

LAW VS. EXECUTIVE ORDERS

QUICK STATS

- ✘ **CONFERENCE:** Regulation
- ✘ **TEAM:** Government-wide
- **FUMBLE:** Accountability by Executive Order, not by law
- **HOW TO RECOVER THE BALL:** Enhance agency accountability by codifying Executive Orders 12866 and 13563

Regulations issued by executive agencies should be tools used to implement laws passed by Congress. The Legislative Branch creates the laws, and the Executive Branch implements them. However, because the legislative process is often cumbersome and difficult (even though that is how the Founders intended it), the regulatory process can be used by the Executive Branch to advance regulatory policies beyond those that Congress likely intended. This can result in oppressive or excessive regulations that hurt farmers, small businesses, and everyday Americans—without due process to individuals who are affected.

Executive Orders 12866 and 13563, signed by Presidents Clinton and Obama, require significant regulatory actions to be submitted to the Office of Information and Regulatory Affairs, part of OMB, for review.¹⁴⁴ Under these Executive Orders, federal agencies are required to do their due diligence before imposing more regulations on Americans—such as assessing the costs and benefits of proposed rules and regulations and considering possible alternatives. They are also directed to

coordinate their regulatory activities and seek the views of individuals likely to be affected by the rulemaking.¹⁴⁵ Transparency provisions allow the American people, Congress, and interested parties to contribute to the rulemaking process.

RECOVERY

Analytical requirements for regulations should be written into law, passed by Congress, and not left only as Executive Orders that can be withdrawn at any time without congressional approval. Congressional action in this area would provide the basis for judicial review of an agency's compliance with the law and would serve as a reminder to the Executive that Congress has a role to play in federal rules. This would give businesses and agencies an additional layer of guaranteed stability and consistency. Congress, exercising its constitutionally provided oversight role, could also remind agencies that they need to stop issuing burdensome and costly regulations that hurt American businesses and families.

[For more information, please visit:](#)

[EPA: Summary of Executive Order 12866 – Regulatory Planning and Review](#)

[Federal Register Archives: Executive Order 12866](#)

[Federal Register: Executive Order 13563](#)