided not to collect some of the proposed information categories above. Upon careful consideration of the public comments and interagency review, OIRA will instead request an optional narrative description, provided by the requester, that states the purpose of the meeting and a brief, informal summary of the views they anticipate presenting.

In addition, OIRA will require and disclose the (1) name of the individual requesting the meeting; (2) the meeting requester's organization, if any; (3) the name of the individual or organization whose interests are being represented; and (4) if the previous field names an individual, the individual's organizational affiliation, if any. Such information will facilitate analysis and understanding of the individuals and groups meeting with OIRA. OIRA will also require meeting requesters to state if the individual or organization being represented has not previously requested or participated in an E.O. 12866 meeting on any regulatory action within the last three years to identify those that have "not historically requested" meetings. Finally, OIRA will provide an opportunity for meeting requesters to specify whether any reasonable accommodations or language access will be requested.

Regarding the brief narrative descriptions, some commenters suggested that this information should be mandatory in order to schedule a meeting. After consideration of the tradeoffs between transparency, on the one hand, and reducing the burdens of scheduling a meeting on the other, OIRA has decided to make such information optional, albeit encouraged, in order to schedule a meeting. Such a description can help OIRA invite the appropriate government officials, particularly when regulatory actions may address many subjects and have many separate provisions.

Commenters had various suggestions for additional meeting requester types, including adding options for whether the requester is a coalition, collective, or educational institution (public or private). OIRA has decided, however, not to request information regarding meeting requester types, including lobbyist status, given the conceptual difficulties associated with categorizing requesters in a meaningful and consistent manner. Some commenters suggested that OIRA collect and make public conflict-of-interest disclosures from requesters, or more narrowly, for conflicts of interest regarding any scientific studies or reports submitted for a meeting. OIRA declines these suggestions given legal questions and the resources that would be necessary for effective implementation of this proposal and, again, notes that E.O. 12866 meetings are not a

¹⁰ 44 U.S.C. §§ 3501-3521.

¹¹ 5 U.S.C. § 552a.

substitute for submitting written comments to the action agency during the action agency's notice-and-comment period under its applicable regulatory procedures.

Another commenter suggested that all E.O. 12866 meetings be video and audio-recorded and then disclosed, a suggestion which OIRA declines given limited server space and other resource constraints. Relatedly, one commenter suggested the disclosure of any audio or video calls or other communications with OMB that are not scheduled and docketed as official meetings, while another recommended that all communications with outside parties concerning regulatory actions, such as telephone conversations and email exchanges, be collected and disclosed. E.O. 12866 already requires OIRA to maintain a record of all substantive audio or video communications with OIRA regarding regulatory actions under review, as well as written materials submitted to OIRA.

Commenters expressed concerns about OIRA's proposed collection of sensitive information for the purposes of consolidation, including the potential for inadvertent disclosure and lack of safeguards. Because OIRA is not engaging in mandatory consolidation, OIRA will not need to collect sensitive information for those purposes. Finally, OIRA plans to release information about E.O. 12866 meeting requests in an open, machine-readable, and accessible format on its main website; contrary to a commenter's concern, OIRA does not require the provision of materials to OIRA in such format.