

2025 LAW AND POLICY

Executive Regulatory Review Under the 2025 Executive Orders

Closing the Big Hole: A Multi-Tier Fix for Regulatory Reform

A Policy Note

September 2026

This is the most recent in a series of notes discussing this Administration's regulatory reform effort. Our initial conclusion was that the Administration's four element remodeling of the traditional White House/OIRA review process offered a reasonable prospect of putting the executive back in charge of the Executive Branch and making the regulatory process more responsive and efficient.

To refresh: the new review process has four essential elements:

- 1. Expanded Scope of Review** — added to OIRA's traditional cost-benefit review, requirements for review to determine consistency with administration policy and with the best reading of the law.
- 2. Unified Agenda** — Semi-annual public notices of upcoming rules classifying each as economically significant, other significant etc. These notices and classifications notify the public as to what is coming, and the classifications determine the level of review.
- 3. Embedded DOGE teams** — (in each Secretary/Administrator's office) — verify the notice is accurate, the regulation matches it, and that draft or proposed final regulations appear to meet the substantive standards, i.e., cost justified by benefits, consistent with Administration policy, and consistent with the best reading of the law.
- 4. OIRA review** — for regulations classified as significant or substantial, full OIRA review to determine economic justification, consistency with policy, and best reading of law, with opportunity for E.O. 12866 consultation, upon request, both before initial and before final Federal Register publication.

Our initial conclusion that this four-element system is capable of assuring that new regulations would conform to the Order's requirements was confirmed by EPA's proceedings to repeal the Endangerment Finding 91 Fed. Reg. 7686 (Feb. 18, 2026) (RIN 2060-AW71). In that proceeding the Agency effectively used digital technology to focus the issues and analyze the comments, finalized and explained its determinations effectively and published the final rule expeditiously. While Judicial Review is in process, the final rule is in place and got there in a timely manner. As we concluded at the time, that is cause for considerable optimism.

On the other hand, when we look at regulations like the MTVLO regs (Technology Review of the Marine Tank Vessel Loading Operations NESHP, RIN 2060-AW22; proposed rule at 91 Fed. Reg. 10559 (Mar. 4, 2026)), which somehow the Unified Agenda classified as "Non-Significant," an entirely different conclusion is suggested. That regulation, though it seems clearly contrary to the President's "energy dominance" policy, will impose hundreds of millions in costs on a few critical facilities and creates more safety problems than it resolves, sits at the

brink of final publication without ever having undergone review for consistency with policy, compliance with the best reading of law or cost justification.

Agencies' Attention, like the public's, tends to fix on the high-profile issues — the Endangerment Finding is the obvious example. Those issues have typically been hotly discussed for years and have drawn enormous attention and news coverage. Accordingly, the Administration gave this matter its highest level of attention and creative thought. It was pushed through expeditiously but nevertheless grounded in solid analysis, thought, and practical justification.

On the other hand, more obscure but nevertheless impactful initiatives like the MTVLO regulations may slide through without meaningful consideration.

Where there is no organizational priority or urgency, systemic inertia and ordinary administrative habits tend to assert themselves. Rulemaking staff must deal with crowded dockets and tight schedules. Marking an item “significant” or “major” on the Unified Agenda brings a Regulatory Impact Analysis, interagency coordination, and a longer review — real costs in time and attention. So, staff naturally looks for the more efficient path: describing a docket as a routine, periodic update under Clean Air Act Section 112, which keeps the procedural burden down. It will also be tempting to defer to the expertise of the working level staff that has shepherded the issue to date.

When that happens, gaps open. OIRA's review triggers don't fire, the "as usual" perspective prevails and the docket moves forward without meaningful executive-level review — not because anyone meant to avoid it, but because the system is built to avoid controversy and let matters take their course quietly.

Filling the Hole – The Embedded DOGE Teams must do their jobs

As noted above, the new regulatory reform system includes a **Multi-Tier** review system — not just OIRA, but the Embedded DOGE teams, involved from the beginning and throughout, supplemented by OIRA as needed.

The numbers clearly demonstrate this need:

- **The EPA Administrator's Office** – This year EPA has received fewer than 120 total rulemaking proposals, about 65 of which are classified as “significant.” That is a reasonable number and a reasonable workload, especially if we keep in mind that this is not an APA rulemaking function. The embedded DOGE teams must give Unified Agenda notifications an early, high-level look before they leave the agency and continue to look at the proposed rule throughout its history -- checking that the rule as it develops is consistent with the notice, tracks administration policy and is consistent with the best reading of the applicable laws. All of this is relatively informal pre-rulemaking and not subject to normal APA strictures.
- **OIRA** -Reviews 500-700 significant rules per year under E.O. 12866. OIRA's desk officers don't have the bandwidth to independently audit technical dockets, second guess an agency's classification of the Unified Agenda notice or determine whether the rule at each of its stages is consistent with the notice, with Administration policy and with the best reading of the applicable laws.

In short, the numbers confirm that the Embedded DOGE Teams are a critical element of the new Regulatory Reform process. If they do their jobs, there will be reasonable assurance that all regulatory actions will undergo some review to assess their cost-benefit justification and conformity with Administration policy and the best reading of the law. If they don't do their jobs, a majority of regulatory actions may escape that review at all levels.

What the public can do

The Public has a role here too:

- **Read the agenda early.** Look closely at the Unified Agenda when it comes out. If an entry for something like MTVLO looks understated relative to its actual impact, flag that early — to both the Secretary/Administrator's Office team and the OIRA desk officer.
- **Make the case for review.** Where a rule's real-world effects are bigger than the notice suggests, bring the economic and legal case to the Embedded team and OIRA and ask for a significance designation and an E.O. 12866 review.
- **Follow up before finalization.** Before a final rule comes out, check back with both OIRA and the Embedded DOGE team to make certain that the draft has not grown beyond its original notice or the classifications assigned to it.

Not rulemaking — executive management

Keep in mind that these reviews happen before initial or final publication, and they are not formal rulemaking under the APA. They're an exercise of executive management rather than part of the APA process. They give leadership and the public a new, flexible way to weigh in informally and early — before a rule is locked in — to address the three critical questions— whether it is cost-benefit justified, whether it reflects the administration's policy and whether it is based on the best reading of the law. It does all this in a relatively informal context which is not a part of the APA proceeding.

The Final Takeaway

The pieces are there to fill the Holes. If the Embedded Teams do their jobs and the public does its job, leakage will be inconsequential. This is an entirely new way of addressing government — in which the threat of litigation can be deemphasized and meaningful information exchange facilitated. This seems to be a great potential. Its realization is up to us all.

Blueprint 2025 Initiative

2025 Law and Policy llc

Tele : 202 775 2025

2025@2025lawandpolicy.com

<http://2025llc.com/>

Thoughts, comments, and suggestions are always welcome at 2025@2025lawandpolicy.com