

VIA ELECTRONIC TRANSMISSION

February 20, 2024

Hon. Shalanda Young
Director
Office of Management and Budget
The White House
1800 F ST NW
Washington, DC 20004

Re: Agency Information Collection Activities; Request for Comments; Information on Meetings with Outside Parties (ICR Reference No. 202401-0348-002; January 25, 2024).

Dear Director Young:

The undersigned trade associations appreciate the opportunity to comment on the Office of Information and Regulatory Affairs (OIRA)'s above referenced information collection request (ICR) pertaining to Executive Order (EO) 12866 meetings with outside parties. Our associations represent a broad cross-section of the U.S. economy—including large and small businesses in the agriculture, chemical distribution, construction, energy, infrastructure, manufacturing, mining, recycling, and transportation sectors—all of which are essential to ensuring our nation's economic security and maintaining our modern standard of living. We, and the businesses we represent, are committed to responsible development that provides economic opportunities in the form of good-paying jobs and other community investment, while fostering safety, environmental stewardship, and innovation.

Meeting with OIRA to present both oral and written feedback is crucial to ensuring all perspectives are heard within the rulemaking process. Our business members are the entities that are subject to implementing these rules, and realizing the impacts they will have. These meetings promote transparency and collaboration, strengthen the integrity of regulatory review, and result in better regulations. We, along with the businesses we represent, regularly engage in EO 12866 meetings, and are therefore directly impacted by this ICR. Unfortunately, the ICR's lack of clarity as to how OIRA will use the requested information raises concerns about its necessity. We therefore respectfully ask that you disapprove this ICR.

I. Background

EO 12866 establishes the framework for a centralized federal regulatory review system.¹ The EO outlines mechanisms and procedures for OIRA's review of executive branch rulemakings. One component of EO 12866 outlines the public's ability to meet with OIRA during the

¹ Exec. Order 12,866, 58 *Fed. Reg.* 51,735 (Oct. 4, 1993).

deliberative regulatory review process. Although EO 12866 calls for these meetings to be held with the OIRA Administrator, they typically have occurred at the staff level and are a standard part of regulatory review.

In April 2023, President Biden issued EO 14094, “Modernizing Regulatory Review,” mandating revisions to OIRA’s regulatory review process.² Following a public comment period on proposed guidance for the review process, OIRA finalized guidance implementing the EO.³ Many of the associations signing this comment also filed comments on the proposed guidance.⁴

Among the changes finalized by OIRA in the guidance were requirements to discourage duplicative oral comments, consolidate meetings by requesters, subject matter, or both, and disclose new information when requesting meetings.⁵ Requesters must now disclose the following information in addition to what was previously required:⁶

- (1) Whether the requester has previously requested an EO 12866 meeting within the last three years.
- (2) Whether the requester has previously requested or participated in an EO 12866 meeting associated with the specific regulatory action at the same stage in the process.
- (3) If requested on behalf of another party, the names of both the requester and the actual participants, and their affiliations.
- (4) An optional narrative stating the purpose of the meeting and a summary of the views the requester plans to present.

The final guidance states that OIRA plans to release this information on its website but offers no additional information about how OIRA plans to use the information.

On January 25, 2024, OIRA published a notice for comment on an ICR pertaining to the final guidance. Within the notice, OIRA outlines the information it plans to collect and make publicly available, as noted above. The notice also outlines OIRA’s intended purpose for collecting the information, stating that the purpose is to further transparency and improve the effectiveness of the meeting process. The notice fails to explain how providing this information improves effectiveness. Moreover, the notice does not offer any additional information as to how the data collected will be used.⁷

² Exec. Order 14,094, 88 *Fed. Reg.* 21,879 (April 11, 2023).

³ “Guidance Implementing Section 2(e) of Executive Order 14094 (Modernizing Regulatory Review),” (December 20, 2023), available at https://www.whitehouse.gov/wp-content/uploads/2023/12/Modernizing-EO-Section-2e-Guidance_FINAL.pdf (last accessed February 9, 2024).

⁴ See U.S. Chamber of Commerce et al., Business Community Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review) (June 6, 2023), https://www.artba.org/wp-content/uploads/2024/02/Business-Community-Comments-Draft-2e-Guidance-6_6_2023.pdf.

⁵ *Supra* note 3.

⁶ *Supra* note 1 at 51,742, stating that OIRA is required to publicly disclose information regarding the date, names of the individuals present, subject matter discussed, and any relevant written comments submitted during the meeting.

⁷ 89 *Fed. Reg.* 4,997 (January 25, 2024).

Under the Paperwork Reduction Act (PRA), federal agencies are required to justify the need for collecting requested information, and the proposed use of that information.⁸ The Office of Management and Budget (OMB) Director must then determine whether collection of the proposed information is necessary and has practical utility.⁹

II. Comments on the Notice

A. OIRA has not adequately explained the purpose for collecting the stated information.

As noted above, one of the statutory components of the PRA is a discussion by the agency of the justification for collecting the information it is requesting. Within its ICR, OIRA states it is requesting information to improve the EO 12866 meeting process. There is no additional information provided about how this information will enhance these meetings, or regulatory review. It is therefore unclear what OIRA's intended uses and goals are for this collection request. OIRA has not complied with its statutory obligations under the PRA to clearly outline the purpose and use of the information the agency is collecting. OMB should, therefore, disapprove this ICR, as further outlined below.

B. OMB should disapprove any ICR that limits public participation in the rulemaking process.

Within its final guidance, OIRA indicates that it will pursue strategies to facilitate participation by those who have not previously requested EO 12866 meetings, including underserved communities.¹⁰ OIRA further states that it will make efforts to ensure that EO 12866 meetings are accessible to "those who have not historically requested" meetings by focusing on granting requests to individuals who have not previously met with OIRA.¹¹

Our organizations endorse the fundamental right of all Americans to petition the government, as articulated in the previous comments some of our organizations submitted to OIRA.¹² We support participation by all interested stakeholders. But, we are concerned that OIRA's actions may hinder some members of the public from meeting with the agency, thereby impeding the free exchange of ideas and information. Typically, trade associations request these meetings on behalf of individuals or small groups of business members within the association that possess specific interests, knowledge, and expertise necessary to implement proposed rulemakings. These businesses provide invaluable detailed, comprehensive, and intricate analyses and data, along with insights into the real-world impacts of a regulatory action. Our business members rely on their trade associations to facilitate these meetings, allowing them to focus on their day-to-day responsibilities. OIRA's new procedures would effectively require these individuals

⁸ 44 U.S.C. § 3507.

⁹ 44 U.S.C. § 3508.

¹⁰ *Id.* at 4-6.

¹¹ *Id.*

¹² *Supra* note 4.

to navigate the federal regulatory process independently, diverting their time and attention from critical activities that impact our nation's economy.

We are particularly concerned by questions pertaining to a requester's history of engagement with OIRA and any other questions that could lead to exclusion from this critically important process. The questions posed in this ICR, and the responses they elicit, may empower OIRA to assess meeting requests without regard for the useful contributions the individuals requesting the meetings may offer. Consequently, OIRA could dismiss a meeting request based solely on an individual or organization's prior history of meaningful engagement on a broad range of topics impacting its members. Excluding individuals directly affected by a proposed regulation from this crucial part of the rulemaking process simply because they frequently avail themselves of these opportunities undermines the principles of transparent and collaborative governance. OMB should therefore reject any actions that could potentially diminish the credibility of regulatory procedures and bar full and open public involvement in federal rulemaking. The collection of this information will not achieve OIRA's stated goals of streamlining the cumbersome process that stakeholders must navigate when seeking and meeting with the agency.

III. Conclusion

We appreciate the opportunity to comment on OIRA's ICR for EO 12866 meetings. This information collection will directly impact our associations and our business members. As discussed above, OIRA has not fulfilled its statutory obligations under the PRA to discuss the purpose and use for the requested information. Moving forward with this ICR could harm the integrity and credibility of the federal regulatory process. We respectfully ask that, considering the possible adverse outcomes of advancing this ICR, you reject OIRA's request. Please contact Prianka Sharma at psharma@artba.org if you have any questions.

Respectfully submitted,

American Coke and Coal Chemicals Institute
Alliance for Chemical Distribution
American Exploration & Mining Association
American Farm Bureau Federation
American Forest & Paper Association
American Fuel & Petrochemical Manufacturers
American Gas Association
Associated General Contractors of America
American Petroleum Institute
American Road & Transportation Builders Association
American Wood Council

National Asphalt Pavement Association
National Association of Home Builders
National Cattlemen's Beef Association
National Federation of Independent Business (NFIB)
National Mining Association
National Oilseed Processors Association
National Pork Producers Council
National Stone, Sand & Gravel Association
National Waste & Recycling Association
The Aluminum Association
The Fertilizer Institute