The formal process by which OIRA reviews agencies’ proposed and final rules is essentially unchanged since Executive Order 12866 was issued in 1993. However, there have been several changes in OIRA’s policies in recent years, including increased use of public letters explaining why rules were returned to the agencies and prompting the development of new rules, increased emphasis on economic analysis, stricter adherence to the 90-day time limit for OIRA review, and improvements in the transparency of the OIRA review process (although some elements of that process are still unclear). Underlying many of these changes is a shift in how recent OIRA administrators view the office’s role in the rulemaking process—from “counselor” to “gatekeeper.” OIRA sometimes reviews drafts of rules before they are formally submitted, and OIRA has said it can have its greatest influence on agencies’ rules during this informal review period. However, OIRA contends that agencies need only document the changes made to rules during what are sometimes very brief formal review periods.

Because about 400 rules were changed, returned, or withdrawn during the 1-year period that GAO examined, the review focused on 85 rules from the nine health, safety, or environmental agencies with five or more such rules. OIRA significantly affected 25 of those 85 rules. The Environmental Protection Agency’s rules were most often significantly changed, and almost all of the returned rules were from the Department of Transportation. OIRA’s suggestions appeared to have at least some effect on almost all of the 25 rules’ potential costs and benefits or the agencies’ estimates of those costs and benefits. Outside parties contacted OIRA before or during its formal review regarding 11 of the 25 rules that OIRA significantly affected. In 7 of these 11 cases, at least some of OIRA’s recommendations were similar to those of the outside parties, but we could not determine whether those contacts influenced OIRA’s actions. The agencies’ docket files did not always provide clear and complete documentation of the changes made during OIRA’s review or at OIRA’s suggestion, as required by the executive order. However, some agencies clearly documented these changes, sometimes including changes suggested during OIRA’s informal reviews.

OMB did not publicly disclose how it determined that 23 of the 71 rules nominated by the public for change or elimination in 2001 merited high priority review. As explained to GAO, OIRA desk officers made the initial determinations regarding issues with which they were familiar, subject to the approval by OIRA management. The Mercatus Center at George Mason University made most of the nominations overall and in the high priority group. Regulatory agencies or OIRA have at least begun to address the issues raised in many of the 23 suggestions. OIRA’s 2002 nomination and review process was different from the 2001 process in several respects (e.g., broader request for reforms, more responses from more commentors, prioritization of the suggestions being made by the agencies, and clearer discussion of process and criteria).