



June 6, 2023

SUBMITTED VIA WWW.REGULATIONS.GOV

Administrator Richard L. Revesz
Office of Information and Regulatory Affairs
Office of Management and Budget
Executive Office of the President
1600 Pennsylvania Ave NW
Washington, DC 20500

RE: Docket OMB-2022-0011; Office of Management and Budget (OMB) Notice, “Request for Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review),” 88 Fed. Reg. 20,916 (April 7, 2023).

Dear Administrator Revesz,

GPA Midstream Association (“GPA Midstream”) appreciates the opportunity to provide comments to the White House Office of Management and Budget’s Office of Information and Regulatory Affairs (“OIRA”) on its proposed Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review), 88 Fed. Reg. 20,916 (April 7, 2023) (the “E.O. 12866 Meeting Guidance”). OIRA’s draft E.O. 12866 Meeting Guidance would significantly alter the long-standing process in which interested parties, such as GPA Midstream and its members, can meet with OIRA and participate in the regulatory review process.

GPA Midstream has served the U.S. energy industry since 1921 and has over 60 corporate members that directly employ more than 56,000 employees that are engaged in a wide variety of services that move vital energy products such as natural gas, natural gas liquids (“NGLs”), refined products, and crude oil from production areas to markets across the United States, commonly referred to as “midstream activities.” The work of our members indirectly creates or impacts an additional 396,000 jobs across the U.S. economy. GPA Midstream members gather over 77% of the natural gas and recover more than 80% of the NGLs such as ethane, propane, butane, and natural gasoline produced in the U.S. from more than 380 natural gas processing facilities. In the 2019-2021 period, GPA Midstream members spent over \$100 billion in capital improvements to serve the country’s needs for reliable and affordable energy.

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Summary

OIRA plays a critical role in the federal regulatory process. For nearly thirty years, across both Democratic and Republican administrations, E.O. 12866 has provided the framework for OIRA-led interagency review of federal agencies' significant regulatory actions and for the public to participate in the interagency review process by requesting a meeting with OIRA (i.e., "E.O. 12866 Meetings"). 58 Fed. Reg. 51735 (Oct. 4, 1993). E.O. 14094 issued on April 7, 2023, amended several aspects of E.O. 12866 that are generally viewed as minimizing the number of regulatory actions subject to OIRA review.¹ In addition, Section 2(e) of E.O. 14094 directed OIRA to encourage E.O. 12866 meeting requests by those "who have not historically requested such meetings" and to modify the E.O. 12866 meeting process "to further the efficiency and effectiveness of such meetings." In response to this directive, OIRA concurrently released the draft E.O. 12866 Meeting Guidance, which proposes procedural changes and novel ideas for reforming the E.O. 12866 Meeting process.

GPA Midstream members are subject to extensive federal regulation, including dozens of regulatory actions subject to OIRA review. Given the highly technical nature of our members' operations and complexities within the energy industry, GPA Midstream greatly values the opportunity to engage with and educate policymakers involved in the regulatory process through E.O. 12866 Meetings. While GPA Midstream supports the E.O. 14094 goals of modernizing regulatory review, OIRA's draft E.O. 12866 Meeting Guidance has the potential to reverse the progress made under the well-established E.O. 12866 meeting process. Some of OIRA's proposed changes, such as prioritizing certain meeting requests over others or requiring the consolidation of meetings, could diminish the level of public input provided to OIRA and the overall quality of OIRA reviews of significant regulatory actions.

In order to preserve OIRA's crucial role in the regulatory review process, and to honor the "open door" policy OIRA reinforced in the draft guidance, GPA Midstream offers the following recommendations:

- Any reforms to the E.O. 12866 Meeting process should be developed transparently, with the benefit of robust public input, and adopted incrementally.
- OIRA should facilitate meeting requests from "those who have not historically requested such meetings" without curtailing engagement from active participants.
- OIRA should further clarify the limits on duplicative meetings.
- Proposed policies for consolidated meetings would create new inequities and reduce the effectiveness of E.O. 12866 meetings.

¹ E.g., by increasing the threshold of "economically significant regulations" from \$100 million in annual costs to \$200 million in annual costs.

1. Reforms to E.O. 12866 Meeting Process Should be Developed Transparently and Adopted on an Incremental Basis

At the outset, we encourage OIRA to take a thoughtful, transparent approach to implementing the directives of E.O. 14094. Concurrent with the issuance of E.O. 14094, OIRA issued the draft guidance. This accelerated action should be followed by a robust stakeholder engagement process, including opportunities for further public comment, and an incremental adoption of reforms to preserve existing, well-functioning E.O. 12866 meeting procedures.

Generally, the E.O. 12866 meeting process works well and should be largely preserved. OIRA acknowledges the majority of regulatory reviews do not result in E.O. 12866 meeting requests and there are fewer than five meeting requests for the majority of regulatory actions. As such, it does not appear that OIRA's references to resource constraints have impeded access to E.O. 12866 meetings under the existing framework.

Further, OIRA already provides one of the most transparent federal platforms to request EO 12866 meetings. It is a simple, standard form that can be submitted online and OIRA has an online calendar updated to reflect meetings scheduled. Meeting attendees, both external and those within the government, are listed along with the subject and date of the meeting and meeting materials. Accordingly, it is unclear how OIRA changes would add value to this platform – and could potentially disrupt stakeholder's ability to request a meeting.

For purposes of transparency and to ensure OIRA meaningfully considered public comments, OIRA should provide a response to comments received on the draft guidance. To the extent OIRA proceeds with final guidance, it should provide the public a phase-in period for implementation, including a minimum period of time such as 30 or 60 days from the date of a final guidance to implementation. Overall, we encourage OIRA to approach these directives in a thoughtful manner, based on additional opportunities for public input, and adopt any changes on an incremental basis so as not to upend the existing, well-functioning process.

2. OIRA should ensure access to those “who have not historically requested such meetings” without curtailing engagement from active participants.

E.O. 14094 Section 2(e)(ii) provides OIRA examples of reforms to consider, including “efforts to ensure access for meeting requesters who have not historically requested such meetings.” The Executive Order does not define or otherwise describe such requesters, nor does it require a particular action or suggest that OIRA should treat those who have historically requested such meetings differently. OIRA's draft approach to ensure access from those “who have not historically requested such meetings” goes beyond the directives of E.O. 14094 and would unnecessarily limit the participation of those experienced with the regulatory process. In addition, OIRA proposes an arbitrary definition of “those who have not historically requested such meetings” that may have the practical effect of disincentivizing longer-term regulatory engagement. GPA recommends OIRA reconsider the proposed approach and pursue other efforts to facilitate such meetings without curtailing engagement from active participants.

OIRA proposes that individuals or organizations who have not participated in the E.O. 12866 meeting process within the last three years will be considered as those “who have not historically requested” E.O. 12866 meetings. The draft guidance fails to explain the basis for this arbitrary three-year threshold, which seems to create less – not more – efficiency in the E.O. 12866 meeting process. OIRA further proposes to modify the currently streamlined E.O. 12866 meeting request form to require more information collection, including disclosure of whether the requester and attendees have participated in E.O. 12866 meetings within the last three years.

In addition, the draft guidance provides that OIRA may prioritize meetings with those “who have not historically requested” such meetings over “regular participants.” GPA Midstream strongly recommends OIRA reconsider this approach. Prioritizing certain requests over others stands in sharp contrast to the E.O. 14094 directive for an open and fair public engagement process. By opening meetings to any member of the public, OIRA must treat all requesters equally. Moreover, while E.O. 12866 meetings are no substitute for public comments on a rulemaking under the Administrative Procedure Act, regulatory review is an informal step in the APA rulemaking process which provides public participation rights to all “interested persons,” regardless of their participation in prior rulemakings.

As a practical matter, prioritization would likely require new internal processes, transparency measures, and dispute resolution capabilities within OIRA which is far from the improved efficiencies directed by E.O. 14094. The current practice of first come, first serve scheduling for E.O. 12866 meetings reflect a fair and transparent approach. OIRA also fails to provide evidence that those who have not historically requested such meetings have been denied a meeting or otherwise lack access to a meeting. Until such time, OIRA should focus its efforts on reforms that will not unnecessarily limit the ability of others to schedule a meeting. To the extent OIRA’s resources become strained by the volume of meetings requested in the future, OIRA should reengage the public and consider other options, including requests for additional funding from Congress, to ensure all stakeholders have fair and open access to E.O. 12866 meetings.

3. OIRA should further clarify the limits on duplicative meetings.

E.O. 14094 Section 2(e)(ii)(B) suggests OIRA discourage duplicative meetings for the same regulatory action by the same requestor. The draft guidance helpfully notes this limit would apply to the same regulatory action—at the same stage of the regulatory process. This provides important clarity that preserves the ability to meet with OIRA on the same regulatory action at multiple stages such as the pre-rule, proposed rule, and final rule stages. It may be useful for OIRA to provide an example clarifying that such policy does not limit the ability to meet with OIRA on the same regulatory action that may be considered the same stage—e.g., a prior meeting on a proposed rule and a meeting on a supplemental proposed rule.

OIRA should also ensure that the proposed limit on duplicative meetings applies to the requesting individual or organization, not meeting attendees. As a trade association, it is important to have member companies join regulatory meetings to provide direct company perspectives. Many GPA member companies are also members of other associations and

organizations that may request an E.O. 12866 meeting. These companies should not be limited to having a representative attend a single meeting.

4. Proposed policies for consolidated meetings would create new inequities and reduce the effectiveness of E.O. 12866 meetings.

E.O. 14094 Section (2)(e)(ii) further identifies the consolidation of meetings as a potential reform for OIRA to “improve efficiency and effectiveness” of E.O. 12866 meetings. In the draft guidance OIRA encourages joint meetings and proposes to prioritize the scheduling of consolidated meeting requests. OIRA also proposes to consolidate meetings “even in the absence of specific requests.” While voluntarily requested joint meetings can produce efficiencies, prioritizing consolidated meetings over other meetings or requiring consolidated meetings may result in greater inefficiencies and create inequities the Executive Order intended to avoid. Thus, we strongly advise OIRA abandon efforts to prioritize or otherwise require consolidation of meetings.

Similar to concerns with OIRA’s proposed prioritization of meetings for those who have not historically requested such a meeting, prioritizing some requests over others creates not only a fundamentally inequitable system, but one that will likely result in inefficiencies for OIRA. For instance, OIRA will need to more fulsome description or put forth a standard of consolidation—i.e., whether it is two or more individuals or organizations, more than five, ten, etc. OIRA should consider whether a meeting requested by a trade association which has numerous members should itself be viewed as a consolidated meeting. The draft guidance also places a greater burden on requesters, including those who have not historically requested such meetings, to identify individuals or organizations for a joint meeting. Moreover, OIRA’s suggestion that requesters simply look at other comments in the public docket is not a reasonable substitute for direct presentation, and in all events would not apply at the proposed rule stage — before public comments are filed.

Efforts by OIRA to consolidate meetings or otherwise require consolidation would diminish the quality and overall effectiveness of E.O. 12866 meetings. E.O. 12866 meetings are typically 30 minutes, and the draft guidance reinforces that even consolidated meetings will be limited to just 30 minutes. While OIRA states this approach would “retain[] the expertise and ability of individual meeting participants to share their views on potential impacts at an appropriate level of nuance,” it fails to explain how this would be accomplished in a limited 30-minute meeting for an undefined number of individuals or organizations. Generally, requiring multiple organizations to join a single meeting for such a limited amount of time will only limit the level of engagement by the public and stifle the exchange of viewpoints and data.

In regard to the “preliminary ideas” for consolidated meetings, OIRA should not adopt any blanket policy requiring consolidated meetings for those who “request meetings on two or more related regulatory actions that are under review concurrently.” However, for efficiencies, OIRA could consider providing an option on the E.O. 12866 request form to identify a second or third rule under review to discuss. This would provide the requester more options and possibly greater access to meetings by providing an opportunity to weigh in on more than one rule.

GPA Midstream Comments
Docket OMB-2022-0011
June 6, 2023

GPA Midstream appreciates the opportunity to submit these comments and is standing by to answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Hite". The signature is written in a cursive, flowing style.

Matt Hite
Vice President of Government Affairs
GPA Midstream Association