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Regulatory Reform-Old stuff [1]



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

Regulatory Working Group Meeting

January 18, 1996

AGENDA

- Introduction

- Guidance on Economic Analysis of Federal Regulations
Under Executive Order 12866

- Unfunded Mandates Reform Act of 1995

- Paperwork Reduction Act

- 16,000/31,000 CFR Elimination/Reinvention Goals

- Reg Reform Legislation

- Elimination of Congressional Reports



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MEMORANDUM FOR MEMBERS OF THE REGULATORY WORKING GROUP

FROM: Sally Katzen *SKatzen*

SUBJECT: Economic Analysis of Federal Regulations Under
Executive Order No. 12866

Over two years ago, a subgroup of the Regulatory Working Group started work on a document to provide agencies with a state-of-the-art discussion of the economic analysis required by Executive Order No. 12866. Attached is a copy of the results of that effort. It replaces the "Regulatory Impact Analysis Guidance" last published in Appendix V of the Regulatory Program of the United States Government, April 1, 1992-March 31, 1993.

"Economic Analysis of Federal Regulations" was drafted by an RWG interagency working group chaired by Joe Stiglitz of CEA and then-General Counsel of the Department of Transportation, Steve Kaplan. This document represents the results of an exhaustive two-year effort by the group to describe "best practices" for preparing the economic analysis of a significant regulatory action called for by E.O. 12866. It is designed to help agencies meet the analytic requirements of E.O. 12866, as well as those of the Unfunded Mandates Reform Act of 1995 and the Regulatory Flexibility Act.

As is pointed out in its introduction, the document "is not in the form of a mechanistic blueprint, for a good EA [economic analysis] cannot be written according to a formula." Furthermore, it acknowledges that "the amount of analysis (whether scientific, statistical, or economic) that a particular issue requires depends on the need for more thorough analysis because of the importance and complexity of the issue, the need for expedition, the nature of the statutory language and the extent of statutory discretion, and the sensitivity of net benefits to the choice of regulatory alternatives." Clearly, good data and good analysis are critical to inform sound decisionmaking, and over the years the federal government has increasingly used such analysis to improve the regulatory system. The document covers three important elements of regulatory economic analysis: the statement of need for the proposed action; the examination of alternative approaches; and, the analysis of benefits and costs.

We appreciate the assistance you and your staff have provided, and believe that the result of this effort will be helpful in your development of new regulations and ongoing evaluation of your current regulatory programs.



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Economic Analysis of Federal Regulations Under Executive Order 12866

After President Clinton signed Executive Order 12866, "Regulatory Planning and Review," the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget convened an interagency group to review the state of the art for economic analyses of regulatory actions required by the Executive Order. The group was co-chaired by a Member of the Council of Economic Advisers and included representatives of all the major regulatory agencies. This document represents the results of an exhaustive two-year effort by the group to describe "best practices" for preparing the economic analysis of a significant regulatory action called for by the Executive Order.

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ECONOMIC ANALYSIS OF FEDERAL REGULATIONS UNDER EXECUTIVE ORDER 12866

INTRODUCTION

In accordance with the regulatory philosophy and principles provided in Sections 1(a) and (b) and Section 6(a)(3)(C) of Executive Order 12866, an Economic Analysis (EA) of proposed or existing regulations should inform decisionmakers of the consequences of alternative actions. In particular, the EA should provide information allowing decisionmakers to determine that:

- There is adequate information indicating the need for and consequences of the proposed action;
- The potential benefits to society justify the potential costs, recognizing that not all benefits and costs can be described in monetary or even in quantitative terms, unless a statute requires another regulatory approach;
- The proposed action will maximize net benefits to society (including potential economic, environmental, public health and safety, and other advantages; distributional impacts; and equity), unless a statute requires another regulatory approach;
- Where a statute requires a specific regulatory approach, the proposed action will be the most cost-effective, including reliance on performance objectives to the extent feasible;
- Agency decisions are based on the best reasonably obtainable scientific, technical, economic, and other information.

While most EAs should include these elements, variations consistent with the spirit and intent of the Executive Order may be warranted for some regulatory actions. In particular, regulations establishing terms or conditions of Federal grants, contracts, or financial assistance may call for a different form of regulatory analysis, although a full-blown benefit-cost analysis of the entire program may be appropriate to inform Congress and the President more fully about its desirability.

The EA that the agency prepares should also satisfy the requirements of the "Unfunded Mandates Reform Act of 1995" (P.L. 104-4). Title II of this statute (Section 201) directs agencies "unless otherwise prohibited by law [to] assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector..." Section 202(a) directs agencies to provide a qualitative and quantitative assessment of the anticipated costs and benefits of a Federal mandate resulting in annual expenditures of \$100 million or more, including the costs and benefits to State, local, and tribal

governments or the private sector. Section 205(a) requires that for those regulations for which an agency prepares a statement under Section 202, "the agency shall [1] identify and consider a reasonable number of regulatory alternatives and [2] from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the proposed rule." If the agency does not select "the least costly, most cost-effective, or least burdensome option, and if the requirements of Section 205(a) are not "inconsistent with law," Section-205(b) requires that the agency head publish "with the final rule an explanation of why the least costly, most cost-effective, or least burdensome method was not adopted."

The "Regulatory Flexibility Act" (P.L. 96-354) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The Act specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates that a regulation will have a significant impact on a substantial number of small entities. The EA that the agency prepares should incorporate the regulatory flexibility analysis, as appropriate.

This document is not in the form of a mechanistic blueprint, for a good EA cannot be written according to a formula. Competent professional judgment is indispensable for the preparation of a high-quality analysis. Different regulations may call for very different emphases in analysis. For one proposed regulation, the crucial issue may be the question of whether a market failure exists, and much of the analysis may need to be devoted to that key question. In another case, the existence of a market failure may be obvious from the outset, but extensive analysis might be necessary to estimate the magnitude of benefits to be expected from proposed regulatory alternatives.

Analysis of the risks, benefits, and costs associated with regulation must be guided by the principles of *full disclosure* and *transparency*. Data, models, inferences, and assumptions should be identified and evaluated explicitly, together with adequate justifications of choices made, and assessments of the effects of these choices on the analysis. The existence of plausible alternative models or assumptions, and their implications, should be identified. In the absence of adequate valid data, properly identified assumptions are necessary for conducting an assessment.

Analysis of the risks, benefits, and costs associated with regulation inevitably also involves uncertainties and requires informed professional judgments. There should be balance between thoroughness of analysis and practical limits to the agency's capacity to carry out analysis. The amount of analysis (whether scientific, statistical, or economic) that a particular issue requires depends on the need for more thorough

analysis because of the importance and complexity of the issue, the need for expedition, the nature of the statutory language and the extent of statutory discretion, and the sensitivity of net benefits to the choice of regulatory alternatives. In particular, a less detailed or intensive analysis of the entire range of regulatory options is needed when regulatory options are limited by statute. Even in these cases, however, agencies should provide some analysis of other regulatory options that satisfy the philosophy and principles of the Executive Order, in order to provide decisionmakers with information for judging the consequences of the statutory constraints. Whenever an agency has questions about such issues as the appropriate analytical techniques to use or the alternatives that should be considered in developing an EA under the Executive Order, it should consult with the Office of Management and Budget as early in the analysis stage as possible.

Preliminary and final Economic Analyses of economically "significant" rules (as defined in Section 3(f)(1) of the Executive Order) should contain three elements: (1) a statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an analysis of benefits and costs. These elements are described in Sections I-III below. The same basic analytical principles apply to the review of existing regulations, as called for under Section 5 of the Executive Order. In this case, the regulation under review should be compared to a baseline case of not taking the regulatory action and to reasonable alternatives.

I. STATEMENT OF NEED FOR THE PROPOSED ACTION

In order to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure. If the problem does not constitute a market failure, the analysis should provide an alternative demonstration of compelling public need, such as improving governmental processes or addressing distributional concerns. If the proposed action is a result of a statutory or judicial directive, that should be so stated.

A. Market Failure

The analysis should determine whether there exists a market failure that is likely to be significant. In particular, the analysis should distinguish actual market failures from potential market failures that can be resolved at relatively low cost by market participants. Examples of the latter include spillover effects that affected parties can effectively internalize by negotiation, and problems resulting from information

asymmetries that can be effectively resolved by the affected parties through vertical integration. Once a significant market failure has been identified, the analysis should show how adequately the regulatory alternatives to be considered address the specified market failure.

The major types of market failure include: externality, natural monopoly, market power, and inadequate or asymmetric information.

1. **Externality.** An externality occurs when one party's actions impose uncompensated benefits or costs on another. Environmental problems are a classic case of externality. Another example is the case of common property resources that may become congested or overused, such as fisheries or the broadcast spectrum. A third example is a "public good," such as defense or basic scientific research, which is distinguished by the fact that it is inefficient, or impossible, to exclude individuals from its benefits.

2. **Natural Monopoly.** A natural monopoly exists where a market can be served at lowest cost only if production is limited to a single producer. Local gas and electricity distribution services are examples.

3. **Market Power.** Firms exercise market power when they reduce output below what a competitive industry would sell. They may exercise market power collectively or unilaterally. Government action can be a source of market power, for example if regulatory actions exclude low-cost imports, allowing domestic producers to raise price by reducing output.

4. **Inadequate or Asymmetric Information.** Market failures may also result from inadequate or asymmetric information. The appropriate level of information is not necessarily perfect or full information because information, like other goods, is costly. The market may supply less than the appropriate level of information because it is often infeasible to exclude nonpayers from reaping benefits from the provision of information by others. In markets for goods and services, inadequate information can generate a variety of social costs, including inefficiently low innovation, market power, or inefficient resource allocation resulting from deception of consumers. Markets may also fail to allocate resources efficiently when some economic actors have more information than others.

On the other hand, the market may supply a reasonably adequate level of information. Sellers have an incentive to provide informative advertising to increase sales by highlighting distinctive characteristics of their products. There are also a variety of

ways in which "reputation effects" may serve to provide adequate information. Buyers may obtain reasonably adequate information about product characteristics even when the seller does not provide that information, for example, if buyer search costs are low (as when the quality of a good can be determined by inspection at point of sale), if buyers have previously used the product, if sellers offer warranties, or if adequate information is provided by third parties. In addition, insurance markets are important sources of information about risks.

Government action may have unintentional harmful effects on the efficiency of market outcomes. For this reason there should be a presumption against the need for regulatory actions that, on conceptual grounds, are not expected to generate net benefits, except in special circumstances. In light of actual experience, a particularly demanding burden of proof is required to demonstrate the need for any of the following types of regulations:

- price controls in competitive markets;
- production or sales quotas in competitive markets;
- mandatory uniform quality standards for goods or services, unless they have hidden safety hazards or other defects or involve externalities and the problem cannot be adequately dealt with by voluntary standards or information disclosing the hazard to potential buyers or users; or
- controls on entry into employment or production, except (a) where indispensable to protect health and safety (e.g., FAA tests for commercial pilots) or (b) to manage the use of common property resources (e.g., fisheries, airwaves, Federal lands, and offshore areas).

B. Appropriateness of Alternatives to Federal Regulation

Even where a market failure exists, there may be no need for Federal regulatory intervention if other means of dealing with the market failure would resolve the problem adequately or better than the proposed Federal regulation would. These alternatives may include the judicial system, antitrust enforcement, and workers' compensation systems. Other nonregulatory alternatives could include, for example, subsidizing actions to achieve a desired outcome; such subsidies may be more efficient than rigid mandates. Similarly, a fee or charge, such as an effluent discharge fee, may be a preferable alternative to banning or restricting a product or action. Legislative

measures that make use of economic incentives, such as changes in insurance provisions, should be considered where feasible. Modifications to existing regulations should be considered if those regulations have created or contributed to a problem that the new regulation is intended to correct, and if such changes can achieve the goal more efficiently or effectively.

Another important factor to consider in assessing the appropriateness of a Federal regulation is regulation at the State or local level, if such an option is available. In some cases, the nature of the market failure may itself suggest the most appropriate governmental level of regulation. For example, problems that spill across State lines (such as acid rain whose precursors are transported widely in the atmosphere) are probably best controlled by Federal regulation, while more localized problems may be more efficiently addressed locally. Where regulation at the Federal level appears appropriate, for example to address interstate commerce issues, the analysis should attempt to determine whether the burdens on interstate commerce arising from different State and local regulations, including the compliance costs imposed on national firms, are greater than the potential advantages of diversity, such as improved performance from competition among governmental units in serving taxpayers and citizens and local political choice.

II. AN EXAMINATION OF ALTERNATIVE APPROACHES

The EA should show that the agency has considered the most important alternative approaches to the problem and provide the agency's reasoning for selecting the proposed regulatory action over such alternatives. Ordinarily, it will be possible to eliminate some alternatives by a preliminary analysis, leaving a manageable number of alternatives to be evaluated according to the principles of the Executive Order. The number and choice of alternatives to be selected for detailed benefit-cost analysis is a matter of judgment. There must be some balance between thoroughness of analysis and practical limits to the agency's capacity to carry out analysis. With this qualifier in mind, the agency should nevertheless explore modifications of some or all of a regulation's attributes or provisions to identify appropriate alternatives.

Alternative regulatory actions that should be explored include the following:

- 1. More Performance-Oriented Standards for Health, Safety, and Environmental Regulations.** Performance standards are generally to be preferred to engineering or design standards because performance standards provide the regulated parties the flexibility to achieve the regulatory objective in a more cost-effective way. It is

therefore misleading and inappropriate to characterize a standard as a performance standard if it is set so that there is only one feasible way to meet it; as a practical matter, such a standard is a design standard. In general, a performance standard should be preferred wherever that performance can be measured or reasonably imputed. Performance standards should be applied with a scope appropriate to the problem the regulation seeks to address. For example, to create the greatest opportunities for the regulated parties to achieve cost savings while meeting the regulatory objective, compliance with air emission standards can be allowed on a plant-wide, firm-wide, or region-wide basis rather than vent by vent, provided this does not produce unacceptable air quality outcomes (such as "hot spots" from local pollution concentration).

2. **Different Requirements for Different Segments of the Regulated Population.** There might be different requirements established for large and small firms, for example. If such a differentiation is made, it should be based on perceptible differences in the costs of compliance or in the benefits to be expected from compliance. It is not efficient to place a heavier burden on one segment of the regulated population solely on the grounds that it is better able to afford the higher cost; this has the potential to load on the most productive sectors of the economy costs that are disproportionate to the damages they create.

3. **Alternative Levels of Stringency.** In general, both the benefits and costs associated with a regulation will increase with the level of stringency (although marginal costs generally increase with stringency, whereas marginal benefits decrease). It is important to consider alternative levels of stringency to better understand the relationship between stringency and the size and distribution of benefits and costs among different groups.

4. **Alternative Effective Dates of Compliance.** The timing of a regulation may also have an important effect on its net benefits. For example, costs of a regulation may vary substantially with different compliance dates for an industry that requires a year or more to plan its production runs efficiently. In this instance, a regulation that provides sufficient lead time is likely to achieve its goals at a much lower overall cost than a regulation that is effective immediately, although the benefits also could be lower.

5. **Alternative Methods of Ensuring Compliance.** Compliance alternatives for Federal, state, or local enforcement include on-site inspection, periodic reporting, and compliance penalties structured to provide the most appropriate incentives. When alternative monitoring and reporting methods vary in their costs and benefits, promising alternatives should be considered in identifying the regulatory alternative that maximizes net benefits. For example, in some circumstances random monitoring will

be less expensive and nearly as effective as continuous monitoring in achieving compliance.

6. Informational Measures. Measures to improve the availability of information include government establishment of a standardized testing and rating system (the use of which could be made mandatory or left voluntary), mandatory disclosure requirements (e.g., by advertising, labeling, or enclosures), and government provision of information (e.g., by government publications, telephone hotlines, or public interest broadcast announcements). If intervention is necessary to address a market failure arising from inadequate or asymmetric information, informational remedies will often be the preferred approaches. As an alternative to a mandatory product standard or ban, a regulatory measure to improve the availability of information (particularly about the concealed characteristics of products) gives consumers a greater choice. Incentives for information dissemination also are provided by features of product liability law that reduce liability or damages for firms that have provided consumers with notice.

Except for prohibiting indisputably false statements (whose banning can be presumed beneficial), specific informational measures should be evaluated in terms of their benefits and costs. The key to analyzing informational measures is a comparison of the actions of the affected parties with the information provided in the baseline (including any information displaced by mandated disclosures) and the actions of affected parties with the information requirements being imposed. Some effects of informational measures can easily be overlooked. For example, the costs of a mandatory disclosure requirement for a consumer product include not only the cost of gathering and communicating the required information, but also the loss of net benefits of any information displaced by the mandated information, the effect of providing too much information that is ignored or information that is misinterpreted, and inefficiencies arising from the incentive that mandatory disclosure may give to overinvest in a particular characteristic of a product or service.

Where information on the benefits and costs of alternative informational measures is insufficient to provide a clear choice between them, as will often be the case, the least intrusive informational alternative, sufficient to accomplish the regulatory objective, should be considered. For example, to correct an informational market failure it may be sufficient for government to establish a standardized testing and rating system without mandating its use, because competing firms that score well according to the system will have ample incentive to publicize the fact.

7. **More Market-Oriented Approaches.** In general, alternatives that provide for more market-oriented approaches, with the use of economic incentives replacing command-and-control requirements, are more cost-effective and should be explored. Market-oriented alternatives that may be considered include fees, subsidies, penalties, marketable permits or offsets, changes in liabilities or property rights (including policies that alter the incentive of insurers and insured parties), and required bonds, insurance or warranties. (In many instances, implementing these alternatives will require legislation.)

8. **Considering Specific Statutory Requirements.** When a statute establishes a specific regulatory requirement and the agency has discretion to adopt a more stringent standard, the agency should examine the benefits and costs of the specific statutory requirement as well as the more stringent alternative and present information that justifies the more stringent alternative if that is what the agency proposes.

III. ANALYSIS OF BENEFITS AND COSTS

A. General Principles

The preliminary analysis described in Sections I and II will lead to the identification of a workable number of alternatives for consideration.

1. **Baseline.** The benefits and costs of each alternative must be measured against a baseline. The baseline should be the best assessment of the way the world would look absent the proposed regulation. That assessment may consider a wide range of factors, including the likely evolution of the market, likely changes in exogenous factors affecting benefits and costs, likely changes in regulations promulgated by the agency or other government entities, and the likely degree of compliance by regulated entities with other regulations. Often it may be reasonable for the agency to forecast that the world absent the regulation will resemble the present. For the review of an existing regulation, the baseline should be no change in existing regulation; this baseline can then be compared against reasonable alternatives.

When more than one baseline appears reasonable or the baseline is very uncertain, and when the estimated benefits and costs of proposed rules are likely to vary significantly with the baseline selected, the agency may choose to measure benefits and costs against multiple alternative baselines as a form of sensitivity analysis. For example, the agency may choose to conduct a sensitivity analysis involving the consequences for

benefits and costs of different assumptions about likely regulation by other governmental entities, or the degree of compliance with the agency's own existing rules. In every case, an agency must measure both benefits and costs against the identical baseline. The agency should also provide an explanation of the plausibility of the alternative baselines used in the sensitivity analysis.

2. Evaluation of Alternatives. Agencies should identify (with an appropriate level of analysis) alternatives that meet the criteria of the Executive Order as summarized at the beginning of this document, as well as identifying statutory requirements that affect the selection of a regulatory approach. If legal constraints prevent the selection of a regulatory action that best satisfies the philosophy and principles of the Order, these constraints should be identified and explained, and their opportunity cost should be estimated. To the fullest extent possible, benefits and costs should be expressed in discounted constant dollars. Appropriate discounting procedures are discussed in the following section.

Information on distributional impacts related to the alternatives should accompany the analysis of aggregate benefits and costs. Where relevant and feasible, agencies can also indicate how aggregate benefits and costs depend on the incidence of benefits and costs. Agencies should present a reasoned explanation or analysis to justify their choice among alternatives.

The distinction between benefits and costs in benefit-cost analysis is somewhat arbitrary, since a positive benefit may be considered a negative cost, and vice versa, without affecting net benefits. This implies that the considerations applicable to benefit estimates also apply to cost estimates and vice versa.

In choosing among mutually exclusive alternatives, benefit-cost ratios should be used with care. Selecting the alternative with the highest benefit-cost ratio may not identify the best alternative, since an alternative with a lower benefit-cost ratio than another may have higher net benefits. In addition, the internal rate of return should not be used as a criterion for choosing among mutually exclusive alternatives. It is often difficult to compute and is problematical when multiple rates exist.

Where monetization is not possible for certain elements of the benefits or costs that are essential to consider, other quantitative and qualitative characterizations of these elements should be provided (see sections 7 and 8 below). Cost-effectiveness analysis also should be used where possible to evaluate alternatives. Costs should be calculated net of monetized benefits. Where some benefits are monetizable and others are not, a

cost-effectiveness analysis will generally not yield an unambiguous choice; nevertheless, such an analysis is helpful for calculating a "breakeven" value for the unmonetized benefits (i.e., a value that would result in the action having positive net benefits). Such a value can be evaluated for its reasonableness in the discussion of the justification of the proposed action. Cost-effectiveness analysis should also be used to compare regulatory alternatives in cases where the level of benefits is specified by statute.

If the proposed regulation is composed of a number of distinct provisions, it is important to evaluate the benefits and costs of the different provisions separately. The interaction effects between separate provisions (such that the existence of one provision affects the benefits or costs arising from another provision) may complicate the analysis but does not eliminate the need to examine provisions separately. In such a case, the desirability of a specific provision may be appraised by determining the net benefits of the proposed regulation with and without the provision in question. Where the number of provisions is large and interaction effects are pervasive, it is obviously impractical to analyze all possible combinations of provisions in this way. Some judgment must be used to select the most significant or suspect provisions for such analysis.

3. Discounting. One of the problems that arises in developing a benefit-cost analysis is that the benefits and costs often occur in different time periods. When this occurs, it is not appropriate, when comparing benefits and costs, to simply add up the benefits and costs accruing over time. Discounting takes account of the fact that resources (goods or services) that are available in a given year are worth more than the identical resources available in a later year. One reason for this is that resources can be invested so as to return more resources later. In addition, people tend to be impatient and to prefer earlier consumption over later consumption.

(a) Basic considerations. Constant-dollar benefits and costs must be discounted to present values before benefits and costs in different years can be added together to determine overall net benefits. To obtain constant dollar estimates, benefit and cost streams in nominal dollars should be adjusted to correct for inflation. The basic guidance on discount rates for regulatory and other analyses is provided in OMB Circular A-94. The discount rate specified in that guidance is intended to be an approximation of the opportunity cost of capital, which is the before-tax rate of return to incremental private investment. The Circular A-94 rate, which was revised in 1992 based on an extensive review and public comment, reflects the rates of return on low yielding forms of capital, such as housing, as well as the higher rates of returns yielded by corporate capital. This average rate currently is estimated to be 7 percent in real

terms (i.e., after adjusting for inflation). As noted in the A-94 guidance, agencies may also present sensitivity analyses using other discount rates, along with a justification for the consideration of these alternative rates. The economic analysis also should contain a schedule indicating when all benefits and costs are expected to occur.

In general, the discount rate should not be adjusted to account for the uncertainty of future benefits and costs. Risk and uncertainty should be dealt with according to the principles presented in Section 4 below and not by changing the discount rate.

Even those benefits and costs that are hard to quantify in monetary terms should be discounted. The schedule of benefits and costs over time therefore should include benefits that are hard to monetize. In many instances where it is difficult to monetize benefits, agencies conduct regulatory "cost-effectiveness" analyses instead of "net benefits" analyses. When the effects of alternative options are measured in units that accrue at the same time that the costs are incurred, annualizing costs is sufficient and further discounting of non-monetized benefits is unnecessary; for instance, the annualized cost per ton of reducing certain polluting emissions can be an appropriate measure of cost-effectiveness. However, when effects are measured in units that accrue later than when the costs are incurred, such as the reduction of adverse health effects that occur only after a long period of exposure, the annualized cost per unit should be calculated after discounting for the delay between accrual of the costs and the effects.

In assessing the present value of benefits and costs from a regulation, it may be necessary to consider implications of changing relative prices over time. For example, increasing scarcity of certain environmental resources could increase their value over time relative to conventional consumer goods. In such a situation, it is inappropriate to use current relative values for assessing regulatory impacts. However, while taking

into account changes over time in relative values may have an effect similar to discounting environmental impacts at a lower rate, it is important to separate the effects of discounting from the effects of relative price changes in the economic analysis. In particular, the discount rate should not be adjusted for expected changes in the relative prices of goods over time. Instead, any changes in relative prices that are anticipated should be incorporated directly in the calculations of benefit and cost streams.

(b) Additional considerations. Modern research in economic theory has established a preferred model for discounting, sometimes referred to as the shadow price approach. The basic concept is that economic welfare is ultimately determined by consumption; investment affects welfare only to the extent that it affects current and future consumption. Thus, any effect that a government program has on public or private investment must be converted to an associated stream of effects on consumption before being discounted.

Converting investment-related benefits and costs to their consumption-equivalents as required by this approach involves calculating the "shadow price of capital." This shadow price reflects the present value of the future changes in consumption arising from a marginal change in investment, using the consumption rate of interest (also termed the rate of time preference) as the discount rate. The calculation of the shadow price of capital requires assumptions about the extent to which government actions -- including regulations -- crowd out private investment, the social (i.e., before-tax) returns to this investment, and the rate of reinvestment of future yields from current investment.

Estimates of the shadow price are quite sensitive to these assumptions. For example, in some applications it may be appropriate to assume that access to global capital markets implies no crowding out of private investment by government actions or that monetary and fiscal authorities determine aggregate levels of investment so that the impact of the contemplated regulation on total private investment can be ignored. Alternatively, there is evidence that domestic saving affects domestic investment and that regulatory costs may also reduce investment. In these cases, more substantial crowding out would be an appropriate assumption.

The rate of time preference is also a complex issue. Generally, it is viewed as being approximated by the real return to a safe asset, such as Government debt. However, a substantial fraction of the population does little or no saving and may borrow at relatively high interest rates.

While the shadow price approach is theoretically preferred, there are several practical challenges to its use. Agencies wishing to use this methodology should consult with OMB prior to doing so, and should clearly explain their solutions to the methodological and empirical challenges noted above.

(c) Intergenerational analysis. Comparisons of benefits and costs across generations raise special questions about equity, in addition to conventional concerns about efficiency. One approach to these questions is to follow the discounting procedures described above and to address equity issues explicitly rather than through modification of the discount rate.

An alternative approach is to use a special social rate of time preference when conducting intergenerational analyses in order to properly value changes in consumption in different generations. For example, one philosophical perspective is that the social marginal rate of substitution between the well-being of members of successive generations may be less than the individual rate of time preference, and that future generations should not have their expected welfare discounted just because they come later in time. Instead, this view suggests that discounting should reflect only the growth of per capita consumption and the corresponding decrease in marginal utility over time. As this approach uses a consumption-based rate of interest, costs and benefits must also be adjusted to reflect the shadow price of capital. As in other cases when agencies seek to use the shadow price of capital approach, they should consult with OMB prior to conducting special analyses of regulations having substantial intergenerational effects.

4. Treatment of Risk and Uncertainty. The effects of regulatory actions frequently are not known with certainty but can be predicted in terms of their probability of occurrence. The term "risk" in this document refers generally to a probability distribution over a set of outcomes. When the outcomes in question are hazards or injuries, risk can be understood to refer to the probabilities of different potential severities of hazard or injury. For example, the risk of cancer from exposure to a chemical means a change in the probability of contracting cancer caused by that exposure. There also are risks associated with economic benefits and costs, e.g., the risk of a financial loss of \$X means the probability of losing \$X.

Often risks, benefits, and costs are measured imperfectly because key parameters are not known precisely; instead, the economic analysis must rely upon statistical probability distributions for the values of parameters. Both the inherent lack of certainty about the consequences of a potential hazard (for example, the odds of

contracting cancer) and the lack of complete knowledge about parameter values that define risk relationships (for example, the relationship between presence of a carcinogen in the food supply and the rate of absorption of the carcinogen) should be considered.

The term "uncertainty" often is used in economic assessments as a synonym for risk. However, in this document uncertainty refers more specifically to the fact that knowledge of the probabilities and sets of possible outcomes that characterize a probability distribution of risks, based on experimentation, statistical sampling, and other scientific tools, is itself incomplete. Thus, for example, a cancer risk might be described as a one-in-one-thousand chance of contracting cancer after 70 years of exposure. However, this estimate may be uncertain because individuals vary in their levels of exposure and their sensitivity to such exposures; the science underlying the quantification of the hazard is uncertain; or there are plausible competitors to the model for converting scientific knowledge and empirical measures of exposures into risk units. Estimates of regulatory benefits entail additional uncertainties, such as the appropriate measures for converting from units of risk to units of value. Cost estimates also will be uncertain when there are uncertainties in opportunity costs or the compliance strategies of regulated entities.

Estimating the benefits and costs of risk-reducing regulations includes two components: a *risk assessment* that, in part, characterizes the probabilities of occurrence of outcomes of interest; and a *valuation* of the levels and changes in risk experienced by affected populations as a result of the regulation. It is essential that both parts of such evaluations be conceptually consistent. In particular, risk assessments should be conducted in a way that permits their use in a more general benefit-cost framework, just as the benefit-cost analysis should attempt to capture the results of the risk assessment and not oversimplify the results (e.g., the analysis should address the benefit and cost implications of probability distributions).

Risk management is an activity conceptually distinct from risk assessment or valuation, involving a policy of whether and how to respond to risks to health, safety, and the environment. The appropriate level of protection is a policy choice rather than a scientific one. The risk assessment should generate a credible, objective, realistic, and scientifically balanced analysis; present information on hazard, dose-response, and exposure (or analogous material for non-health assessments); and explain the confidence in each assessment by clearly delineating strengths, uncertainties, and assumptions, along with the impacts of these factors on the overall assessment. The data, assumptions, models, and inferences used in the risk assessment to construct

quantitative characterizations of the probabilities of occurrence of health, safety, or ecological effects should not reflect unstated or unsupported preferences for protecting public health and the environment, or unstated safety factors to account for uncertainty and unmeasured variability. Such procedures may introduce levels of conservatism that cumulate across assumptions and make it difficult for decisionmakers to evaluate the magnitude of the risks involved.

(a) Risk assessment. The assessment of outcomes associated with regulatory action to address risks to health, safety, and the environment raises a number of scientific difficulties. Key issues involve the quality and reliability of the data, models, assumptions, scientific inferences, and other information used in risk analyses. Analysts rarely, if ever, have complete information. It may be difficult to identify the full range of impacts. Little definitive may be known about the structure of key relationships and therefore about appropriate model specification. Data relating to effects that can be identified may be sketchy, incomplete, or subject to measurement error or statistical bias. Exposures and sensitivities to risks may vary considerably across the affected population. These difficulties can lead, for example, to a range of quantitative estimates of risk in health and ecological risk assessments that can span several orders of magnitude. Uncertainties in cost estimates also can be significant, in particular because of lack of experience with the adjustments that markets can make to reduce regulatory burdens, the difficulty of identifying and quantifying opportunity cost, and the potential for enhanced or retarded technical innovation. All of these concerns should be reflected in the uncertainties about outcomes that should be incorporated in the analysis.

The treatment of uncertainty in developing risk, benefit, and cost information also must be guided by the principles of *full disclosure* and *transparency*, as with other elements of an EA. Data, models, and their implications for risk assessment should be identified in the risk characterization. Inferences and assumptions should be identified and evaluated explicitly, together with adequate justifications of choices made, and assessments of the effects of these choices on the analysis.

Informed judgment is necessary to evaluate conflicting scientific theories. In some cases it may be possible to weigh conflicting evidence in developing the overall risk assessment. In other cases, the level of scientific uncertainty may be so large that a risk assessment can only present discrete alternative scenarios without a quantitative assessment of their relative likelihood. For example, in assessing the potential outcomes of an environmental effect, there may be a limited number of scientific studies with strongly divergent results. In such cases, the assessment should present

results representing a range of plausible scenarios, together with any information that can help in providing a qualitative judgment of which scenarios are more scientifically plausible.

In the absence of adequate valid data, properly identified assumptions are necessary for conducting an assessment. The existence of plausible alternative models and their implications should be carried through as part of each risk characterization product. Alternative models and assumptions should be used in the risk assessment as needed to provide decisionmakers with information on the robustness of risk estimates and estimates of regulatory impacts. As with other elements of an EA, there should be balance between thoroughness of analysis in the treatment of risk and uncertainty and practical limits on the capacity to carry out analysis. The range of models, assumptions, or scenarios presented in the risk assessment need not be exhaustive, nor is it necessary that each alternative be evaluated at every step of the assessment. The assessment should provide sufficient information for decisionmakers to understand the degree of scientific uncertainty and the robustness of estimated risks, benefits, and costs. The choice of models or scenarios used in the risk assessment should be explained.

Where feasible, data and assumptions should be presented in a manner that permits quantitative evaluation of their incremental effects. The cumulative effects of assumptions and inferences should also be evaluated. A full characterization of risks should include findings for the entire affected population and relevant subpopulations. Assumptions should be consistent with reasonably obtainable scientific information. Thus, for example, low-dose toxicity extrapolations should be consistent with physiological knowledge; assumptions about environmental fate and transport of contaminants should be consistent with principles of environmental chemistry.

The material provided should permit the reader to replicate the analysis and quantify the effects of key assumptions. Such analyses are becoming increasingly easy to perform because of advances in computing power and new methodological developments. Thus, the level and scope of disclosure and transparency should increase over time.

In order for the EA to evaluate outcomes involving risks, risk assessments must provide some estimates of the probability distribution of risks with and without the regulation. Whenever it is possible to quantitatively characterize the probability distributions, some estimates of central tendency (e.g., mean and median) must be provided in addition to

ranges, variances, specified low-end and high-end percentile estimates, and other characteristics of the distribution.

Overall risk estimates cannot be more precise than their most uncertain component. Thus, risk estimates should be reported in a way that reflects the degree of uncertainty present in order to prevent creating a false sense of precision. The accuracy with which quantitative estimates are reported must be supported by the quality of the data and models used. In all cases, the level of precision should be stated explicitly.

Overall uncertainty is typically a consequence of uncertainties about many different factors. Appropriate statistical techniques should be used to combine uncertainties about separate factors into an overall probability distribution for a risk. When such techniques cannot be used, other methods may be useful for providing more complete information:

- *Monte Carlo analysis and other simulation methods* can be used to estimate probability distributions of the net benefits of alternative policy choices. It requires explicit quantitative characterization of variability to derive an overall probability distribution of net benefits. Parameter or model probability distributions may be derived empirically (for example, directly from population data or indirectly from regression or other statistical models) or by assumption. This approach has the advantage of weighing explicitly the likelihood of alternative outcomes, permitting evaluation of their relative importance. However, care must be taken to consider the entire output of the analysis rather than placing undue reliance on any one statistic. Because of the sensitivity of such simulations to assumptions about correlations between parameters, the likelihood that a particular specification is correct, omitted factors, and assumptions about the distribution of parameters, etc., special care should be taken to address these potential pitfalls. The quality of the overall analysis is only as good as the quality of its components; faulty assumptions or model specifications will yield faulty results.
- *Sensitivity analysis* is carried out by conducting analyses over the full range of plausible values of key parameters and plausible model specifications. Sensitivity analysis is particularly attractive when there are several easily identifiable critical assumptions in the analysis, when information is inadequate to carry out a more formal probabilistic simulation, or when the nature and scope of the regulation do not warrant more extensive analysis. One important form of sensitivity analysis involves estimating "switch points," that is, critical parameter values at which estimated net benefits change sign. Sensitivity analysis is useful for evaluating the

robustness of conclusions about net benefits with respect to changes in model parameters. Sensitivity analysis should convey as much information as possible about the likely plausibility or frequency of occurrence of different scenarios (sets of parameter values) considered.

- *Delphi methods* involve derivation of estimates by groups of experts and can be used to identify attributes of subjective probability distributions. This method can be especially useful when there is diffuse or divergent prior knowledge. Care must be taken, however, to preserve any scientific controversy arising in a delphi analysis.
- *Meta-analysis* involves combining data or results from a number of different studies. For example, one could re-estimate key model parameters using combined data from a number of different sources, thereby improving confidence in the parameter estimates. Alternatively, one could use parameter estimates (elasticities of supply and demand, implicit values of mortality risk reduction) from a number of different studies as data points, and analyze variations in those results as functions of potential causal factors. Care must be taken to ensure that the data used are comparable, that appropriate statistical methods are used, and that spurious correlation problems are considered. One significant pitfall in the use of meta-analysis arises from combining results from several studies that do not measure comparable independent or dependent variables.

New methods may become available in the future as well. This document is not intended to discourage or inhibit their use, but rather to encourage and stimulate their development.

Uncertainty may arise from a variety of fundamentally different sources, including lack of data, variability in populations or natural conditions, limitations in fundamental scientific knowledge (both social and natural) resulting in lack of knowledge about key relationships, or fundamental unpredictability of various phenomena. The nature of these different sources may suggest different approaches. For example, when uncertainty is due to lack of information, one policy alternative may be to defer action pending further study. One factor that may help determine whether further study is justifiable as a policy alternative is an evaluation of the potential benefits of the information relative to the resources needed to acquire it and the potential costs of delaying action. When uncertainty is due largely to observable variability in populations or natural conditions, one policy alternative may be to refine targeting, that is, to differentiate policies across key subgroups. Analysis of such policies should

consider the incremental benefits of improved efficiency from targeting, any incremental costs of monitoring and enforcement, and changes in the distribution of benefits and costs.

(b) Valuing risk levels and changes. To value changes in risk arising from variability in expected outcomes as a consequence of regulation, agencies should consider the expected net benefits of the risk change, taking into account the probability distribution of potential outcomes with and without the regulation. The more familiar examples deal with valuing risks associated with incurring possible future costs. When costs are subject to risk, they are generally appraised by risk-averse individuals at more than the expected value. For example, riskier financial instruments must generally earn a higher average rate of return in order to attract investors. Similarly, the owner of a facility may be willing to pay more to reduce the probability of fire than the reduction in expected loss, because of aversion to the risk of the loss. This also explains why property owners are willing to buy fire insurance at a price that exceeds expected losses. To accurately value the net benefits of a regulation, regulation-induced changes in expenditures on self-protection, mitigation, or other risk-reduction measures should be included.

Under the standard assumption in economic theory that individuals make choices among outcomes subject to risks to maximize expected utility, risk aversion is incorporated into net benefits estimates by expressing benefits and costs in terms of their *certainty equivalents*. Certainty equivalents are defined as net benefits occurring with certainty that would have the same value to individuals as the expected value of an alternative whose net benefits are subject to risk. For risk-averse individuals, the certainty equivalent of such a net benefit stream would be smaller than the expected value of those net benefits, because risk intrinsically has a negative value. The difference between the expected value of net benefits subject to risk and the certainty equivalent is called the risk premium. Similarly, regulations that reduce the overall variability of net benefits will have a certainty equivalent value that is larger than the expected value of the net benefits by an amount that reflects the value of the variability of outcomes.

Typically total expected net benefits and risk premia are calculated on the basis of a representative set of individual preferences. Agencies should also present available information on the incidence of benefits, costs, and risks where necessary for judging distributional consequences. Where information is available on differences in valuation across income levels or other identifiable criteria, agencies can use this information and

information on the incidence of regulatory effects in calculating total net benefits estimates.

The importance of including estimates of individuals' willingness to pay for risk reduction varies. Willingness to pay for reduced risks is likely to be more significant if risks are difficult to diversify because of incomplete risk and insurance markets, or if the net benefits of the regulation are correlated with overall market returns to investment. When the effects of regulation fall primarily on private parties, it is sufficient to incorporate measures of individual risk aversion. For regulatory benefits or costs that accrue to the Federal government (for example, income from oil production), the Federal government should be treated as risk neutral because of its high degree of diversification.

As noted in the previous section, the discount rate generally should not be adjusted as a device to account for the uncertainty of future benefits or costs. Any allowance for uncertainty should be made by adjusting the monetary values of changes in benefits or costs (for the year in which they occur) so that they are expressed in terms of their certainty equivalents. The adjustment for uncertainty may well vary over time because the degree of uncertainty may change. For example, price forecasts are typically characterized by increasing uncertainty (forecast error) over time, because of an increasing likelihood of unforeseen (and unforeseeable) changes in market conditions as time passes. In such cases, the certainty equivalents of net benefits will tend to change systematically over time; these changes should be taken into account in analyzing regulations that have substantial effects over a long time period. Uncertainty that increases systematically over time will result in certainty equivalents that fall systematically over time; however, these decreases in certainty equivalents will mimic the effects of an increase in the discount rate only under special circumstances.

5. Assumptions. Where benefit or cost estimates are heavily dependent on certain assumptions, it is essential to make those assumptions explicit and, where alternative assumptions are plausible, to carry out sensitivity analyses based on the alternative assumptions. If the value of net benefits changes sign with alternative plausible assumptions, further analysis may be necessary to develop more evidence on which of the alternative assumptions is more appropriate. Because the adoption of a particular estimation methodology sometimes implies major hidden assumptions, it is important to analyze estimation methodologies carefully to make hidden assumptions explicit.

Special challenges arise in evaluating the results of an EA that relies strongly upon proprietary data or analyses whose disclosure is limited by confidentiality agreements.

In some cases, such data and analysis may be the best, or even the only, means to address an important aspect of a proposed regulation. Nevertheless, given the difficulties that this confidentiality presents to OMB review and meaningful public participation in the rulemaking, agencies should exercise great care in relying strongly upon proprietary material in developing an EA. When such material is used, it is essential that agencies provide as much information as possible concerning the underlying scientific, technological, behavioral, and valuation assumptions and conclusions. This can be accomplished, for example, by providing information about the values of key input parameters used in a modeling analysis or the implied behavioral response rates derived from sensitivity analysis.

The effectiveness of proposed rules may depend in part upon agency enforcement strategies, which may vary over time as agency priorities and budgetary constraints change. Because an agency usually cannot commit to an enforcement strategy at the time the rule is promulgated, the analysis of a rule's benefits and costs should generally assume that compliance with the rule is complete, although there may be circumstances when other assumptions should be considered as well. The analysis of a new or revised rule should differentiate between its benefits and costs, given an assumed level of compliance, and the implications of changes in compliance with an existing rule.

6. International Trade Effects. In calculating the benefits and costs of a proposed regulatory action, generally no explicit distinction needs to be made between domestic and foreign resources. If, for example, compliance with a proposed regulation requires the purchase of specific equipment, the opportunity cost of that equipment is ordinarily best represented by its domestic cost in dollars, regardless of whether the equipment is produced domestically or imported. The relative value of domestic and foreign resources is correctly represented by their respective dollar values, as long as the foreign exchange value of the dollar is determined by the exchange market. Nonetheless, an awareness of the role of international trade may be quite useful for assessing the benefits and costs of a proposed regulatory action. For example, the existence of foreign competition may make the demand curve facing a domestic industry more elastic than it would be otherwise. Elasticities of demand and supply frequently can significantly affect the magnitude of the benefits or costs of a regulation.

Regulations limiting imports — whether through direct prohibitions or fees, or indirectly through an adverse differential effect on foreign producers or consumers relative to domestic producers and consumers — raise special analytic issues. The economic loss to the United States from limiting imports should be reflected in the net benefit estimate. However, a benefit-cost analysis will generally not be able to

measure the potential U.S. loss from the threat of future retaliation by foreign governments. This threat should then be treated as a qualitative cost (see section 7).

7. Nonmonetized Benefits and Costs. Presentation of monetized benefits and costs is preferred where acceptable estimates are possible. However, monetization of some of the effects of regulations is often difficult if not impossible, and even the quantification of some effects may not be easy. Effects that cannot be fully monetized or otherwise quantified should be described. Those effects that can be quantified should be presented along with qualitative information to characterize effects that are not quantified.

Irrespective of the presentation of monetized benefits and costs, the EA should present available physical or other quantitative measures of the effects of the alternative actions to help decisionmakers understand the full effects of alternative actions. These include the magnitude, timing, and likelihood of impacts, plus other relevant dimensions (e.g., irreversibility and uniqueness). For instance, assume the effects of a water quality regulation include increases in fish populations and habitat over the affected stream segments and that it is not possible to monetize such effects. It would then be appropriate to describe the benefits in terms of stream miles of habitat improvement and increases in fish population by species (as well as to describe the timing and likelihood of such effects, etc.). Care should be taken, however, when estimates of monetized and physical effects are mixed in the same analysis so as to avoid double-counting of benefits. Finally, the EA should distinguish between effects unquantified because they were judged to be relatively unimportant, and effects that could not be quantified for other reasons.

8. Distributional Effects and Equity. Those who bear the costs of a regulation and those who enjoy its benefits often are not the same people. The term "distributional effects" refers to the description of the net effects of a regulatory alternative across the population and economy, divided up in various ways (e.g., income groups, race, sex, industrial sector). Benefits and costs of a regulation may be distributed unevenly over time, perhaps spanning several generations. Distributional effects may also arise through "transfer payments" arising from a regulatory action. For example, the revenue collected through a fee, surcharge, or tax (in excess of the cost of any service provided) is a transfer payments.

Where distributive effects are thought to be important, the effects of various regulatory alternatives should be described quantitatively to the extent possible, including their magnitude, likelihood, and incidence of effects on particular groups. Agencies should

be alert for situations in which regulatory alternatives result in significant changes in treatment or outcomes for different groups. Effects on the distribution of income that are transmitted through changes in market prices can be important, albeit sometimes difficult to assess. The EA should also present information on the streams of benefits and costs over time in order to provide a basis for judging intertemporal distributional consequences, particularly where intergenerational effects are concerned.

There are no generally accepted principles for determining when one distribution of net benefits is more equitable than another. Thus, the EA should be careful to describe distributional effects without judging their fairness. These descriptions should be broad, focusing on large groups with small effects per capita as well as on small groups experiencing large effects per capita. Equity issues not related to the distribution of policy effects should be noted when important and described quantitatively to the extent feasible.

B. Benefit Estimates

The EA should state the beneficial effects of the proposed regulatory change and its principal alternatives. In each case, there should be an explanation of the mechanism by which the proposed action is expected to yield the anticipated benefits. An attempt should be made to quantify all potential real incremental benefits to society in monetary terms to the maximum extent possible. A schedule of monetized benefits should be included that would show the type of benefit and when it would accrue; the numbers in this table should be expressed in constant, undiscounted dollars. Any benefits that cannot be monetized, such as an increase in the rate of introducing more productive new technology or a decrease in the risk of extinction of endangered species, should also be presented and explained.

The EA should identify and explain the data or studies on which benefit estimates are based with enough detail to permit independent assessment and verification of the results. Where benefit estimates are derived from a statistical study, the EA should provide sufficient information so that an independent observer can determine the representativeness of the sample, the reliability of extrapolations used to develop aggregate estimates, and the statistical significance of the results.

The calculation of benefits (including benefits of risk reductions) should reflect the full probability distribution of potential consequences. For example, extreme safety or health results should be weighted, along with other possible outcomes, by estimates of their probability of occurrence based on the available evidence to estimate the expected

result of a proposed regulation. To the extent possible, the probability distributions of benefits should be presented. Extreme estimates should be presented as complements to central tendency and other estimates. If fundamental scientific disagreement or lack of knowledge precludes construction of a scientifically defensible probability distribution, benefits should be described under plausible alternative assumptions, along with a characterization of the evidence underlying each alternative view. This will allow for a reasoned determination by decisionmakers of the appropriate level of regulatory action.

It is important to guard against double-counting of benefits. For example, if a regulation improves the quality of the environment in a community, the value of real estate in the community might rise, reflecting the greater attractiveness of living in the improved environment. Inferring benefits from changes in property values is complex. On the one hand, the rise in property values may reflect the capitalized value of these improvements. On the other hand, benefit estimates that do not incorporate the consequences of land use changes will not capture the full effects of regulation. For regulations with significant effects on land uses, these effects must be separated from the capitalization of direct regulatory impacts into property values.

1. General Considerations. The concept of "opportunity cost" is the appropriate construct for valuing both benefits and costs. The principle of "willingness-to-pay" captures the notion of opportunity cost by providing an aggregate measure of what individuals are willing to forgo to enjoy a particular benefit. Market transactions provide the richest data base for estimating benefits based on willingness-to-pay, as long as the goods and services affected by a potential regulation are traded in markets. It is more difficult to estimate benefits where market transactions are difficult to monitor or markets do not exist. Regulatory analysts in these cases need to develop appropriate proxies that simulate market exchange. Indeed, the analytical process of deriving benefit estimates by simulating markets may suggest alternative regulatory strategies that create such markets.

Either willingness-to-pay (WTP) or willingness-to-accept (WTA) can provide an appropriate measure of benefits, depending on the allocation of property rights. The common preference for WTP over WTA measures is based on the empirical difficulties in estimating the latter.

Estimates of willingness-to-pay based on observable and replicable behavior deserve the greatest level of confidence. Greater uncertainty attends benefit estimates that are neither derived from market transactions nor based on behavior that is observable or

replicable. While innovative benefit estimation methodologies will be necessary or desirable in some cases, use of such methods intensifies the need for quality control to ensure that estimates are reliable and conform as closely as possible to what would be observed if markets existed.

2. Principles for Valuing Benefits Directly Traded in Markets. Ordinarily, goods and services are to be valued at their market prices. However, in some instances, the market value of a good or service may not reflect its true value to society.

If a regulatory alternative involves changes in such a good or service, its monetary value for purposes of benefit-cost analysis should be derived using an estimate of its true value to society (often called its "shadow price"). For example, suppose a particular air pollutant damages crops. One of the benefits of controlling that pollutant will be the value of the crop saved as a result of the controls. That value would typically be determined by reference to the price of the crop. If, however, the price of that crop is held above the unregulated market equilibrium price by a government price-support program, an estimate based on the support price would overstate the value of the benefit of controlling the pollutant. Therefore, the social value of the benefit should be calculated using a shadow price for crops subject to price supports. The estimated shadow price is intended to reflect the value to society of marginal uses of the crop (e.g., the world price if the marginal use is for exports). If the marginal use is to add to very large surplus stockpiles, the shadow price would be the value of the last units released from storage minus storage cost. Therefore, where stockpiles are large and growing, the shadow price is likely to be low and could well be negative.

In other cases, market prices could understate social values, for example where production of a particular good also provides opportunities for improving basic knowledge.

3. Principles for Valuing Benefits That Are Indirectly Traded in Markets. In some important instances, a benefit corresponds to a good or service that is indirectly traded in the marketplace. Examples include reductions in health-and-safety risks, the use-values of environmental amenities and scenic vistas. To estimate the monetary value of such an indirectly traded good, the willingness-to-pay valuation methodology is considered the conceptually superior approach. As noted in Sections 4 and 5 immediately following, alternative methods may be used where there are practical obstacles to the accurate application of direct willingness-to-pay methodologies.

A variety of methods have been developed for estimating indirectly traded benefits. Generally, these methods apply statistical techniques to distill from observable market transactions the portion of willingness-to-pay that can be attributed to the benefit in question. Examples include estimates of the value of environmental amenities derived from travel-cost studies, hedonic price models that measure differences or changes in the value of land, and statistical studies of occupational-risk premiums in wage rates. For all these methods, care is needed in designing protocols for reliably estimating benefits or in adapting the results of previous studies to new applications. The use of occupational-risk premiums can be a source of bias because the risks, when recognized, may be voluntarily rather than involuntarily assumed, and the sample of individuals upon which premium estimates are based may be skewed toward more risk-tolerant people.

Contingent-valuation methods have become increasingly common for estimating indirectly traded benefits, but the reliance of these methods on hypothetical scenarios and the complexities of the goods being valued by this technique raise issues about its accuracy in estimating willingness to pay compared to methods based on (indirect) revealed preferences. Accordingly, value estimates derived from contingent-valuation studies require greater analytical care than studies based on observable behavior. For example, the contingent valuation instrument must portray a realistic choice situation for respondents -- where the hypothetical choice situation corresponds closely with the policy context to which the estimates will be applied. The practice of contingent valuation is rapidly evolving, and agencies relying upon this tool for valuation should judge the reliability of their benefit estimates using this technique in light of advances in the state of the art.

4. Principles and Methods for Valuing Goods That Are Not Traded Directly or Indirectly in Markets. Some types of goods, such as preserving environmental or cultural amenities apart from their use and direct enjoyment by people, are not traded directly or indirectly in markets. The practical obstacles to accurate measurement are similar to (but generally more severe than) those arising with respect to indirect benefits, principally because there are few or no related market transactions to provide data for willingness-to-pay estimates.

For many of these goods, particularly goods providing "nonuse" values, contingent-valuation methods may provide the only analytical approaches currently available for estimating values. The absence of observable and replicable behavior with respect to the good in question, combined with the complex and often unfamiliar nature of the goods being valued, argues for great care in the design and execution of surveys,

rigorous analysis of the results, and a full characterization of the uncertainties in the estimates to meet best practices in the use of this method.

5. Methods for Valuing Health and Safety Benefits. Regulations that address health and safety concerns often yield a variety of benefits traded directly in markets, benefits indirectly traded in markets, and benefits not traded in markets. A major component of many such regulations is a reduction in the risk of illness, injury or premature death. There are differences of opinion about the various approaches for monetizing such risk reductions. In assessing health and safety benefits, the analysis should present estimates of both the risks of nonfatal illness or injury and fatality risks, and may include any particular strengths or weaknesses of such analyses the agencies think appropriate, in order to accurately assess the benefits of government action.

(a) **Nonfatal illness and injury.** Although the willingness-to-pay approach is conceptually superior, measurement difficulties may cause the agency to prefer valuations of reductions in risks of nonfatal illness or injury based on the expected direct costs avoided by such risk reductions. For example, an injury-value estimate from a willingness-to-pay study may be an average over a specific combination of injuries of varying severity. If the average injury severity in such a study differs greatly from the injury severity addressed by the regulatory action, then the study's estimated injury value may not be appropriate for evaluating that action. More generally, willingness-to-pay estimates may be unavailable or too tentative to provide a solid base for the evaluation. The agency should use whatever approach it can justify as most appropriate for the decision at hand, keeping in mind that direct cost measures can be expected to understate the true cost. As discussed above (Section III.A.3), costs and benefits should be appropriately discounted to reflect the latency period between exposure and illness.

The primary components of the direct-cost approach are medical and other costs of offsetting illness or injury; costs for averting illness or injury (e.g., expenses for goods such as bottled water or job safety equipment that would not be incurred in the absence of the health or safety risk); and the value of lost production. Possibly important costs that might be omitted by the use of the direct-cost approach are the costs of pain, suffering and time lost (due to illness, injury, or averting behavior) from leisure and other activities that are not directly valued in the market. The present value of the expected stream of costs should be included. For long-term chronic illness or incapacitation the direct-cost approach may be particularly problematic compared to a willingness-to-pay estimate analogous to the valuation of mortality risks (discussed below).

Valuing lost production and other time-related costs gives rise to a number of methodological concerns. For occupational illness or injury, lost production can be measured by losses in workers' value of marginal product. In valuing the effects of broader environmental hazards, however, attention must be given to the composition of the exposed population. For example, some portion of the working-age population may be unemployed, while others will be retired. Still others may have chosen to be homemakers or home caregivers. Valuation of nonfatal illness or injury to these parts of the population presents a greater challenge than valuing the loss of employee services using wage rates. Finally, the valuation of health impacts on children or retirees through the direct-cost approach is especially problematic since their zero opportunity cost in the labor market is not a good proxy for the social cost of illness. The agency should use whatever approach it can justify but should provide a clear explanation of the assumptions and reasoning used in the valuation.

(b) Fatality risks. Values of fatality risk reduction often figure prominently in assessments of government action. Estimates of these values that are as accurate as possible, given the circumstances being assessed and the state of knowledge, will reduce the prospects for inadequate or excessive action.

Reductions in fatality risks as a result of government action are best monetized according to the willingness-to-pay approach. The value of changes in fatality risk is sometimes expressed in terms of the "value of statistical life" (VSL) or the "value of a life". These terms are confusing at best and should be carefully described when used. It should be made clear that these terms refer to the willingness to pay for reductions in risks of premature death (scaled by the reduction in risk being valued). That is, such estimates refer only to the value of relatively small changes in the risk of death. They have no application to an identifiable individual.

There is also confusion about the term "statistical life." This term refers to the sum of risk reductions expected in a population. For example, if the annual risk of death is reduced by one in a million for each of two million people, that represents two "statistical lives" saved per year (two million x one millionth = two). If the annual risk of death is reduced by one in 10 million for each of 20 million people, that also represents two statistical lives saved.

Another way of expressing reductions in fatality risks is in terms of the "value of statistical life-years extended" (VSLY). For example, if a regulation protected individuals whose average remaining life expectancy was 40 years, then a risk reduction of one fatality would be expressed as 40 life-years extended. This approach

allows distinctions in risk-reduction measures based on their effects on longevity. However, this does not automatically mean that regulations with greater numbers of life-years extended will be favored over regulations with fewer numbers of life-years extended. VSL and VSLY ultimately depend on the willingness to pay for various forms of mortality risk reduction, not just longevity considerations.

As described below, there are several ways that the benefits of mortality risk reduction can be estimated. In considering these alternatives, however, it is important to keep in mind the larger objective of consistency -- subject to statutory limitations -- in the estimates of benefits applied across regulations and agencies for comparable risks. Failure to maintain such consistency prevents achievement of the most risk reduction from a given level of resources spent on risk reduction. The valuation of mortality risk reduction is an evolving area in terms of results and methodology. Agencies generally should utilize valuation estimates, either explicitly or implicitly calculated, that are consistent with the current state of knowledge at the time that the analysis is being performed, and should show that their approach to valuation reflects the current state of knowledge. Significant deviations from the prevailing state of knowledge should be explained.

(c) Alternative methodological frameworks for estimating benefits from reduced fatality risks. Several alternative ways of incorporating the value of reducing fatality risks into the framework of benefit-cost analysis may be appropriate. These may involve either explicit or implicit valuation of fatality risks, and generally involve the use of estimates of the VSL from studies on wage compensation for occupational hazards (which generally are in the range of 10^4 annually), on consumer product purchase and use decisions, or from a limited literature using contingent-valuation approaches. Because these estimates may not be entirely appropriate for the risk being evaluated in some cases (e.g., the use of occupational risk premia for environmental hazards), agencies should provide an explanation for their selection of estimates and for any adjustments of the estimates to reflect the nature of the risk being evaluated.

One acceptable explicit valuation approach would be for the agency to select a single estimate of the value of reductions in fatality risk at ordinarily encountered risk levels, or a distribution of such values, and use these values consistently for evaluating all its programs that affect ordinary fatality risks. Where the analysis uses a range of alternative values for reductions in fatality risk, it may be useful to calculate break-even values, as in other sensitivity analyses. This requires calculating the borderline value of reductions in fatality risk at which the net benefit decision criterion would switch over from favoring one alternative to favoring another (i.e., the value of fatality risk at

which the net benefits of the two alternatives are equal). This method will frequently be infeasible because of its computational demands but, where feasible, it may be a useful addition to the sensitivity analysis.

An implicit valuation approach that could be used entails calculations of the net incremental cost per unit of reduction in fatality risk (cost per "statistical life saved") of alternative measures, with net incremental costs defined as costs minus monetized benefits. Alternatives can be arrayed in order of increasing reductions in expected fatalities. Generally this will also correspond to increasing incremental cost. (It is possible that there will be some initial economies of scale, with declining incremental costs. If incremental costs are declining over a broad range of alternative measures, it is likely that there are flaws in the definition of the measures or the estimation of their effects.) The incremental cost per life saved then can be calculated for each adjacent pair of alternatives. With this construction, the choice to undertake a certain set of measures while eschewing others implies a lower and upper bound for the value per life saved; it would be at least as large as the incremental cost of the most expensive measure undertaken, but not as large as the cheapest measure not undertaken. In contrast to explicit valuation approaches, this avoids the necessity of specifying in advance a value for reductions in fatality risks. However, the range of values should be consistent with estimated values of reductions in fatality risks calculated according to the willingness-to-pay methodology, and the method should be consistently applied across regulatory decisions (within statutory limitations), in order to assure that regulation achieves the greatest risk reduction possible from the level of resources committed to risk reduction.

While there are theoretical advantages to using a value of statistical life-year-extended approach, current research does not provide a definitive way of developing estimates of VSLY that are sensitive to such factors as current age, latency of effect, life years remaining, and social valuation of different risk reductions. In lieu of such information, there are several options for deriving the value of a life-year saved from an estimate of the value of life, but each of these methods has drawbacks. One approach is to use results from the wage compensation literature (which focus on the effect of age on WTP to avoid risk of occupational fatality). However, these results may not be appropriate for other types of risks. Another approach is to annualize the VSL using an appropriate rate of discount and the average life years remaining. This approach does not provide an independent estimate of VSLY; it simply rescales the VSL estimate. Agencies should consider providing estimates of both VSL and VSLY, while recognizing the developing state of knowledge in this area.

Whether the VSLs (or VSLYs) are chosen explicitly or are an implicit outcome of a cost-effectiveness approach, the choice of estimates *ideally* should be based on a comparison of the context of the regulation affecting risks and the context of the study or studies being relied on for value estimates. The literature identifies certain attributes of risk that affect value. These attributes include the baseline risk, the extent to which the risk is voluntarily or involuntarily assumed, and features (such as age) of the population exposed to risk. For regulations affecting some segments of the population (e.g., infants) more than those groups which have served as the basis for most of the information used to estimate VSLs (e.g., working-age adults), the use of VSLs from the literature may not be appropriate. At a minimum, differences in regulatory and study contexts should be acknowledged and a rationale for the choice of the value estimate should be provided.

Based on the literature, both the scale of baseline risks and their degree of voluntariness appear to affect VSLs. However, the risk from an involuntary hazard typically is too small to represent a significant portion of baseline risk. (For example, average annual mortality risks for men aged 55-64 are about two per hundred, while occupational fatality risk reductions typically achieved by regulations are between two per ten thousand and two per million annually.) In such cases, it may be legitimate to assume that the valuation of risks can be treated as independent of baseline risk.

To value reductions in more voluntarily incurred risks (e.g., those related to motorcycling without a helmet) that are "high," agencies should consider using lower values than those applied to reductions in involuntary risk. When a higher-risk option is chosen voluntarily, those who assume the risk may be more risk-tolerant, i.e., they may place a relatively lower value on avoiding risks. Empirical studies of risk premiums in higher-risk occupations suggest that reductions in risks for voluntarily assumed high risk jobs (e.g., above 10^{-4} annually) are valued less than equal risk reductions for lower-risk jobs. However, when occupational choices are limited, the occupational risks incurred may be more involuntary in nature.

C. Cost Estimates

1. General Considerations. The preferred measure of cost is the "opportunity cost" of the resources used or the benefits forgone as a result of the regulatory action. Opportunity costs include, but are not limited to, private-sector compliance costs and government administrative costs. Opportunity costs also include losses in consumers' or producers' surpluses, discomfort or inconvenience, and loss of time. These effects should be incorporated in the analysis and given a monetary value wherever possible.

(Producers' surplus is the difference between the amount a producer is paid for a unit of a good and the minimum amount the producer would accept to supply that unit. It is measured by the area between the price and the supply curve for that unit. Consumers' surplus is the difference between what a consumer pays for a unit of a good and the maximum amount the consumer would be willing to pay for that unit. It is measured by the distance between the price and the demand curve for that unit.)

The opportunity cost of an alternative also incorporates the value of the benefits forgone as a consequence of that alternative. For example, the opportunity cost of banning a product (e.g., a drug, food additive, or hazardous chemical) is the forgone net benefit of that product, taking into account the mitigating effects of potential substitutes. As another example, even if a resource required by regulation does not have to be paid for because it is already owned by the regulated firm, the use of that resource to meet the regulatory requirement has an opportunity cost equal to the net benefit it would have provided in the absence of the requirement. Any such forgone benefits should be monetized wherever possible and either added to the costs or subtracted from the benefits of that alternative. Any costs that are averted as a result of an alternative should be monetized wherever possible and either added to the benefits or subtracted from the costs of that alternative.

All costs calculated should be incremental, that is, they should represent changes in costs that would occur if the regulatory option is chosen compared to costs in the base case (ordinarily no regulation or the existing regulation) or under a less stringent alternative. Future costs that would be incurred even if the regulation is not promulgated, as well as costs that have already been incurred (sunk costs), are not part of incremental costs. If marginal cost is not constant for any component of costs, incremental costs should be calculated as the area under the marginal cost curve over the relevant range. A schedule of monetized costs should be included that would show the type of cost and when it would occur; the numbers in this table should be expressed in constant, undiscounted dollars.

The EA should identify and explain the data or studies on which cost estimates are based with enough detail to permit independent assessment and verification of the results. Where cost estimates are derived from a statistical study, the EA should provide sufficient information so that an independent observer can determine the representativeness of the sample, the reliability of extrapolations used to develop aggregate estimates, and the statistical significance of the results.

As with benefit estimates, the calculation of costs should reflect the full probability distribution of potential consequences. Extreme values should be weighted, along with other possible outcomes, by estimates of their probability of occurrence based on the available evidence to estimate the expected result of a proposed regulation. If fundamental scientific disagreement or lack of knowledge precludes construction of a scientifically defensible probability distribution, costs should be described under plausible alternative assumptions, along with a characterization of the evidence underlying each alternative view. This will allow for a reasoned determination by decisionmakers of the appropriate level of regulatory action. That level of action should derive from the decisionmaking process, not from adjusting cost estimates upward or downward at the information-gathering or analytical stages of the process.

Estimates of costs should be based on credible changes in technology over time. For example, a slowing in the rate of innovation or of adoption of new technology because of delays in the regulatory approval process or the setting of more stringent standards for new facilities than existing ones may entail significant costs. On the other hand, a shift to regulatory performance standards and incentive-based policies may lead to cost-saving innovations that should be taken into account. In some cases agencies are limited under statute to considering only technologies that have been demonstrated to be feasible. In these situations, it may also be useful to estimate costs and cost savings assuming a wider range of technical possibilities.

As in the calculation of benefits, costs should not be double counted. Two accounting cost concepts that should not be counted as costs in benefit-cost analysis are interest and depreciation. The time value of money is already accounted for by the discounting of benefits and costs. Generally, depreciation is already taken into account by the time distribution of benefits and costs. One legitimate use for depreciation calculations in benefit-cost analysis is to estimate the salvage value of a capital investment.

2. Real Costs Versus Transfer Payments. An important, but sometimes difficult, problem in cost estimation is to distinguish between real costs and transfer payments. Transfer payments are not social costs but rather are payments that reflect a redistribution of wealth. While transfers should not be included in the EA's estimates of the benefits and costs of a regulation, they may be important for describing the distributional effects of a regulation. Scarcity rents and monopoly profits, insurance payments, government subsidies and taxes, and distribution expenses are four potential problem areas that may affect both social benefits and costs as well as involve significant transfer payments.

(a) Scarcity rents and monopoly profits. If, for example, sales of a competitively produced product were restricted by a government regulation so as to raise prices to consumers, the resulting profit increases for sellers are not a net social benefit of the rule, nor is their payment by consumers generally a net social cost, though there may be important distributional consequences. The social benefit-cost effects of the regulation would be represented by changes in producers' and consumers' surpluses, including the net surplus reduction from reduced availability of the product. The same conclusion applies if the government restriction provides an opportunity for the exercise of market power by sellers, in which case the net cost of the regulation would include the cost of reduced product provision due both to the government mandate and the induced change in market structure.

(b) Insurance payments. Potential pitfalls in benefit-cost analysis may also arise in the case of insurance payments, which are transfers. Suppose, for example, a worker safety regulation, by decreasing employee injuries, led to reductions in firms' insurance premium payments. It would be incorrect to count the amount of the reduction in insurance premiums as a benefit of the rule. The proper measure of benefits for the EA is the value of the reduction in worker injuries, monetized as described previously, plus any reduction in real costs of administering insurance (such as the time insurance company employees needed to process claims) due to the reduction in worker insurance claims. Reductions in insurance premiums that are matched by reductions in insurance claim payments are changes in transfer payments, not benefits.

(c) Indirect taxes and subsidies. A third instance where special treatment may be needed to deal with transfer payments is the case of indirect taxes (tariffs or excise taxes) or subsidies on specific goods or services. Suppose a regulation requires firms to purchase a \$10,000 piece of imported equipment, on which there is a \$1,000 customs duty. For purposes of benefit-cost analysis, the cost of the regulation for each firm ordinarily would be \$10,000, not \$11,000, since the \$1,000 customs duty is a transfer payment from the firm to the Treasury, not a real resource cost. This approach, which implicitly assumes that the equipment is supplied at constant costs, should be used except in special circumstances. Where the taxed equipment is not supplied at constant cost, the technically correct treatment is to calculate how many of the units purchased as a result of the regulation are supplied from increased production and how many from decreased purchases by other buyers. The former units would be valued at the price without the tax and the latter units would be valued at the price including tax. This calculation is usually difficult and imprecise because it requires estimates of supply and demand elasticities, which are often difficult to obtain and inexact. Therefore, this treatment should only be used where the benefit-cost

conclusions are likely to be sensitive to the treatment of the indirect tax. While costs ordinarily should be adjusted to remove indirect taxes on specific goods or services as described here, similar treatment is not warranted for other taxes, such as general sales taxes applying equally to most goods and services or income taxes.

(d) Distribution expenses. The treatment of distribution expenses is also a source of potential error. For example, suppose a particular regulation raises the cost of a product by \$100 and that wholesale and retail distribution expenses are on average 50 percent of the factory-level cost. It would ordinarily be incorrect to add a \$50 distribution markup to the \$100 cost increase to derive a \$150 incremental cost per product for benefit-cost analysis. Most real resource costs of distribution do not increase with the price of the product being distributed. In that case, either distribution expenses would be unchanged or, if they increased, the increase would represent distributor monopoly profits. Since the latter are transfer payments, not real resource costs, in neither case should additional distribution expenses be included in the benefit-cost analysis. However, increased distribution expenses should be counted as costs to the extent that they correspond to increased real resource costs of the distribution sector as a result of the change in the price or characteristics of the product, or if regulation directly affects distribution costs.

SELECTED FURTHER READINGS

Judith D. Bentkover, Vincent T. Covello, and Jeryl Mumpower, Eds., Benefits Assessment: The State of the Art.

Jack Hirshliefer and John G. Riley, The Analytics of Uncertainty and Information. An advanced treatment of many issues related to risk and uncertainty.

Myrick Freeman, The Measurement of Environmental and Resource Values: Theory and Methods. A comprehensive high-level treatment of environmental valuation issues.

Robert C. Lind, Ed., Discounting for Time and Risk in Energy Policy. An advanced treatment of issues related to public and private sector discounting.

E. J. Mishan, Economics for Social Decisions: Elements of Cost-Benefit Analysis. Assumes some knowledge of economics. Chapters 5-8 should be helpful on the important subjects of producers' and consumers' surpluses (not discussed extensively in this guidance document).

Robert Cameron Mitchell and Richard C. Carson, Using Surveys to Value Public Goods: The Contingent Valuation Method. Provides a valuable discussion on the potential strengths and pitfalls associated with the use of contingent-valuation methods.

V. Kerry Smith, Ed., Advances in Applied Micro-economics: Risk, Uncertainty, and the Valuation of Benefits and Costs.

Edith Stokey and Richard Zeckhauser, A Primer for Policy Analysis. Chapters 9 and 10 provide a good introduction to basic concepts.

George Tolley, Donald Kenkel, and Robert Fabian, Eds., Valuing Health for Policy: An Economic Approach. An excellent summary of methods to value reduction in morbidity and extensions to life expectancy.

W. Kip Viscusi, Risk By Choice. Chapter 6 is a good starting point for the topic of valuing health and safety benefits. Other more technical sources are given in the bibliography.

1. EO Anniversary Event

Sept 30 1993 - EO 12866

- a. Amendment to EO - taking some pieces from REEO that makes sense. (not going beyond long approved by Congress)
- b. Shows results of old EO - good reg's - avoid the rules that do good things.
- c. Scorecard from initiatives of last yr on renumbering

EPA - big concerns w/ EO. ~~Centralized~~

↳ Areas of risk espec

centralizing in w/lt - mistake.

But in agencies

Sk - in each area, of decides. No command + control.

3 areas

1. Look back - in EO in lot instances.

Ag's have looked at own codes

Thru process, no ~~provision~~ public input

Now - open it up - provide for pub comment
(can plans)

2. Peer review - Ag's should have such a syst.
Each of to determine when this is approp.

3. Risk. Good for good data, explicit assays,
being able to replicate + communicate results.

Risk principles -

- not HC to regs
- threshold level? - (see SR)
- emergency exception
- not always poss to rely on public data

SR - This is aspirational. No need to do everything every time.

Not judicially reviewable - no vts.

SR - still, ags will have to comply. Wouldn't always make sense to do so.

OT - If 3 is not a pub, 5 shouldn't be. Always, ag has some discretion.

o - Just regs?

SR - Everything. First 4 primes also apply to everything.

SR - Focus on this. Let's not look for agreement

EPA (Fred) - Section 4 ^{in review}

Too centralized. Allows political decisions - instead of sci, expert decisions

SR - Made this gen'l decision (no centralized review) long ago.

EPA - This dramatically expands areas subj
to review -
into areas dominated by hard science

OIR - OIRA already sets risk analyses

OIR - Does this suggest OIRA will take closer
look? at science, e.g.?

Expect. That OIRA will become
central reviewer of risk assessment

II. Reg Plans - received from all but 5 ags.
GSA, EPA, DOE, SBA. ~~SBA~~

III. Paperwork Reduction Act -

Oct 1 - pres rule effect

Trustee response to cy in lit instance

Defines burden further

Public hearings this fall on PRA

where we can consolidate?

Subgp to work on PRA

Subgps - reorganizable following subgps:

risk
info technologies
CB

(Do what ACUS was doing)

Throne - On 1986 book.

We've done it - a lot in pub input - can eval.
Mis allocation of resources.

She - Really just annual listing of
what you're doing in.
Not too much for some
Too far for others.

Other - institutionalize what already done.
false credit for what done.
This doesn't do that.

Other - again, OIRA role in risk assessment
very imp.
Also - scope of comparative work



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 18 1995

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MEMORANDUM FOR AGENCY SENIOR INFORMATION RESOURCES MANAGEMENT
OFFICIALS

FROM: Sally Katzen 

SUBJECT: Agency Responses to OMB Bulletin 95-06,
Information Resources Management Plans Bulletin

I would like to enlist your help ensuring that your agency provides the Office of Management and Budget (OMB) with responses to our annual IRM Plans Bulletin. This Bulletin supports the publication of the *Information Resources Management Plan of the Federal Government* as required by the Paperwork Reduction Act (PRA). The bulletin will also collect data for the fifteenth annual report of the Information Collection Budget (ICB) of the United States Government, prepared pursuant to OMB's implementing regulation, *Controlling Paperwork Burdens on the Public*, 5 CFR 1320. Please note that agency responses are due to OMB on December 18, 1995.

Thank you for your assistance. If you have questions about this bulletin, please contact Lewis Oleinick of my staff at (202) 395-4638.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

September 14, 1995

OMB BULLETIN NO. 95-06

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Information Resources Management (IRM) Plans Bulletin

- I. **Purpose.** This Bulletin provides guidance and instructions to agencies for reporting on their Information Resources Management (IRM) Plans and their Information Collection Budget (ICB). It replaces Bulletin No. 94-05, "Information Resources Management (IRM) Plans Bulletin," issued April 19, 1994.
- II. **Authority.** This Bulletin is issued pursuant to the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Paperwork Reduction Act of 1995; the Brooks Act, as amended; and the Computer Security Act of 1987.
- III. **Background.** The Office of Management and Budget (OMB) will use the information requested in this Bulletin to analyze agency efforts to improve Federal information resources management and to develop Federal information resources management policies. Agency submissions will also be published as part of the Information Resources Management Plan of the Federal Government.

The Paperwork Reduction Act of 1995 requires that each agency "in accordance with guidance by the Director [of the Office of Management and Budget], develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions." (44 USC § 3506 (a)(4)(b)(2)) This plan should be part of "an ongoing process to...ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions." (44 USC § 3506 (a)(4)(b)(3)) In addition, OMB Circular No. A-130, "Management of Federal Information Resources" (July 25, 1994) provides that "[a]gencies shall establish and maintain strategic information resources management planning processes which include the following components:

- (a) Strategic IRM planning that addresses how the management of information resources promotes the

fulfillment of an agency's mission. This planning process should support the development and maintenance of a strategic IRM plan that reflects and anticipates changes in the agency's mission, policy direction, technological capabilities, or resource levels;

(b) Information planning that promotes the use of information throughout its life cycle to maximize the usefulness of information, minimize the burden on the public, and preserve the appropriate integrity, availability, and confidentiality of information. It shall specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 C.F.R. 1320;

(c) Operational information technology planning that links information technology to anticipated program and mission needs, reflects budget constraints, and forms the basis for budget requests. This planning should result in the preparation and maintenance of an up-to-date five-year plan, as required by 44 U.S.C. 3506, which includes:

(i) a listing of existing and planned major information systems;

(ii) a listing of planned information technology acquisitions;

(iii) an explanation of how the listed major information systems and planned information technology acquisitions relate to each other and support the achievement of the agency's mission; and

(iv) a summary of computer security planning, as required by Section 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note); and

(d) Coordination with other agency planning processes including strategic, human resources, and financial resources." (OMB Circular A-130 §8b(2)(a-d))

On August 29, 1995, OMB issued revised regulations, "Controlling Paperwork Burdens on the Public" (5 CFR 1320), that require designated agencies to prepare an annual ICB. The ICB describes the agency's program to collect information from the public (reporting, recordkeeping, regulatory monitoring where information is collected, etc.). The ICB serves to implement the Administration's paperwork burden reduction program and assist agencies in efficient information resources management.

To meet the mandate of the Paperwork Reduction Act, Federal agencies must continue to reduce information collection burden through management and technology improvements.

IV. Required Information. Agency reporting should be consistent with OMB fiscal and policy guidance.

Agencies should submit the following information in accordance with the instructions and formats provided:

- A. One copy of the agency's latest five-year plan for meeting the agency's information technology needs with an emphasis on operational planning, as outlined above in paragraphs (c)(i-iv), in accordance with the Paperwork Reduction Act of 1995 and OMB Circular No. A-130. The Computer Security Act (P.L. 100-235) requires that this plan include a summary of the agency's computer security plans. OIRA will provide copies of the plans upon receipt to an agency's program examiner as information regarding the use of information technology within an agency.
- B. One copy of data on compliance with OMB Circular No. A-130, "Management of Federal Information Resources," in accordance with the instructions in Appendix A.
- C. One copy of data on the agency Information Collection Budget, in accordance with instructions in Appendix B.

V. Submission Date. Not later than **ninety days after the date of issue of this Bulletin**, each agency listed in Part VI shall provide the required information to Sally Katzen, Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, Room 10236 NEOB, Washington, D.C. 20503.

VI. Coverage. The following agencies are subject to the reporting requirements of this Bulletin that are enumerated in paragraphs IV, A-C:

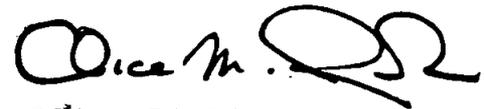
- Department of Agriculture
- Department of Commerce
- Department of Defense
 - Office of the Secretary of Defense
 - Department of the Air Force
 - Department of the Army
 - Department of the Navy
- Department of Education
- Department of Energy
- Department of Health and Human Services

Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Agency for International Development
Environmental Protection Agency
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Trade Commission
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Science Foundation
Nuclear Regulatory Commission
Office of Personnel Management
Social Security Administration
Securities and Exchange Commission
Small Business Administration
United States Information Agency
Federal Acquisition Regulation (FAR Secretariat) --
(Appendix B only)

- IV. **Information Contacts.** Questions about specific agency concerns should be directed to the agency's Desk Officer in OMB's Office of Information and Regulatory Affairs.

Questions about this Bulletin should be directed as follows: General Questions - Lew Oleinick, tel. (202) 395-4638; Appendix A - Peter Weiss, tel. (202) 395-3785; Appendix B - Jonathan Winer, tel. (202) 395-7858.

- V. **Expiration Date.** This Bulletin expires December 30, 1995.



Alice Rivlin
Director

Attachments

COMPLIANCE WITH INFORMATION POLICY REVISIONS OF OMB
CIRCULAR NO. A-130

Section 9(a)(11) of OMB Circular No. A-130, as revised on June 25, 1993 (58 Federal Register 36068, July 2, 1993) provides that the head of each agency shall:

(11) Direct the senior official appointed pursuant to 44 U.S.C. 3506(b) to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the senior official shall consider alleged instances of agency failure to comply with this Circular and recommend or take corrective action as appropriate. The senior official shall report annually, not later than February 1st of each year, to the Director those instances of alleged failure to comply with this Circular and their resolution.

Each agency shall report on (1) each instance in which a failure to comply was alleged, (2) the nature of the alleged violation, and (3) the disposition of the complaint. Agencies that receive no complaints should so state.

AGENCY INFORMATION COLLECTION BUDGET (ICB)

- I. General. A major component of an agency's information resources management plan is a review of the information collection burden it places on the public. To account for this burden, OIRA maintains an Information Collection Budget (ICB) for each agency.

As each agency is aware, the Paperwork Reduction Act of 1995 takes effect on October 1, 1995. Specifically, the Act requires that,

"[the Director of the Office of Management and Budget,] in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burden by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and 2001, and set annual agency goals to --

reduce information collection burdens imposed in the public that --

represent the maximum practicable opportunity in each agency; and

are consistent with improving agency management of the process for the review of collections of information established under section 3506(c)." Section 3505(a)(1)(A)(i, ii).

"[the Director will report annually on] a summary of accomplishments and planned initiatives to reduce collection of information burdens..." Section 3514(a)(2)(A)(i).

"[The Director report annually on] a list of any increase in the collection of information burden, including the authority for each such collection..." Section 3514(a)(2)(A)(i).

OIRA is sending the agencies a preliminary list of all data collections for fiscal year 1995. The purpose is to allow agencies to develop a baseline against which future burden changes will be measured. A final list will be sent to each agency in October for verification with agency records and submission of an aggregate total to OMB.

II. Content. Each agency's ICB should be presented in the format presented in Exhibits 1, 2, and 3.

Exhibit 1 provides, in hours and number of collections, the total information collection burden for FY 1995 and the burden reduction goals for FY 1996. (If total agency burden is expected to increase, Exhibit 1 also asks for the primary statutes and/or regulations which will lead to this increase.) Agencies also are asked to describe, in narrative form, primary goals to reduce burden to the maximum extent practicable; these goals should be consistent with improving agency management of the information collection review process.

Exhibit 2 describes the agency's FY 1995 accomplishments which reduced information collection burdens on the public. Include any additional information on each initiative which would underscore specific burden reduction accomplishments (e.g., less frequent reporting, consolidation of several forms, and/or cross-cutting activities). Attach additional sheets, as necessary.

Exhibit 3 details the agency's plans for achieving the specified goals for information collection burden reduction in FY 1996, including a summary of specific planned initiatives to reduce burden. The specific burden reduction initiatives should support the broad goals illustrated in Exhibit 1. Attach additional sheets, as necessary.

INSTRUCTIONS FOR VERIFYING COMPUTER-GENERATED TRANSACTIONS SHEETS

(A) Verify FY 1995 Individual Program Changes and Adjustments: OMB has provided agencies with a computer-generated list of all reports that were new, amended, expired, and reinstated in FY 1995. Agencies should verify the figures presented in this list, and either provide a statement that the changes listed are accurate or revise the figures directly on the list.

(B) Verify Total FY 1995 Program Changes and Adjustments for Each Agency: On the computer-generated summary sheets OMB has provided to each agency, verify the total adjustments (corrections or changes in use) and program changes for the agency and/or subagencies based on changes to Part 1(A), and either provide a statement that the changes listed are accurate or revise the figures directly on the list.

Definitions: Program changes should not be confused with adjustments.

A "Program increase" is an additional burden resulting from an action or directive of any branch of the Federal government (e.g., an increase in sample size, amount of information, reporting frequency, or expanded use of an existing form). This also includes previously in-use and unapproved information collections discovered during the ICB process, or during the fiscal year, which will be in use during the next fiscal year.

A "Program decrease" is a reduction in burden because of: (1) the discontinuation of an information collection; or (2) a change in an existing information collection by a Federal agency (e.g., the use of sampling (or smaller samples), a decrease in the amount of information requested (fewer questions), or a decrease in reporting frequency).

An "Adjustment" does not denote change in the actual paperwork requirements or in agency policy, but rather in factors such as population growth over which the government has no control.

Note: Expired collections will be accounted for as program decreases (e.g., surveys that have been completed) only if they are no longer in use (and will not be put back in use). For an expired collection which is still in use and for which reinstatement is pending or expected, agencies should write "REINSTATEMENT PENDING" in the margin next to the collection.

(Sample Format)

EXHIBIT 1

Information Collection Burden Reduction Goals

Department of Government

Agency Functional Unit of Program: Tourist Information Bureau

A.

- | | |
|--|--|
| (1) Total actual burden hours for all FY 1995 collections ¹ : | 2,500,000 hrs |
| (2) Total estimated burden hours for all FY 1996 collections ² : | 1,500,000 hrs |
| (3) Total actual number of all FY 1995 collections ³ : | 20 collections |
| (4) Total estimated number of all FY 1996 collections ⁴ : | 13 collections |
| (5) Statutes/regulations responsible for burden increase ⁵ : | The Government Act
The XYZ Regulation |

B.

- (1) Agencies are also asked to describe, in narrative form, primary goals to reduce burden to the maximum extent practicable; these goals should be consistent with improving agency management of the information collection review process.

¹ Sum of burden hours for **all** collections for FY 1995.

² Sum of burden hours for **all** collections for FY 1996.

³ Total number (count) of **all** collections for FY 1995.

⁴ Total number (count) of **all** collections for FY 1996.

⁵ List primary statutes/regulations responsible for burden increase, if any, from FY 1995 to FY 1996.

(Sample Format)

EXHIBIT 2

FY 1995 Accomplishments in Reducing Burden

Department of Government

Agency Functional Unit of Program: Tourist Information Bureau

<u>OMB No.</u>	<u>Title</u>	<u>Number of Respondents</u>	<u>Frequency of Response</u>	<u>Annual Burden FY 1994 (Hours)</u>	<u>Annual Burden FY 1995 (Hours)</u>	<u>Program Change or Adjustment</u>	<u>Comments⁶</u>
0000-0000	U.S. Survey	750	Annual	20,000,000	12,000,000	Adjustment	

⁶ Include any additional information on each initiative (e.g., less frequent reporting, consolidation of several forms, and/or cross-cutting activities). Attach extra sheets of paper, as necessary.

(Sample Format)

EXHIBIT 3

FY 1996 Planned Initiatives for Reducing Burden
Department of Government
Agency Functional Unit of Program: Tourist Information Bureau

OMB No.	Title	Number of Respondents	Frequency of Response	Annual Burden FY 1995 (Hours)	Annual Burden FY 1996 (Hours)	Program Change or Adjustment	Comments ⁷
0000-0000	U.S. Survey	750	Annual	20,000,000	12,000,000	Adjustment	

⁷ Include any additional information on each initiative (e.g., less frequent reporting, consolidation of several forms, and/or cross-cutting activities). Attach extra sheets of paper, as necessary.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 22, 1995

THE DIRECTOR

M-95-12

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS, AGENCIES,
AND INDEPENDENT ESTABLISHMENTS

FROM: Alice M. Rivlin *AMR*

SUBJECT: Preparing to Implement S. 244, the "Paperwork
Reduction Act of 1995"

The President today signed S. 244, the "Paperwork Reduction Act of 1995." This Act restates and expands upon the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as previously amended. Of most immediate importance are the changes to agency responsibilities in the clearance of collections of information through the Office of Management and Budget (OMB).

Within OMB, the Office of Information and Regulatory Affairs (OIRA) has the primary responsibility for implementing and overseeing agency compliance with this Act. Sally Katzen, the OIRA Administrator, has prepared a memorandum providing early guidance to agencies in complying with this new Act.

This memorandum outlines the advance planning and public notice that need to take place before an agency submits an information collection for OMB clearance, as well as other new requirements contained in the Act. In order to assure that the new Act does not disrupt your ongoing program responsibilities, you should consider reviewing, and in some cases strengthening, your existing procedures for developing new collections of information.

I urge you to send Administrator Katzen's memorandum (attached) to the appropriate officials for their immediate attention.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 22, 1995

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS, AGENCIES,
AND INDEPENDENT ESTABLISHMENTS

FROM: Sally Katze *S. Katze*

SUBJECT: Preparing to Implement S. 244, the "Paperwork
Reduction Act of 1995"

The President today signed S. 244, the "Paperwork Reduction Act of 1995." This Act restates and expands upon the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as previously amended. Of most immediate importance are the changes to agency responsibilities in the clearance of collections of information through the Office of Management and Budget (OMB).

In general terms, the new Act requires agencies to plan for the development of new collections of information and the extension of ongoing collections of information well in advance of sending the proposal to OMB. The additional advance planning is necessary because agencies will now need to estimate potential burdens on respondents, prepare to disclose certain additional information to the public (e.g., time limits for recordkeeping requirements), seek public comment through 60-day notice in the Federal Register, and thereafter certify to OMB, e.g., that the proposed collection "reduces to the extent practicable and appropriate the burden" on respondents, including, for small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act.

For any collection of information to be approved by OMB on or after October 1, the agencies will have to have already carried out all of these procedural steps -- beginning, in effect, at least as early as July 1.

As of October 1, the Act also requires agencies to have obtained OMB approval for third-party disclosure requirements. It prohibits agencies from penalizing respondents that have not been informed by an agency that a response is not required unless the request displays a control number. It establishes a government-wide goal for the reduction of paperwork burden by at least 10 percent during FY 1996, with OMB, working with agencies, to set individual annual agency goals that "represent the maximum practicable opportunity in each agency."

The discussion below elaborates on how these changes affect the current paperwork clearance process.

1. Coverage.

The new Act, in 44 U.S.C. 3502(1), does not change the agencies covered by the existing Act, which includes independent regulatory agencies. The independent regulatory agencies may void an OMB disapproval by majority vote (44 U.S.C. 3507(f)).

2. Third-Party or Public Disclosure.

The new Act explicitly expands the scope of the Act by redefining "collection of information" to include "disclosure to third parties or the public" (44 U.S.C. 3502(3)(A)). Reinforcing this, the new Act explicitly defines "recordkeeping requirement" to include the notification and disclosure of retained records to third parties or the public (44 U.S.C. 3502(13)). These definitions have the effect of overturning the Supreme Court's decision in Dole v. United Steelworkers of America, 494 U.S. 26 (1990).

3. Effective Date.

The new Act takes effect on October 1, 1995. The procedural requirements of the Paperwork Reduction Act of 1980, as amended in 1986, will continue to apply to collections of information approved by OMB on or before September 30, but which have a valid OMB control number expiring after that date. Thus, if an agency wishes to obtain OMB approval for a third-party or public disclosure requirement before October 1, 1995, under the existing clearance procedures, it needs to submit that clearance request early enough to permit review and obtain approval before October 1.

For collections of information to be approved by OMB on or after October 1, the agency will have already had to comply with the new procedures, e.g., the 60-day public notice, the statutory certification to OMB, and the new disclosure requirements. In effect, to gain OMB approval on October 1, agencies will have had to have started their internal paperwork review process on or before July 1.

4. Public Protection. The Paperwork Reduction Act of 1980, as amended, prohibits agencies from penalizing those who fail to respond to Federal collections of information that do not display valid OMB control numbers. The new Act would also prohibit agencies from penalizing those who have not been informed that a response is not required unless the collection of information displays a valid control number (44 U.S.C. 3512(a)(2)). As noted in paragraph 5(C) below, agencies must so inform respondents for

each collection of information approved on or after October 1, 1995. Both of these public protections "may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto" (44 U.S.C. 3512(b)).

5. The Agency's Internal Paperwork Review Process.

The new Act sets forth a number of new agency paperwork clearance responsibilities.

A. Independent Review. The new Act calls upon agencies to establish a paperwork review process within an office "sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved" by OMB (44 U.S.C. 3506(a) and (c)(1)). The new Act then details a number of approaches and standards that agencies are to consider in connection with collections of information (44 U.S.C. 3506(c)(1), (2), and (3)).

B. Need to Develop New Collections of Information Carefully. In developing new collections of information and deciding whether to continue existing ones, agencies need to evaluate the need for each aspect of the information collection, estimate respondent burdens, and, if appropriate, test the collection of information through a pilot program (44 U.S.C. 3506(c)(1)(A)).

C. Inform the Respondent. As part of the collection of information package (e.g., in the form, the instructions, the preamble of a regulation containing a collection of information, and/or an appropriate notice in the Code of Federal Regulations), the agency needs to inform respondents of the reasons the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required to obtain a benefit, or mandatory; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a valid OMB control number (44 U.S.C. 3506(c)(1)(B)).

D. Seek Public Comment. Unless the proposed collection of information is contained in a Notice of Proposed Rulemaking (44 U.S.C. 3507(d)) or unless exempted (44 U.S.C. 3507(j)), the agency needs, for each new proposed collection of information or extension of an existing one (44 U.S.C. 3507(h)) to "provide 60-day notice in the Federal Register, and otherwise consult with the members of the public and affected agencies" (44 U.S.C. 3506(c)(2)(A)). In this notice, the agency is to solicit comment on the need for the information, its practical utility, the accuracy of the agency's burden estimate, and on ways to minimize

burden, including through "the use of automated collection techniques or other forms of information technology" (44 U.S.C. 3507(c)(2)(A)(iv)).

E. Certification to OMB. In order to submit a proposed collection of information to OMB, the agency must certify that the information collection meets certain standards "and provide a record supporting such certification, including [the] public comments received by the agency" (44 U.S.C. 3506(c)(3)). The agency is to certify that the proposed collection of information, e.g., is needed; not unnecessarily duplicative; "reduces to the extent practicable and appropriate the burden" on respondents, including, for small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act; is written in "unambiguous terminology;" is to be implemented in ways consistent with the existing reporting and recordkeeping practices of the respondents; and "indicates for each recordkeeping requirement the length of time" documents are to be retained (44 U.S.C. 3506(c)(3)(C)).

F. Federal Register Notice of Submission to OMB. The new Act also continues the existing requirement that agencies publish a notice in the Federal Register stating that the proposed collection of information has been submitted for OMB review (44 U.S.C. 3507(a)(1)(D)). This will be the second notice in the Federal Register for those collections of information for which the agency already provided the public notice under 44 U.S.C. 3506(c)(2)(A).

G. Plan for Enough Time to Review Collections of Information. In addition to the time agencies need to carry out their internal review and to seek public comment (60 days), agencies also have to allow for the time OMB needs to make its review and decision. Under the new Act, unless exempted (44 U.S.C. 3507(j)), OMB is to provide at least 30 days for public comment after it receives the agency submission and before it makes a decision (44 U.S.C. 3707(c)(1)). In other words, to obtain public comment and routine OMB review and approval, for both new collections of information and also to extend ongoing collections of information, agencies need to plan ahead by least 90 days.

* * * * *

The new Act contains a number of other new provisions. We are in the process of reviewing these and developing material that will further help in understanding the full scope of the changes made in the new Act.

Starting now, we need to work together to be able to implement the new Act as smoothly and straightforwardly as possible. The Office of Information and Regulatory Affairs (OIRA) staff have already begun having informal

discussions with agency paperwork clearance personnel concerning the Act. We plan to offer more formal training and additional guidance for agency staff in understanding the new Act.

If you have any questions, please let us know.

Federal Register

Tuesday
August 29, 1995

Part III

**Office of
Management and
Budget**

**5 CFR Part 1320
Reporting and Recordkeeping
Requirements: Final Rule**

OFFICE OF MANAGEMENT AND BUDGET**5 CFR Part 1320****Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act**

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final rule.

SUMMARY: This rule implements the Paperwork Reduction Act of 1995. The Act changes existing law in several significant ways. It makes more explicit the responsibilities of agencies in developing proposed collections of information and submitting them for OMB review and approval. Among other things it requires agencies to seek public comment concerning proposed collections of information through 60-day notice to the public before submission for clearance by the Office of Management and Budget (OMB) and thereafter to certify to OMB that the proposed collection reduces to the extent practicable and appropriate the burden on respondents for small business, local government, and other small entities, and indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified. The Act also redefines "collection of information" explicitly to include third-party and public disclosures, and changes a number of definitions and other provisions. This final rule amends OMB's existing paperwork clearance rules to reflect these and other legislative changes made by the Paperwork Reduction Act of 1995.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jefferson B. Hill, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (202/395-7340). Inquiries may be submitted via facsimile to 202/395-7285. Electronic mail inquiries may be submitted via SMTP to Hill—J@a1.eop.gov or via X.400 to G=Jefferson, S=Hill, PRMD=gov+eop, ADMD+telemail, C=us. Inquiries submitted via electronic mail should include the commenter's name, affiliation, postal address, telephone number, and e-mail address in the text of the message.

SUPPLEMENTARY INFORMATION:**A. Background**

The Office of Management and Budget (OMB) last issued 5 CFR Part 1320—Controlling Paperwork Burden on the

Public—on May 10, 1988 [53 FR 16618]. The 1988 rule implemented the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. Chapter 35), as amended by the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99-500 (October 18, 1986) and 99-591 (October 30, 1986), section 101(m)). The rationale supporting the 1988 rule is set forth at 53 FR 16618 (May 10, 1988), 52 FR 27768 (July 23, 1987), 48 FR 13666 (March 31, 1983), and 47 FR 39515 (September 8, 1982).

The Paperwork Reduction Act of 1995 (Pub. L. 104-13 (May 22, 1995)) replaced the Paperwork Reduction Act of 1980, as amended in 1986. The Paperwork Reduction Act of 1995 takes effect on October 1, 1995. The procedural requirements of the Paperwork Reduction Act of 1980, as amended in 1986, continue to apply to collections of information approved by OMB on or before September 30, 1995, and which have a valid OMB control number expiring after that date.

As a result of this legislative recodification of the Paperwork Reduction Act, OMB published proposed changes to 5 CFR Part 1320 in a Notice of Proposed Rulemaking (NPRM) on June 8, 1995 [60 FR 30438]. The NPRM changed the order and structure of the 1988 rule in order to clarify agency and OMB responsibilities, and to elaborate upon the various requirements of the Paperwork Reduction Act of 1995. The scope of these proposed changes, their legislative basis, and their relation to the 1988 rule are described in the NPRM.

In response to the NPRM, OMB received 50 comments. Each comment has been considered in preparing this final rule. In developing this recodification of 5 CFR Part 1320, OMB has also relied upon its 14 years of practical experience in administering the Paperwork Reduction Act of 1980 and upon its 12 years of implementing 5 CFR Part 1320.

Some of the comments received were of an administrative nature—that is, comments from agency staff requesting further elaboration or explanation of how the paperwork clearance process will work administratively. OMB staff have met with and are continuing to meet with agency staff in order to answer this type of question. OMB also notes that, in January 1989, the Office of Information and Regulatory Affairs (OIRA) in OMB issued an Information Collection Review Handbook, which was designed to offer detailed guidance to agency staff and the public on OMB's paperwork clearance process. It is OMB's intention to review and update

that Handbook in light of the Paperwork Reduction Act of 1995 and these implementing regulations, and—in that document—provide more detailed elaboration and explanation.

Significant comments received in response to the NPRM, and any significant changes are discussed below.

B. Legislative Intent

In issuing this final rule, OMB is fully cognizant of the legislative intent of the draftsmen of the Paperwork Reduction Act of 1995: "To the extent the revision is a restatement of the Paperwork Reduction Act of 1980, as amended in 1986, the legislation is a reaffirmation of the law's scope, underlying purposes, requirements, and legislative history. It is the intent of the [Senate] Committee that the Act's prior legislative history remain unchanged and continue to be viewed [as] an important explanation of the Congressional intent underpinning the Act's provisions" (S. Rpt. 104-8, p. 35; see H. Rpt. 104-37, p. 35; H. Rpt. 104-99, pp. 27-28).

C. Significant Comments or Changes

1. Proposed § 1320.1 ("Purpose"): A comment suggested that the last sentence of the statement of purpose more closely track the text of 44 U.S.C. 3501(1) and (2). The final rule is modified accordingly.

2. Proposed § 1320.3(c)(1) (Definition of "collection of information"): Several comments questioned the need for the provision in proposed § 1320.3(c)(1) to the effect that a collection of information may include "any other techniques or technological methods used to monitor compliance with agency requirements".

This provision was added in recognition that Federal agencies now collect, and in the future will increasingly collect information by having respondents use a wide variety of automated, electronic, mechanical, and other technological means—as well as the more traditional paper forms and interviews—to demonstrate compliance with agency requirements. Congress was fully aware of the increased respondent use of technology to collect, process, and disclose information to an agency or the public. In the Paperwork Reduction Act, a "collection of information" is defined to mean "the obtaining * * * or requiring the disclosure to third parties or the public" of facts or opinions, "regardless of form or format" (44 U.S.C. 3502(3)(A)). The Congressional Committees explained that "the phrase 'regardless of form or format' * * * clarifies that regardless of the instrument, media, or method of agency action, a collection of information is any

agency action that calls for * * * identical reporting or recordkeeping requirements, or third party information disclosure requirements. * * * It also includes information collection activities regardless of whether the collection is formulated or communicated in written, oral, electronic or other form" (H. Rpt. 104-37, p. 36; see S. Rpt. 104-8, p. 37). This same awareness is reflected in the definition of "burden" in the 1995 Act, which expressly includes the burden of "acquiring, installing, and utilizing technology and systems" (44 U.S.C. 3502(2)(B)). The Committees stated their intent to have the definition of burden include "the resources expended for * * * acquiring, installing, and utilizing technology to gather, obtain, compile, or report" information (H. Rpt. 104-37; see S. Rpt. 104-8, p. 35).

The final rule, in § 1320.3(c)(1), is modified to make it clear that, unless exempted, all agency collections of information are subject to OMB review and approval under the Paperwork Reduction Act, regardless of form or format, and regardless of whether the collections are implemented through paper, voice, automation, electronics, or other technological, scientific, or mechanical collection techniques.

3. Proposed § 1320.3(c)(3) (Definition of "collection of information"): Proposed § 1320.3(c)(3) provided that a "collection of information" includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for "general statistical purposes." Several comments suggested that it would be useful to define "general statistical purposes," consistent with historical practice.

The legislative history of the 1980 Act is helpful. "As used in the definition [of collection of information], 'general statistical purposes' is intended to have precisely the same meaning as 'statistical compilations of general public interest' as the phrase appears in the original [Federal] Reports Act" (See S. Rpt. 96-930, pp. 38-39).

Accordingly, in the final rule, a defining clause consistent with this legislative history has been added to § 1320.3(c)(3). The clarification is intended to distinguish between statistics collected for publication for the general public (such as studies of the Federal workforce made by the Office of Personnel Management) and internal statistics (information solicited from employees to support management purposes such as improving customer service or conducting internal audits of agency performance).

4. Proposed § 1320.3(f)(3) (Definition of "display") and proposed § 1320.5(b)(2)(ii)(C): The proposed rule in § 1320.3(f)(3) stated that, in the case of collections of information published in regulations in the **Federal Register**, an agency may "display" the OMB control number by publishing it in the preamble or the regulatory text for the final rule, in a technical amendment to the final rule, in a separate notice announcing OMB approval of the collection of information, and/or in the Code of Federal Regulations. The proposed rule also recommended that, for ease of reference, the agency also publish the control number in the Code of Federal Regulations, even when the agency has already "displayed" the control number by publishing it in the **Federal Register**. The proposed rule contained a similar provision at § 1320.5(b)(2)(ii)(C) regarding the requirement to inform potential respondents that they are not required to respond to the collection of information unless it displays a valid control number.

A comment stressed that the Code of Federal Regulations does not function independently of the **Federal Register**. Specifically, the comment pointed out that materials that are in the preamble for a final rule, or in a general notice in the **Federal Register**, will not be codified in the Code of Federal Regulations. For this reason, the comment expressed concern that the proposed rule's language might wrongly suggest that materials which are published in a preamble or in a notice indicating OMB approval would be codified in the Code of Federal Regulations.

The comment's point is well taken. To avoid any ambiguity or confusion on this matter, § 1320.3(f)(3) and § 1320.5(b)(2)(ii)(C) are revised in the final rule, and additional background explanation is included in this preamble.

With respect to § 1320.3(f)(3), this provision has been revised to make clear that, for purposes of the Act, an agency satisfies the requirement to "display" the OMB control number if the control number is published in the **Federal Register** or, alternatively, if the control number is published in the Code of Federal Regulations. Either form of publication satisfies the requirement to "display" the control number. Both are not required. A similar revision has been made to § 1320.5(b)(2)(ii)(C).

As additional background explanation, consider the application of § 1320.3(f)(3). If the agency publishes (and thus "displays") the control number in the **Federal Register** as part

of the regulatory text for the final rule or in a technical amendment to the final rule, then the Office of the Federal Register will automatically place the control number in the Code of Federal Regulations. By contrast, if the agency publishes (and thus "displays") the control number in the **Federal Register** as part of the preamble for the final rule or in a separate notice announcing that OMB has approved the collection of information, then the Office of the Federal Register will not automatically place the control number in the Code of Federal Regulations. In the latter situation, although the agency has already "displayed" the control number by publishing it in the preamble or in a separate notice, OMB recommends for ease of future reference that the agency also place the control number in a table or codified section to be included in the Code of Federal Regulations. In addition to aiding in future reference, such a table or codification section would itself constitute an alternative form of "display." The placement of the control number in regulations is governed by a regulation issued by the Administrative Committee of the Federal Register, at 1 CFR 21.35. The same background principles apply to the application of § 1320.5(b)(2)(ii)(C).

5. Proposed § 1320.3(h)(1) (Definition of "information"): In the NPRM, OMB clarified the exemption for "certifications" in proposed § 1320.3(h)(1) to ensure that the exempted certification is used only to identify an individual in a routine, non-intrusive, non-burdensome way. OMB further stated that the exemption is not to be available for a certification that substitutes for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards.

A comment objected to the burden of agency certification requirements and, while supportive of the proposed clarification, suggested the following amendment: "A certification that requires more than the identity of the respondent, the date, the respondent's address, and the nature of the instrument will be considered to be 'information' unless and until the Agency demonstrates and OMB determines that it is not 'information' following OMB review and public comment in accordance with the requirements of § 1320.11." On the other hand, another comment suggested that the use of certifications in lieu of detailed records is a way to reduce, to the lowest possible level, the burden imposed on respondents, and that a certification of compliance with a regulatory requirement is a de minimis

activity compared to full recordkeeping. This commenter suggested that the certification exemption be broadened to include any certification of compliance with a regulatory requirement.

Given that the issue in dispute involves paperwork burdens—which is one of the primary issues that OMB is to evaluate under the Paperwork Reduction Act, it is appropriate for OMB to review such certifications in order to evaluate the burden involved and balance those concerns against agency need. For example, the one commenter stated that certification requirements impose less burden than full recordkeeping requirements. The imposition of less burden would of course be an important consideration in evaluating a proposed certification requirements under the “practical utility”-“burden” criteria. However, the fact that certification requirements may impose less burden than full recordkeeping does not argue for exempting them altogether from review. With respect to the other commenter’s suggested amendment, OMB believes that the provision in the NPRM should address the commenter’s fundamental concerns. Before concluding that the provision should be revised further, OMB prefers to see whether any issues arise in implementing this provision in the context of concrete situations. The final rule is left unchanged.

6. Proposed § 1320.3(k) (Definition of “person”): In proposed § 1320.3(k), the definition of “person” included “corporation (including operations of government-owned, contractor-operated facilities).” One comment suggested that “Government-owned contractor-operated facilities contractors” should be excluded from this definition of “person.”

This portion of proposed § 1320.3(k) is identical to that found in the OMB regulations since 1983 (see 5 CFR 1320.7(p) (1984); 5 CFR 1320.7(n) (1989)). As OMB explained in 1983: “In response to a request for clarification, the term ‘person’ has been defined to include ‘operations of government-owned contractor-operated facilities.’ Such operations are specifically excepted from the statutory definition of ‘agency,’ see 44 U.S.C. 3502(1) [(1981)]. Since they are not agencies, but are private businesses falling within the purposes of the Act, they are covered as ‘persons’” (48 FR 13677 [March 31, 1983]). Since Congress did not substantively amend the definitions of “agency” and “person” in the 1995 Act, the final rule is left unchanged.

7. Proposed § 1320.4 (“Coverage”): In the NPRM, OMB pointed out that, for certain agency offices, including Chief

Financial Officers or Inspectors General, an investigation (a term used in 44 U.S.C. 3518(c)(1) and (2)) often carries the title of “audit” (a term used in the Inspector General Act, Section 3(a), 5 U.S.C. App. 3). Several Inspectors General suggested that the scope of the exemptions should make specific reference to the word “audit.” The final rule is modified accordingly, with equivalent amendments to § 1320.4(a)(2), § 1320.4(b), and § 1320.4(c). These changes are made for clarification; no substantive change is intended.

8. Proposed § 1320.6(e) (“Public Protection”): In the NPRM, OMB stated in proposed § 1320.6(e) that the Act’s “public protection” provision in 44 U.S.C. 3512 “does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute”. The proposed regulation also provided two examples of such a statute: 26 U.S.C. 6011(a) and 42 U.S.C. 6938(c).

In the preamble of the NPRM, OMB explained that the proposed provision “is based on the principle announced by the courts in several cases which addressed the issue of whether the public protection provided by 44 U.S.C. 3512 could preclude the Federal government from prosecuting persons for their failure to perform paperwork duties imposed upon them by statute. * * * In those cases, the courts concluded that Congress, in enacting the Paperwork Reduction Act, did not intend to require itself to comply with the requirements of that Act (and seek and obtain OMB approval) whenever Congress decided to impose a paperwork requirement on persons directly by statute.” 60 FR at 30441. Thus, the preamble described proposed § 1320.6(e) as stating the principle “where Congress imposes a collection of information directly on persons, by statute [as in those two statutory examples in the proposed regulation], then the public protection provided by proposed § 1320.6(a) would not preclude the imposition of penalties for a person’s failure to comply with the statutory mandate.” Id. The preamble concluded by noting that “[t]his principle, however, does not extend to situations in which a statute authorizes, or directs, an agency to impose a collection of information on persons, and the agency does so. In such cases, the agency is obligated to comply with the Paperwork Reduction Act of 1995 in imposing the paperwork requirement (just as the agency must comply with other applicable statutes—e.g. the Administrative Procedure Act in the

case of regulations), and the public protection provided by proposed § 1320.6(a) would apply to such paperwork requirements.” Id.

OMB received four comments regarding proposed § 1320.6(e). These comments criticized the provision as either too broad or too narrow. For the reasons stated below, the final rule adopts the provision as proposed.

Three comments objected to proposed § 1320.6(e) as being too broad. They stated that proposed § 1320.6(e) would undermine agency compliance with the Paperwork Reduction Act’s requirements. These commenters understood proposed § 1320.6(e) to mean that agencies would not be required to comply with the requirements of the Paperwork Reduction Act with regard to paperwork requirements that agencies impose in connection with those statutes in which Congress has imposed collections of information directly on persons. These comments objected to such a reading of the Act, pointing out that Congress intended the agencies to comply with the Act’s requirements with regard to all of their collections of information, including those mandated by statute. As one comment stated: “Even if a collection is mandated by statute, the law requires that the specifics be put out for public comment and subjected to OMB review.” For this reason, that comment objected that proposed § 1320.6(e) “creates an unnecessary loophole and is a back door signal to agencies to declare that their collection requirements are mandated by statutory action and therefore not subject to public comment and OMB review.” Another comment made the same objection, stating that proposed § 1320.6(e) “would enable federal agencies to undermine and avoid fundamental requirements of this law [i.e., the Paperwork Reduction Act] by mere assertion that collections of information were statutorily mandated.” Finally, the third comment stated that the “plain meaning” of 44 U.S.C. 3512 “is clear and unambiguous; the regulations should be revised to make it clear that a valid OMB control number and the notice that one does not have to comply if a valid control number is not displayed should be required on all covered information requests from the Federal government.”

In addition to the three comments that criticized proposed § 1320.6(e) as being too broad, OMB received one comment that took the contrary view, contending that proposed § 1320.6(e) was too narrow. In summarizing proposed § 1320.6(e), this comment stated that “1320.6(e) provides that the public

protection provision does not apply to noncompliance with collections of information imposed on persons by statute. The preamble (at 30441) explains that the scope of this provision is limited to collections of information imposed 'on persons *directly* by statute' and 'does not extend to situations in which a statute * * * directs an agency to impose a collection of information on persons, and the agency does so.' (Emphasis supplied in comment.) According to the comment, "This distinction * * * is not supported by the case law," which in this commenter's view, "simply distinguishes collections of information mandated by Congress in statute from those imposed by regulation under an agency's discretionary authority." For this reason, the comment concluded that proposed § 1320.6(e) was too narrowly drawn, and should be broadened: "Thus, the scope of section 1320.6(e) should cover all collections of information specifically mandated by statute, regardless of whether Congress imposes them on persons directly or through an agency."

With respect to the criticism that proposed § 1320.6(e) is too broad, OMB did not intend in proposed § 1320.6(e) or in the preamble of the NPRM to suggest that the requirements of the Paperwork Reduction Act do not apply to agency paperwork requirements that implement mandates that Congress imposes on persons. We agree with these comments that the legislative history to the Paperwork Reduction Act of 1980 indicates the Act's broad coverage with respect to agency collections of information: "Unless the collection of information is specifically required by statutory law the Director's determination is final for agencies which are not independent regulatory agencies. The fact the collection of information is specifically required by statute does not, however, relieve an agency of the obligation to submit the proposed collection for the Director's review" (S. Rpt. 96-930, at p. 49).

Accordingly, OMB's 1983 regulations implementing the 1980 Act stated that "OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation" (5 CFR 1320.4(c)(1) (1984)). This provision has remained in OMB's regulations since then. Moreover, it was included in the proposed rule at § 1320.5(e)(1), where it is found in the final rule issued today.

OMB's intention in proposed § 1320.6(e) was therefore not to exempt

any agency collections of information from the requirements of the Paperwork Reduction Act. Instead, our intention was to address the consequences under the Act's public protection provision if an agency fails to comply with the Act's requirements with respect to a particular collection of information. In the cases that OMB discussed in the NPRM, the courts held that an agency's failure to comply with the Act cannot preclude the enforcement of a requirement that Congress in a statute has imposed on persons. The reason for this conclusion, as those courts explained (see 60 FR 30441), was that Congress did not subject its law-making process to the requirements of the Paperwork Reduction Act.

In other words, Congress in the Paperwork Reduction Act did not provide that Congress must comply with the Act's requirements, which include seeking and obtaining OMB approval (and periodic reapproval), when Congress passes a law that imposes paperwork requirements on the public. OMB does not review laws for compliance with the Paperwork Act, and thus, laws do not have to display OMB control numbers and do not require subsequent OMB review and approval at least once every three years.

This is not to say that an agency's implementing forms, regulations, and other directives to the public are exempt from the Act's requirements; those implementing forms, regulations, and directives are indeed subject to the Act's requirements. However, it does mean that an agency's failure to comply with the Act cannot preclude the enforcement of a statute that imposes paperwork requirements on persons. Otherwise, agency officials, by failing to satisfy their statutory obligations, would have the power to nullify a requirement that Congress imposes on persons by statute. The Act's public protection provision does not have such a reach.

Accordingly, as we have clarified above, proposed § 1320.6(e) does not exempt any agency collections of information from the Act's requirements. We believe that, with this clarification, we have addressed the main concerns that were expressed by the three commenters who considered proposed § 1320.6(e) to be too broad. To the extent that the comments are suggesting that the Act's public protection provision precludes the Government from enforcing duties that Congress imposes on persons by statute, we believe that the Act does not support such an interpretation, for the reasons outlined above.

With respect to the one comment that criticized proposed § 1320.6(e) as being

too narrow, we believe that the suggestion in this comment is contrary to the Congressional intent behind the Act's public protection provision and is contrary to administrative practice generally. As noted above, this comment asserts that the case law discussed in the proposed rule's preamble "simply distinguishes collections of information mandated by Congress in statute from those imposed by regulation under an agency's discretionary authority." According to the comment, "the scope of section 1320.6(e) should cover all collections of information specifically mandated by statute, regardless of whether Congress imposes them on persons directly or through an agency." In other words, whereas OMB's proposed § 1320.6(e) stated that the public protection provision does not apply to paperwork requirements that Congress imposes upon persons by statute, the commenter's view is that the public protection provision also does not apply to any paperwork requirement that an agency imposes on persons in response to a statutory requirement that the agency impose such a requirement.

OMB does not agree with this reading of the Act. As we explained above, statutes are not subject to the Paperwork Reduction Act. Therefore, Congress does not have to seek and obtain OMB approval for the statutes that Congress enacts, and the Act's public protection provision cannot preclude the enforcement of a statute that imposes paperwork requirements on persons. It is an entirely different matter when Congress in a statute requires an agency to impose a paperwork requirement on persons.

In this regard, moreover, the comment's suggested reading of the public protection provision would substantially narrow its scope. Agencies impose many collections of information in response to mandates that they receive from Congress (although, as OMB's regulation indicates, see § 1320.5(e)(1), these mandates may leave agencies with varying degrees of discretion). Nothing in the Act's public protection provision supports the comment's suggested distinction between agency action that is "mandated by Congress" and agency action that is "discretionary," just as there is no such distinction in the Administrative Procedure Act.

In sum, an agency's failure to comply with the Paperwork Reduction Act cannot override a statutory obligation on persons that Congress imposes on persons through statute. By contrast, an agency's failure to comply with the requirements that Congress imposes on the agency in one statute (in this case,

the Paperwork Reduction Act) can preclude the Government from enforcing a requirement that the agency has imposed on persons, including when the agency has imposed the requirement in order to comply with a statutory obligation that Congress imposed on the agency in another statute.

9. Proposed § 1320.7(a) and (b) ("Agency head and Senior Official responsibilities"): In the NPRM, OMB recognized that the Inspectors General have an important statutory function that requires independence in the conduct of their work. OMB sought public comment on how best to implement the objectives of the Paperwork Reduction Act of 1995 while maintaining the practical ability of the Inspectors General to perform their statutory functions. (60 FR 30440.)

All the Inspectors General who responded and one private party were concerned about the need to protect the statutory independence of Inspectors General, which is based on two sections of the Inspector General Act (5 U.S.C. App. 3). First, "each Inspector General * * * is authorized * * * to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable" (Sec. 6(a)(2)). Second, "each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, to the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment" (Sec. 3(a)).

On the other hand, a comment suggested that "unless the information requested by the Inspectors General falls into one of the categories of information expressly excluded from coverage by the [Paperwork Reduction] Act under sections 3502(3) and 3518(c)(1) [of title 44, U.S.C.], the Inspectors General must comply with the PRA and implementing regulations." Two other comments expressed similar views.

One issue of particular concern to the Inspectors General was that involving proposed § 1320.4, discussed above. A second issue was a suggestion in the comments that Inspectors General be added to the list of agencies that are designated as independent regulatory agencies (see 44 U.S.C. 3502(5) and 5 CFR 1320.3(g)). With respect to this suggestion, OMB does not believe that the Inspectors General qualify as a "similar agency designated by statute as a Federal independent regulatory

agency or commission" under the statute.

A third issue of particular concern involves proposed § 1320.7(a) and (b), and the relationship of the agency head, the Senior Official, and the Inspector General's office. Under proposed § 1320.7(a) and (b), the head of each agency is responsible for carrying out agency responsibilities under this Act, but either may designate a Senior Official to carry out these responsibilities or "may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head" (proposed § 1320.7(b)). OMB explained the need for the agency head to retain full undelegated review authority in 1982: "Section 3506 of the [Paperwork Reduction] Act must be accommodated to other laws concerning intra-agency structures, by providing that an agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head" (47 FR 39521 [September 8, 1982]).

Given their concerns about institutional independence, the Inspectors General suggested a number of alternatives—that the "may" in proposed § 1320.7(b) be changed to "shall"; that the agency head designate the Inspector General to be the "Senior Official"; or that the agency head review a proposed collection of information by the Inspector General and forward comments on it to OMB, but not be able to "impound" the proposed collection of information.

OMB is sensitive to the concerns that the Inspectors General have raised regarding their independence under the Inspector General Act. However, OMB is reluctant through provisions in a rulemaking implementing the Paperwork Reduction Act to seek to establish agency institutional relations between an agency head and the agency's Inspector General, particularly as these relations are already well established through statute and agency practice. It is also inappropriate in this rulemaking for OMB to impose on agencies and their Inspectors General an interpretation of the Inspector General Act. However, in evaluating the three suggestions noted above, OMB must bring to bear the terms of the Paperwork Reduction Act of 1995 and OMB's experience in implementing the predecessor statutes.

On this basis, OMB has decided not to adopt these suggestions. First, OMB disagrees with changing the "may" in

proposed § 1320.7(b) to "shall." The Inspectors General are not the only independent components located within agency structures (e.g., the Federal Energy Regulatory Commission within the Department of Energy). While the final rule states that an agency head "may" retain full undelegated review authority for any statutorily independent component of the agency, it is not appropriate for OMB in this rulemaking to compel an agency head to retain full undelegated review authority. OMB notes, nonetheless, that it would be appropriate and consistent with the structure and intent of the Paperwork Reduction Act for an agency head to retain full undelegated Paperwork Reduction Act oversight authority over an Inspector General. Second, OMB does not want to encourage an agency head to designate an Inspector General as the agency's Senior Official. Under 44 U.S.C. 3506(a)(2) and (b), an agency head (other than in the Department of Defense) may delegate the agency's Paperwork Reduction Act responsibilities only to "a" Senior Official. For an Inspector General to undertake paperwork review and clearance responsibilities for an entire agency may be both inappropriate and impractical, particularly since the Senior Official's responsibilities are broader than just paperwork review and clearance. This regulation preserves the agency head's discretion to determine the appropriate Senior Official for that agency. Third, the suggestion that the regulation state that an agency head may review and comment on a proposed collection of information, but may not "impound" it, appears to involve an interpretation of the Inspector General Act. While this regulation does not preclude an agency and its Inspector General from establishing such an institutional relationship, it would not be appropriate for OMB to mandate it in this rulemaking.

In sum, there are a number of ways, consistent with the Paperwork Reduction Act, in which agency heads and Inspectors General could decide to submit information clearance packages for OMB review, which would be for them to decide. Because the proposed rule, in proposed § 1320.7(a) and (b), is neither prescriptive of an approach, nor preclusive of any approach that serves this end, the final rule is left unchanged. In addition, while OMB has not yet reached any firm conclusions on this point, OMB believes that it would be worthwhile to explore whether, in light of the Inspector General Act, it would be consistent with the Paperwork Reduction Act for an Inspector General

to "establish a process [within his or her office] * * * that is sufficiently independent of [the Inspector General's] program responsibility to evaluate fairly whether proposed collections of information should be approved" under the Act (44 U.S.C. 3506(c)(1)). Under such an approach, the "independent" office within the Office of Inspector General would develop information clearance packages for OMB review (for those that are not otherwise exempt from review) and transmit them directly to OMB for review, perhaps with copies simultaneously to the agency head to permit the agency head to transmit any comments to OMB as he or she may deem appropriate.

10. Proposed § 1320.8(b)(2) ("Agency collection of information responsibilities"): Proposed § 1320.8(b)(2) instructs the agency office established under § 1320.7 to assure, under 44 U.S.C. 3506(c)(1)(B)(ii), that each agency collection of information "is reviewed" by OMB in accordance with the clearance requirements of 44 U.S.C. 3507. One comment suggested the insertion of "has been reviewed". We believe that, in context, this provision states an ongoing responsibility and that the inserted phrase is not needed. The final rule is left unchanged.

11. Proposed § 1320.8(d)(2) ("Agency collection of information responsibilities"): In the NPRM, OMB proposed that, where an agency does not publish the proposed collection of information, together with related instructions, as part of the **Federal Register** notice, the agency either provide more than 60-day notice to permit timely receipt of a copy by interested members of the public or explain how and from whom a copy can be obtained without charge (including by electronic access). See preamble discussion at 60 FR 30442. A comment suggested that the 60-day advance notice provides sufficient time for those interested to obtain a copy of the proposed collection of information and to comment upon it.

OMB believes that the proposed provision is reasonable. It gives agencies a choice of providing more than 60 days for comment, or explaining in the **Federal Register** notice how and from whom a copy can be obtained. The proposed provision therefore ensures that the public receives "60-day notice in the **Federal Register**," as 44 U.S.C. 3506(c)(2) requires. Accordingly, the provision is left unchanged in the final rule.

12. Proposed § 1320.9(f) ("Agency certifications for proposed collections of information"): Proposed § 1320.9(f) has

each agency include with its paperwork clearance package to OMB a certification that the collection of information "indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified". One concern is that the recordkeeper be made aware of the length of the retention; a comment suggested that agencies should be encouraged to publish the applicable retention period "on all relevant documents." Another concern is that at least some existing retention periods are open-ended; for example, 26 CFR 1.6001-1(e) requires records to "be retained so long as the contents thereof may become material in the administration of any internal revenue law."

In the final rule, this provision is left unchanged. It simply reiterates the statutory requirement in 44 U.S.C. 3506(c)(3)(F). OMB believes that any implementation issues that arise are best addressed in particular concrete situations.

13. Proposed § 1320.11(a) ("Clearance of collections of information in proposed rules"): Under proposed § 1320.11(a), the agency is to include a statement, in a Notice of Proposed Rulemaking containing collections of information, that those collections have been submitted for OMB review, and that the public should direct their comments to the Office of Information and Regulatory Affairs (OIRA) within OMB.

Several comments pointed out that the statement in a proposed rule concerning OMB review of collections of information needed to comply with not only the requirements in proposed § 1320.5(a)(1)(iv), but also those in proposed § 1320.8(d) (See 44 U.S.C. 3507(a)(1)(D) and 44 U.S.C. 3506(c)(2)(B)). In the final rule, § 1320.11(a) is modified to refer to both of these provisions.

In addition, several comments raised a concern with the following sentence in proposed § 1320.11(a): "The statement shall request that comments be submitted to OMB within 60 days of the notice's publication." This sentence does not appear in the previously existing counterpart § 1320.13(a).

These comments pointed out that OMB is obligated both to "provide at least 30 days for public comment prior to making a decision" under proposed § 1320.11 (see 44 U.S.C. 3507(b)), and also to make its decision "within 60 days" (44 U.S.C. 3507(d)(1)(B)). The comments suggested that OMB should change the sentence to have agencies request the public to submit comments to OMB within 30 days of the notice's

publication, thus providing OMB adequate time to review the public's comments before making its decision.

For the reasons discussed below, OMB is deleting this sentence from § 1320.11(a) in the final rule. For many Notices of Proposed Rulemaking, agencies provide the public with 60 days to comment (cf. Section 6(a)(1) in Executive Order No. 12866, 58 FR 51740 (October 4, 1993), which encourages agencies to "afford the public a meaningful opportunity to comment on any proposed regulation"). To change the sentence in proposed § 1320.11(a) to have agencies allow the public only 30 days for comments to OMB, but to retain 60 days for comments to the agency, may confuse the public and have the unintended consequence of encouraging all the public comments to be submitted to OMB and the agency within 30 days. On the other hand, to require agencies to provide a 60-day comment period for OMB submissions may needlessly confuse the public for those proposed rules for which the agency wishes to allow a 30-day comment period (often used for routine or administrative regulations) or a 90-day comment period (often used for particularly significant regulations). In addition, the absence of this sentence from the previously existing counterpart § 1320.13(a) has not appeared to interfere with the public's awareness of the need to send pertinent comments to OMB in a timely manner. In addition to deleting the sentence from proposed § 1320.11(a), OMB has also deleted a parallel "30-day" statement that was in proposed § 1320.5(a)(1)(iv). However, OMB has retained the parallel "30-day" statements that were in proposed § 1320.10(a) and in proposed § 1320.12(c).

OMB requests that agencies, in providing guidance in their statement directing comments concerning collections of information to OMB, point out that OMB is required to make a decision concerning the collections of information contained in the proposed rule between 30 and 60 days after publication and that a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Such a statement, however, should only be done in a way that does not confuse the public concerning the comment period that the agency wishes to provide for the proposed rule.

14. Proposed § 1320.13 ("Emergency processing"): Proposed § 1320.13 (preamble) authorizes the agency head or Senior Official to request emergency processing of an agency's submission of a collection of information for review. One comment suggested that the

designee, authorized under § 1320.7(e), should also be able to make such a request.

OMB agrees, and the final rule is modified accordingly. An emergency may arise when the agency head or Senior Official is not available, for any reason. In order to make the lines of responsibility clear, the designee authorized under this Part should be an individual located in an office that is independent of the office with responsibility for implementing the collection of information involved (cf. 44 U.S.C. 3506(c)(1)).

Other Changes

15. In addition to the revisions discussed above, additional revisions have been made. These were generally technical and non-substantive in nature, designed to correct mistakes, improve clarity, and remove ambiguities. For example, in the definition of "collection of information" in § 1320.3(c)(1), the reference to "collections of information contained in, derived from, or authorized by such rules or regulations" was removed as surplusage (being contained by implication in the final sentence); the references to "electronic", "mechanical" and "other technological" collection techniques, though implicit, were added to increase clarity; and "recordkeeping" in the last sentence was replaced with "collection of information" for clarity. Similarly, in the definition of "information" in § 1320.3(h), the added reference to "estimate" was implicit, but increases clarity. In addition, proposed § 1320.5(d)(2)(vii) was dropped as surplusage; such collections of information are subject to the same review and clearance process that applies to collections of information generally. Other such changes are found in § 1320.3(b)(1)(vi), § 1320.3(c) (preamble), § 1320.3(g), § 1320.3(l), § 1320.5(a)(1)(iii), § 1320.5(a)(1)(iv), § 1320.5(a)(1)(iv)(B), § 1320.5(b)(2)(ii)(D), § 1320.5(d)(2), § 1320.5(h), § 1320.8(a)(5), § 1320.8(b)(3), § 1320.8(c)(2), § 1320.8(d)(1)(ii) and (iv), § 1320.12(b)(2), § 1320.12(f)(1)(ii), § 1320.16(b)(1), and Appendix A1 and A2.

Other Comments

16. OMB received letters from several State agencies. The specific comments varied, but the common theme was a concern that OMB's proposed regulation would require the State agencies to obtain OMB Paperwork Reduction Act approval for all the forms they use. The State agencies believed this could

undermine their ability to perform their mission.

The Paperwork Reduction Act applies to a collection of information that is "conducted or sponsored" by an agency (i.e., Federal agencies) (see § 1320.3 (a) and (d); S. Rpt. 104-8, p. 36; H. Rpt. 104-37, p. 36). Accordingly, a State agency is not required to obtain OMB approval in order to undertake, on its own initiative, to collect information. However, in those cases where the State agency's collection of information is being "conducted or sponsored" by a Federal agency, then the Federal agency would need to obtain OMB approval for the collection of information.

17. OMB received two comments expressing contradictory interpretations of the following statutory provision involving agency statistical policy and coordination: "With respect to statistical policy and coordination, each agency shall * * * protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality" (44 U.S.C. 3506(e)(3)).

In its Paperwork Reduction Act regulation, OMB has addressed the need to ensure confidentiality with respect to collections of information generally. That provision has been found at 5 C.F.R. 1320.6(i) (1984). In the proposed rule, this provision was moved to § 1320.5(d)(2)(ix). The proposed rule also included additional provisions regarding confidentiality, at § 1320.5(d)(2)(viii) and § 1320.8(b)(3)(v). These provisions have been retained in this final rule, at § 1320.5(d)(2)(vii)-(viii) and § 1320.8(b)(3)(v). To the extent that issues involving the application of 44 U.S.C. 3506(e)(3) arise in the course of the development and review of proposed collections of statistical information, those issues are best addressed in particular concrete situations.

Assessment of Potential Costs and Benefits and Regulatory Flexibility Act Analysis

OMB has analyzed the effects of this rule under the Regulatory Flexibility Act (5 U.S.C. §§ 601 et seq.). Copies of this analysis are available upon request. In summary, OMB has concluded that these amendments will have a salutary impact on small entities through the reduction of unnecessary paperwork.

For purposes of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), as well as Executive Order No. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or by the private sector.

Issued in Washington, DC, August 21, 1995.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, Paperwork, Collections of information.

5 CFR Part 1320 is revised to read as follows:

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

- 1320.1 Purpose.
- 1320.2 Effect.
- 1320.3 Definitions.
- 1320.4 Coverage.
- 1320.5 General requirements.
- 1320.6 Public protection.
- 1320.7 Agency head and Senior Official responsibilities.
- 1320.8 Agency collection of information responsibilities.
- 1320.9 Agency certifications for proposed collections of information.
- 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.
- 1320.11 Clearance of collections of information in proposed rules.
- 1320.12 Clearance of collections of information in current rules.
- 1320.13 Emergency processing.
- 1320.14 Public access.
- 1320.15 Independent regulatory agency override authority.
- 1320.16 Delegation of approval authority.
- 1320.17 Information collection budget.
- 1320.18 Other authority.

Appendix A: Agencies with Delegated Review and Approval Authority

Authority: 31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

§ 1320.1 Purpose.

The purpose of this Part is to implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter." It is designed to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.

§ 1320.2 Effect.

(a) Except as provided in paragraph (b) of this section, this Part takes effect on October 1, 1995.

(b)(1) In the case of a collection of information for which there is in effect on September 30, 1995, a control number issued by the Office of Management and Budget under 44 U.S.C. Chapter 35, the provisions of this Part shall take effect beginning on the earlier of:

(i) the date of the first extension of approval for or modification of that collection of information after September 30, 1995; or

(ii) the date of the expiration of the OMB control number after September 30, 1995.

(2) Prior to such extension of approval, modification, or expiration, the collection of information shall be subject to 5 CFR Part 1320, as in effect on September 30, 1995.

§ 1320.3 Definitions.

For purposes of implementing the Act and this Part, the following terms are defined as follows:

(a) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include:

(1) the General Accounting Office;

(2) Federal Election Commission;

(3) the governments of the District of Columbia and the territories and possessions of the United States, and their various subdivisions; or

(4) government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b)(1) *Burden* means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including:

(i) reviewing instructions;

(ii) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;

(iii) developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;

(iv) developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;

(v) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(vi) training personnel to be able to respond to a collection of information;

(vii) searching data sources;

(viii) completing and reviewing the collection of information; and

(ix) transmitting, or otherwise disclosing the information.

(2) The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

(3) A collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of State, local, or tribal government is presumed to impose a Federal burden except to the extent that the agency shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement.

(c) *Collection of information* means, except as provided in § 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. "Collection of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, "collection of information" refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

(1) A *Collection of information* may be in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements;

or any other techniques or technological methods used to monitor compliance with agency requirements. A "collection of information" may implicitly or explicitly include related collection of information requirements.

(2) Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or the public at large, through posting, notification, labeling or similar disclosure requirements constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) *Collection of information* includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes, that is, if the results are to be used for statistical compilations of general public interest, including compilations showing the status or implementation of Federal activities and programs.

(4) As used in paragraph (c) of this section, "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, tribal or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition of "ten or more persons," "persons" does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government (including military reservists and members of the National Guard while on active duty) when acting within the scope of their employment, but it does include retired and other former Federal employees.

(i) Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(ii) Any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

(d) *Conduct or Sponsor*. A Federal agency is considered to "conduct or

sponsor" a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency. A collection of information undertaken by a recipient of a Federal grant is considered to be "conducted or sponsored" by an agency only if:

(1) the recipient of a grant is conducting the collection of information at the specific request of the agency; or
 (2) the terms and conditions of the grant require specific approval by the agency of the collection of information or collection procedures.

(e) *Director* means the Director of OMB, or his or her designee.

(f) *Display* means:

(1) in the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), to place the currently valid OMB control number on the front page of the collection of information;
 (2) in the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, to place the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(3) in the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, to publish the currently valid OMB control number in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing the OMB control number in the preamble or the regulatory text for the final rule, in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of the currently valid control number in the Code of Federal Regulations constitutes an alternative means of "display." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease

of future reference that, even where an agency has already "displayed" the OMB control number by publishing it in the **Federal Register** as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also place the currently valid control number in a table or codified section to be included in the Code of Federal Regulations. For placement of OMB control numbers in the Code of Federal Regulations, see 1 CFR 21.35.

(4) in other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means to inform potential respondents of the OMB control number.

(g) *Independent regulatory agency* means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(h) *Information* means any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (by contrast, a certification would likely involve the collection of "information" if an agency conducted or sponsored it as a substitute for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards, because such a certification would generally entail burden in addition to that necessary to identify the respondent, the date, the

respondent's address, and the nature of the instrument);

(2) samples of products or of any other physical objects;

(3) facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment;

(5) facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) a request for facts or opinions addressed to a single person;

(7) examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information; and

(10) like items so designated by OMB.

(i) *OMB* refers to the Office of Management and Budget.

(j) *Penalty* includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(k) *Person* means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a

political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(l) *Practical utility* means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of recordkeeping requirements or general purpose statistics (see § 1320.3(c)(3)), "practical utility" means that actual uses can be demonstrated.

(m) *Recordkeeping requirement* means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to:

- (1) Retain such records;
- (2) Notify third parties, the Federal government, or the public of the existence of such records;
- (3) Disclose such records to third parties, the Federal government, or the public; or
- (4) Report to third parties, the Federal government, or the public regarding such records.

§ 1320.4 Coverage.

(a) The requirements of this Part apply to all agencies as defined in § 1320.3(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.3 (c) and (d), wherever conducted or sponsored, but, except as provided in paragraph (b) of this section, shall not apply to collections of information:

- (1) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;
- (2) during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities;

(3) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(4) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(b) The requirements of this Part apply to the collection of information during the conduct of general investigations or audits (other than information collected in an antitrust investigation to the extent provided in paragraph (a)(3) of this section) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(c) The exception in paragraph (a)(2) of this section applies during the entire course of the investigation, audit, or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or equivalent is opened with respect to a particular party. In accordance with paragraph (b) of this section, collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.5 General requirements.

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information—

- (1) the agency has—
 - (i) conducted the review required in § 1320.8;
 - (ii) evaluated the public comments received under § 1320.8(d) and § 1320.11;
 - (iii) submitted to the Director, in accordance with such procedures and in such form as OMB may specify,
 - (A) the certification required under § 1320.9,
 - (B) the proposed collection of information in accordance with § 1320.10, § 1320.11, or § 1320.12, as appropriate,
 - (C) an explanation for the decision that it would not be appropriate, under § 1320.8(b)(1), for a proposed collection of information to display an expiration date;
 - (D) an explanation for a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees;
 - (E) a statement indicating whether (and if so, to what extent) the proposed

collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) a summary of the public comments received under § 1320.8(d), including actions taken by the agency in response to the comments, and the date and page of the publication in the **Federal Register** of the notice thereof; and

(G) copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) published, except as provided in § 1320.13(d), a notice in the **Federal Register**—

(A) stating that the agency has made such submission; and

(B) setting forth—

- (1) a title for the collection of information;
- (2) a summary of the collection of information;
- (3) a brief description of the need for the information and proposed use of the information;
- (4) a description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;
- (5) an estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;
- (6) notice that comments may be submitted to OMB; and
- (7) the time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under § 1320.10, § 1320.11 or § 1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under § 1320.13; and

(2) OMB has approved the proposed collection of information, OMB's approval has been inferred under § 1320.10(c), § 1320.11(i), or § 1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under § 1320.15; and

(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:

- (1) the collection of information displays a currently valid OMB control number; and

(2)(i) the agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.

(C) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency publishes such information in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it "in a manner that is reasonably calculated to inform the public." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided

such information "in a manner that is reasonably calculated to inform the public" by publishing it in the **Federal Register** as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see § 1320.3(f)(3)).

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the **Federal Register** or in current regulations that were published as final rules in the **Federal Register**, in accordance with the requirements in § 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of § 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the requirements in § 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the **Federal Register** in accordance with the requirements in § 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in § 1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) is not duplicative of information otherwise accessible to the agency; and

(iii) has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do

so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) requiring respondents to report information to the agency more often than quarterly;

(ii) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) requiring respondents to submit more than an original and two copies of any document;

(iv) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under § 1320.11 or § 1320.12, but will independently assess any such collection of

information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in § 1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).

§ 1320.6 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this Part if:

(1) the collection of information does not display, in accordance with § 1320.3(f) and § 1320.5(b)(1), a currently valid OMB control number assigned by the Director in accordance with the Act; or

(2) the agency fails to inform the potential person who is to respond to the collection of information, in accordance with § 1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

(b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto.

(c) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to

respond to the collection of information, as prescribed in § 1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under § 1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under § 1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through administrative or judicial process.

(e) The protection provided by paragraph (a) of this section does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute—e.g., 26 U.S.C. § 6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. § 6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).

§ 1320.7 Agency head and Senior Official responsibilities.

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act and this Part. The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(b) An agency head may retain full un delegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) The Senior Official shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under the Act, including the reduction of information collection burdens on the public.

(d) With respect to the collection of information and the control of paperwork, the Senior Official shall establish a process within such office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this Part.

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under § 1320.9, may be made only by the agency head or the Senior Official, or their designee.

§ 1320.8 Agency collection of information responsibilities.

The office established under § 1320.7 shall review each collection of information before submission to OMB for review under this Part.

(a) This review shall include:

(1) an evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) a functional description of the information to be collected;

(3) a plan for the collection of information;

(4) a specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) an evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(6) a test of the collection of information through a pilot program, if appropriate; and

(7) a plan for the efficient and effective management and use of the information to be collected, including necessary resources.

(b) Such office shall ensure that each collection of information:

(1) is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date;

(2) is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. § 3507; and

(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of—

(i) the reasons the information is planned to be and/or has been collected;

(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

(iv) whether responses to the collection of information are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority);

(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c)(1) An agency shall provide the information described in paragraphs (b)(3)(i) through (v) of this section as follows:

(i) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (except in an electronic format), such information can be included either on the form, questionnaire or other collection of information, as part of the instructions for such collection, or in a cover letter or memorandum that accompanies the collection of information.

(ii) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, such information can be included either in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(iii) In the case of collections of information published in regulations, guidelines, and other issuances in the **Federal Register**, such information can be published in the **Federal Register** (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text to the final rule, or in a technical amendment

to the final rule, or in a separate notice announcing OMB approval of the collection of information).

(iv) In other cases, and where OMB determines in advance in writing that special circumstances exist, agencies may use other means to inform potential respondents.

(2) An agency shall provide the information described in paragraph (b)(3)(vi) of this section in a manner that is reasonably calculated to inform the public (see § 1320.5(b)(2)(ii)).

(d)(1) Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the **Federal Register** notice, the agency should—

(i) provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

(3) The agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under § 1320.11, if the agency provides notice and comment through

the notice of proposed rulemaking for the proposed rule and such notice specifically includes the solicitation of comments for the same purposes as are listed under paragraph (d)(1) of this section.

(4) The agency need not seek or may shorten the time allowed for such public comment if OMB grants an exemption from such requirement for emergency processing under § 1320.13.

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) an exemption from coverage of the collection of information, or any part thereof;

(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) informs potential respondents of the information called for under § 1320.8(b)(3);

(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which

shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

§ 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the **Federal Register** (which are submitted under § 1320.11) or in current rules that were published as final rules in the **Federal Register** (which are submitted under § 1320.12), in accordance with the following requirements:

(a) On or before the date of submission to OMB, the agency shall, in accordance with the requirements in § 1320.5(a)(1)(iv), forward a notice to the **Federal Register** stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the **Federal Register**, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under § 1320.13. Upon approval of a collection of information, OMB shall assign an OMB control number and, if appropriate, an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(d) As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(e)(1) In the case of a collection of information not contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(i) conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(ii) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this Part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

(f) Prior to the expiration of OMB's approval of a collection of information, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this Part.

(g) For good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule; in such case, the agency shall cease conducting or sponsoring such collection of information while the submission is pending, and shall publish a notice in the **Federal Register** to that effect.

§ 1320.11 Clearance of collections of information in proposed rules.

Agencies shall submit collections of information contained in proposed rules published for public comment in the **Federal Register** in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements in § 1320.5(a)(1)(iv) and § 1320.8(d)(1) and (3), in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the Act. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the **Federal Register**, in such form and in accordance with such procedures as OMB may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, but subject to paragraph (e) of this section, OMB may file public comments on collection of information provisions. The OMB comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may, subject to paragraph (e) of this section, disapprove the collection of information in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information subject to this section, OMB may, subject to paragraph (e) of this section, disapprove it at any time.

(e) OMB shall provide at least 30 days after receipt of the proposed collection of information before submitting its comments or making its decision, except as provided under § 1320.13.

(f) When the final rule is published in the **Federal Register**, the agency shall explain how any collection of information contained in the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(g) If OMB has not filed public comments under paragraph (c) of this section, or has approved without conditions the collection of information contained in a rule before the final rule is published in the **Federal Register**, OMB may assign an OMB control number prior to publication of the final rule.

(h) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved under paragraph (g) of this section (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication, but subject to paragraph (e) of this section, OMB shall approve, instruct the agency to make a substantive or material change to, or disapprove, the collection of information contained in the final rule. Any such instruction to change or disapprove may be based on one or more of the following reasons, as determined by OMB:

(1) the agency has failed to comply with paragraph (b) of this section;

(2) the agency had substantially modified the collection of information contained in the final rule from that contained in the proposed rule without providing OMB with notice of the change and sufficient information to make a determination concerning the modified collection of information at least 60 days before publication of the final rule; or

(3) in cases in which OMB had filed public comments under paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(i) After making such decision to approve, to instruct the agency to make a substantive or material change to, or disapprove, the collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not acted upon the submission within the time limits of this section, the agency may request, and OMB shall assign an OMB control number. If OMB disapproves or instructs the agency to make substantive or material change to the collection of information, it shall make the reasons for its decision publicly available.

(j) OMB shall not approve any collection of information under this section for a period longer than three years. Approval of such collection of information will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(k) After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision.

(l) As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

§ 1320.12 Clearance of collections of information in current rules.

Agencies shall submit collections of information contained in current rules that were published as final rules in the **Federal Register** in accordance with the following procedures:

(a) In the case of a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(1) conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(2) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this Part, which shall include an explanation of how the agency has used the information that it has collected.

(b)(1) In the case of a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Act and this Part, the agency shall:

(i) conduct the review established under § 1320.8, including the seeking of public comment under § 1320.8(d); and

(ii) after having made a reasonable effort to seek public comment, submit the collection of information for review and approval under this Part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is

pending at OMB. In the case of a collection of information not previously approved, approval shall be granted for such period, which shall not exceed 60 days, unless extended by the Director for an additional 60 days, and an OMB control number assigned. Upon assignment of the OMB control number, and in accordance with § 1320.3(f) and § 1320.5(b), the agency shall display the number and inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(c) On or before the day of submission to OMB under paragraphs (a) or (b) of this section, the agency shall, in accordance with the requirements set forth in § 1320.5(a)(1)(iv), forward a notice to the **Federal Register** stating that OMB review is being sought. The notice shall direct requests for copies of the collection of information and supporting documentation to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the **Federal Register**, together with the date of expected publication, shall be included in the agency's submission to OMB.

(d) Within 60 days after receipt of the collection of information or publication of the notice under paragraph (c) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under § 1320.13.

(e)(1) Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this section will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(2) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall

assign without further delay, an OMB control number that shall be valid for not more than one year.

(3) As provided in § 1320.5(b) and § 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(f)(1) If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, OMB shall:

(i) publish an explanation thereof in the **Federal Register**; and

(ii) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under § 1320.10 or § 1320.11, as appropriate; and

(iii) extend the existing approval of the collection of information (including an interim approval granted under paragraph (b) of this section) for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.10 or § 1320.11, as appropriate.

(2) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the **Federal Register**. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the **Federal Register** and submission to OMB shall initiate OMB clearance procedures under section 3507(d) of the Act and § 1320.11. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(g) OMB may disapprove, in whole or in part, any collection of information

subject to the procedures of this section, if the agency:

(1) has refused within a reasonable time to comply with an OMB instruction to submit the collection of information for review;

(2) has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(h)(1) Upon disapproval by OMB of a collection of information subject to this section, except as provided in paragraph (f)(1)(iii) of this section, the OMB control number assigned to such collection of information shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

(2) The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(i) Prior to the expiration of OMB's approval of a collection of information in a current rule, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of

information, the agency shall submit it to OMB for review under this Part.

§ 1320.13 Emergency processing.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this Part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the **Federal Register** notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period stated under paragraph (b) of this section.

(e) OMB shall approve or disapprove each such submission within the time period stated under paragraph (b) of this section, provided that such time period is consistent with the purposes of this Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

§ 1320.14 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this Part, and to the extent permitted by law,

requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that such public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) Any person may request OMB to review any collection of information conducted by or for an agency to determine, if, under this Act and this Part, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, OMB shall, in coordination with the agency responsible for the collection of information:

(1) Respond to the request within 60 days after receiving the request, unless such period is extended by OMB to a specified date and the person making the request is given notice of such extension; and

(2) Take appropriate remedial action, if necessary.

§ 1320.15 Independent regulatory agency override authority.

(a) An independent regulatory agency which is administered by two or more members of a commission, board, or similar body, may by majority vote void:

(1) Any disapproval, instruction to such agency to make material or substantive change to, or stay of the effectiveness of OMB approval of, any collection of information of such agency; or

(2) An exercise of authority under § 1320.10(g) concerning such agency.

(b) The agency shall certify each vote to void such OMB action to OMB, and explain the reasons for such vote. OMB shall without further delay assign an OMB control number to such collection of information, valid for the length of time requested by the agency, up to three years, to any collection of information as to which this vote is exercised. No override shall become effective until the independent regulatory agency, as provided in § 1320.5(b) and § 1320.6(2), has displayed the OMB control number and informed the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of

information unless it displays a currently valid OMB control number.

§ 1320.16 Delegation of approval authority.

(a) OMB may, after complying with the notice and comment procedures of the Administrative Procedure Act, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he or she has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegate:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved;

(2) Has sufficient resources to carry out this responsibility effectively; and

(3) Has established an agency review process that demonstrates the prompt, efficient, and effective performance of collection of information review responsibilities.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, conducted or sponsored by an agency, at any time.

(d) Subject to the provisions of this Part, and in accordance with the terms and conditions of each delegation as specified in Appendix A to this part, OMB delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System; and

(2) Managing Director of the Federal Communications Commission.

§ 1320.17 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form, at such time, and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted in the succeeding twelve months. For good cause, OMB may exempt any agency from this requirement.

§ 1320.18 Other authority.

(a) OMB shall determine whether any collection of information or other matter is within the scope of the Act, or this Part.

(b) In appropriate cases, after consultation with the agency, OMB may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with the informal rulemaking procedures of the Administrative Procedure Act.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by OMB under this Act.

(d) To the extent permitted by law, OMB may waive any requirements contained in this Part.

(e) Nothing in this Part shall be interpreted to limit the authority of OMB under this Act, or any other law. Nothing in this Part or this Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

Appendix A—Agencies with Delegated Review and Approval Authority

1. The Board of Governors of the Federal Reserve System

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program, provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the **Federal Register** notices specified in paragraph (1)(3)(i) of this section 1.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance set by the Board and OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable

opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** informing the public of the proposed collection of information, announcing the beginning of a 60-day public comment period, and the availability of copies of the "clearance package," to provide the public with the opportunity to comment. Such **Federal Register** notices shall also advise the public that they may also send a copy of their comments to the Federal Reserve Board and to the OMB/OIRA Desk Officer.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may temporarily approve of the collection of information for a period not to exceed 90 days without providing opportunity for public comment.

(B) At the earliest practical date after approving the temporary extension to the collection of information, the Board will publish a **Federal Register** notice informing the public of its approval of the collection of information and indicating why immediate action was necessary. In such cases, the Board will conduct a normal delegated review and publish a notice in the **Federal Register** soliciting public comment on the intention to extend the collection of information for a period not to exceed three years.

(ii) Provide the OMB/OIRA Desk Officer for the Federal Reserve Board with a copy of the Board's **Federal Register** notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to conduct the review established under 5 CFR 1320.8, including the seeking of public comment under 5 CFR 1320.8(d). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.5(d)(2), unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v)(A) Assure that each approved collection of information displays, as required by 5 CFR 1320.6, a currently valid OMB control number and the fact that a person is not

required to respond to a collection of information unless it displays a currently valid OMB control number.

(B) Assure that all collections of information, except those contained in regulations, display the expiration date of the approval, or, in case the expiration date has been omitted, explain the decision that it would not be appropriate, under 5 CFR 1320.5(a)(1)(iii)(C), for a proposed collection of information to display an expiration date.

(C) Assure that each collection of information, as required by 5 CFR 1320.8(b)(3), informs and provides fair notice to the potential respondents of why the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required to obtain or retain a benefit, or mandatory; the confidentiality to be provided; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(vi) Assure that each approved collection of information, together with a completed form OMB 83-1, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's **Federal Register** notice or a summary of these comments, the certification required by 5 CFR 1320.9, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board has delivered this transmittal to OMB.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that the Board approvals of collections of information that have been received by OMB and incorporated into OMB's public docket files and an inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this Appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.16(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.10(f) and

1320.10(g), prior to the expiration of the time period set for public comment in the Board's **Federal Register** notices and generally only if:

(1) Prior to the commencement of a Board review (e.g., during the review for the Information Collection Budget). OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed. When OMB exercises this authority it will consider that the period of its review began the date that OMB received the **Federal Register** notice provided for in section 1(a)(3)(i) of this Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.13 continue to apply.

2. The Managing Director of the Federal Communications Commission

(a) Authority to review and approve currently valid (OMB-approved) collections of information, including collections of information contained in existing rules, that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent is delegated to the Managing Director of the Federal Communications Commission.

(1) This delegation does not include review and approval authority over any new collection of information, any collections whose approval has lapsed, any substantive or material modification to existing collections, any reauthorization of information collections employing statistical methods, or any information collections that exceed a total annual burden of 5,000 hours or an estimated burden of 500 hours per respondent.

(2) The Managing Director may ask that OMB review and approve collections of information covered by the delegation.

(3) In exercising delegated authority, the Managing Director will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action on reauthorizing an existing collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** and an FCC Public Notice informing the public that a collection of information is being extended and announcing the beginning of a 60-day comment period, notifying the public of the "intent to extend an information collection," and providing the public with the opportunity to comment on the need for the information, its practicality, the accuracy of the agency's burden estimate, and on ways to minimize burden, including the use of automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Such notices shall advise the public that they may also send a copy of their comments to the OMB/Office of Information and Regulatory Affairs desk officer for the Commission.

(A) Should the Managing Director determine that a collection of information that falls within the scope of this delegation must be reauthorized quickly and that public participation in the reauthorization process interferes with the Commission's ability to perform its statutory obligation, the Managing Director may temporarily reauthorize the extension of an information collection, for a period not to exceed 90 days, without providing opportunity for public comment.

(B) At the earliest practical date after granting this temporary extension to an information collection, the Managing Director will conduct a normal delegated review and publish a **Federal Register** notice soliciting public comment on its intention to extend the collection of information for a period not to exceed three years.

(ii) Assume that approved collections of information are reviewed not less frequently than once every three years and that such reviews are conducted before the expiration date of the prior approval. When the review is not completed prior to the expiration date, the Managing Director will submit the lapsed information collection to OMB for review and reauthorization.

(iii) Assume that each reauthorized collection of information displays an OMB control number and, except for those contained in regulations or specifically designated by OMB, displays the expiration date of the approval.

(iv) Inform and provide fair notice to the potential respondents, as required by 5 CFR 1320.8(b)(3), of why the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required, required to obtain or retain a benefit, or mandatory; the confidentiality to be provided; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(v) Transmit to OMB for incorporation into OMB's public docket files, a report of delegated approval certifying that the Managing Director has reauthorized each collection of information in accordance with the provisions of this delegation. The Managing Director shall also make the certification required by 5 CFR 1320.9, e.g., that the approved collection of information reduces to the extent practicable and appropriate, the burden on respondents, including, for small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act. Such transmittals shall be made no later than 15 days after the Managing Director has taken final action reauthorizing the extension of an information collection.

(vi) Ensure that the personnel in the Commission's functional bureaus and offices responsible for managing information collections receive periodic training on procedures related to meeting the requirements of this part and the Act.

(b) OMB will:

(1) Provide notice to the Commission acknowledging receipt of the report of delegated approval and its incorporation into OMB's public docket files and inventory of currently approved collections of information.

(2) Act upon any request by the Commission to review a collection of information referred by the Commission in accordance with the provisions of section 2(a)(2) of this Appendix.

(3) Periodically assess, at its discretion, the Commission's paperwork review process as administered under the delegation. The Managing Director will cooperate in carrying out such an assessment. The Managing Director will respond to any recommendations resulting from such a review and, if it finds the recommendations to be appropriate, will either accept the recommendation or propose an alternative approach to achieve the intended purpose.

(c) This delegation may, as provided by 5 CFR 1320.16(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances.

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Public Law 104-13
104th Congress

An Act

To further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

May 22, 1995
[S. 244]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Paperwork Reduction Act of 1995".

Paperwork
Reduction Act of
1995.
Information
resources
management.
44 USC 101 note.

SEC. 2. COORDINATION OF FEDERAL INFORMATION POLICY.

Chapter 35 of title 44, United States Code, is amended to read as follows:

**"CHAPTER 35—COORDINATION OF FEDERAL
INFORMATION POLICY**

- "Sec.
*3501. Purposes.
*3502. Definitions.
*3503. Office of Information and Regulatory Affairs.
*3504. Authority and functions of Director.
*3505. Assignment of tasks and deadlines.
*3506. Federal agency responsibilities.
*3507. Public information collection activities; submission to Director; approval and delegation.
*3508. Determination of necessity for information; hearing.
*3509. Designation of central collection agency.
*3510. Cooperation of agencies in making information available.
*3511. Establishment and operation of Government Information Locator Service.
*3512. Public protection.
*3513. Director review of agency activities; reporting; agency response.
*3514. Responsiveness to Congress.
*3515. Administrative powers.
*3516. Rules and regulations.
*3517. Consultation with other agencies and the public.
*3518. Effect on existing laws and regulations.
*3519. Access to information.
*3520. Authorization of appropriations.

"§ 3501. Purposes

"The purposes of this chapter are to—

"(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

"(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, main-

tained, used, shared and disseminated by or for the Federal Government;

"(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

"(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

"(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

"(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

"(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

"(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

"(A) privacy and confidentiality, including section 552a of title 5;

"(B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and

"(C) access to information, including section 552 of title 5;

"(9) ensure the integrity, quality, and utility of the Federal statistical system;

"(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

"(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

"§ 3502. Definitions

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

"(A) the General Accounting Office;

"(B) Federal Election Commission;

"(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

"(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

"(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

"(A) reviewing instructions;

"(B) acquiring, installing, and utilizing technology and systems;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching data sources;

"(E) completing and reviewing the collection of information; and

"(F) transmitting, or otherwise disclosing the information;

"(3) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1);

"(4) the term 'Director' means the Director of the Office of Management and Budget;

"(5) the term 'independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

"(6) the term 'information resources' means information and related resources, such as personnel, equipment, funds, and information technology;

"(7) the term 'information resources management' means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

"(8) the term 'information system' means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

"(9) the term 'information technology' has the same meaning as the term 'automatic data processing equipment' as defined by section 111(a) (2) and (3)(C) (i) through (v) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a) (2) and (3)(C) (i) through (v));

"(10) the term 'person' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

"(11) the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

"(12) the term 'public information' means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

"(13) the term 'recordkeeping requirement' means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

"(A) retain such records;

"(B) notify third parties, the Federal Government, or the public of the existence of such records;

"(C) disclose such records to third parties, the Federal Government, or the public; or

"(D) report to third parties, the Federal Government, or the public regarding such records; and

"(14) the term 'penalty' includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

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"§ 3503. Office of Information and Regulatory Affairs

"(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

"(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

"§ 3504. Authority and functions of Director

"(a)(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall—

"(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

"(B) provide direction and oversee—

"(i) the review and approval of the collection of information and the reduction of the information collection burden;

"(ii) agency dissemination of and public access to information;

"(iii) statistical activities;

"(iv) records management activities;

"(v) privacy, confidentiality, security, disclosure, and sharing of information; and

"(vi) the acquisition and use of information technology.

"(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

"(b) With respect to general information resources management policy, the Director shall—

"(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

"(2) foster greater sharing, dissemination, and access to public information, including through—

"(A) the use of the Government Information Locator Service; and

"(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

"(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

"(4) oversee the development and implementation of best practices in information resources management, including training; and

"(5) oversee agency integration of program and management functions with information resources management functions.

"(c) With respect to the collection of information and the control of paperwork, the Director shall—

"(1) review and approve proposed agency collections of information;

"(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public;

"(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

"(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; and

"(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.

"(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

"(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

"(2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.

"(e) With respect to statistical policy and coordination, the Director shall—

"(1) coordinate the activities of the Federal statistical system to ensure—

"(A) the efficiency and effectiveness of the system; and

"(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

"(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

"(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

"(A) statistical collection procedures and methods;

"(B) statistical data classification;

"(C) statistical information presentation and dissemination;

"(D) timely release of statistical data; and

"(E) such statistical data sources as may be required for the administration of Federal programs;

"(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

"(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

"(6) coordinate the participation of the United States in international statistical activities; including the development of comparable statistics;

"(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

"(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

"(A) be headed by the chief statistician; and

"(B) consist of—

"(i) the heads of the major statistical programs;

and

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"(ii) representatives of other statistical agencies under rotating membership; and

"(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

"(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

"(B) all costs of the training shall be paid by the agency requesting training.

"(f) With respect to records management, the Director shall—

"(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

"(2) review compliance by agencies with—

"(A) the requirements of chapters 29, 31, and 33 of this title; and

"(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

"(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

"(g) With respect to privacy and security, the Director shall—

"(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

"(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, the Director shall—

"(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

"(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

"(B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

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"(2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759);

"(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

"(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

"(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

"(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

"(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

"§ 3505. Assignment of tasks and deadlines

"(a) In carrying out the functions under this chapter, the Director shall—

"(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and 2001, and set annual agency goals to—

"(A) reduce information collection burdens imposed on the public that—

"(i) represent the maximum practicable opportunity in each agency; and

"(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

"(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

"(2) with selected agencies and non-Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; and

"(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

"(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

"(B) plans for—

"(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

"(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

"(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and

"(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

"(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may, after consultation with the agency head, waive the application of any administrative directive issued by an agency with which the project is conducted, including any directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

"§ 3506. Federal agency responsibilities

"(a)(1) The head of each agency shall be responsible for—

"(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

"(B) complying with the requirements of this chapter and related policies established by the Director.

"(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter. Reports.

"(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate senior officials who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated, the respective duties of the officials shall be clearly delineated. Reports.

"(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

"(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

"(b) With respect to general information resources management, each agency shall—

"(1) manage information resources to—

“(A) reduce information collection burdens on the public;

“(B) increase program efficiency and effectiveness; and
“(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

“(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

“(3) develop and maintain an ongoing process to—

“(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

“(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

“(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

“(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

“(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

“(c) With respect to the collection of information and the control of paperwork, each agency shall—

“(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

“(A) review each collection of information before submission to the Director for review under this chapter, including—

“(i) an evaluation of the need for the collection of information;

“(ii) a functional description of the information to be collected;

“(iii) a plan for the collection of the information;

“(iv) a specific, objectively supported estimate of burden;

“(v) a test of the collection of information through a pilot program, if appropriate; and

“(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

“(B) ensure that each information collection—

“(i) is inventoried, displays a control number and, if appropriate, an expiration date;

“(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

“(iii) informs the person receiving the collection of information of—

“(I) the reasons the information is being collected;

“(II) the way such information is to be used;

“(III) an estimate, to the extent practicable, of the burden of the collection;

“(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

“(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number; and

“(C) assess the information collection burden of proposed legislation affecting the agency;

“(2)(A) except as provided under subparagraph (B) or section 3507(j), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

“(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

“(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

“(iii) enhance the quality, utility, and clarity of the information to be collected; and

“(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

“(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); and

“(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

“(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

“(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

“(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities,

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as defined under section 601(6) of title 5, the use of such techniques as—

“(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

“(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

“(iii) an exemption from coverage of the collection of information, or any part thereof;

“(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

“(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

“(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

“(G) contains the statement required under paragraph (1)(B)(iii);

“(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

“(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

“(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

“(d) With respect to information dissemination, each agency shall—

“(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through—

“(A) encouraging a diversity of public and private sources for information based on government public information;

“(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

“(C) agency dissemination of public information in an efficient, effective, and economical manner;

“(2) regularly solicit and consider public input on the agency's information dissemination activities;

“(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

“(4) not, except where specifically authorized by statute—

“(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

“(B) restrict or regulate the use, resale, or redissemination of public information by the public;

“(C) charge fees or royalties for resale or redissemination of public information; or

“(D) establish user fees for public information that exceed the cost of dissemination.

“(e) With respect to statistical policy and coordination, each agency shall—

“(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

“(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

“(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

“(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

“(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

“(6) make data available to statistical agencies and readily accessible to the public.

“(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

“(g) With respect to privacy and security, each agency shall—

“(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

“(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

“(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

“(h) With respect to Federal information technology, each agency shall—

“(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

“(2) assume responsibility and accountability for information technology investments;

“(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

“(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, includ-

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ing changes that improve the ability of the agency to use technology to reduce burden; and

"(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

"(A) integrated with budget, financial, and program management decisions; and

"(B) used to select, control, and evaluate the results of major information systems initiatives.

§ 3507. Public information collection activities; submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

"(1) the agency has—

"(A) conducted the review established under section 3506(c)(1);

"(B) evaluated the public comments received under section 3506(c)(2);

"(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

"(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

"(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

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"(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—

"(A) the approval may be inferred;

"(B) a control number shall be assigned without further delay; and

"(C) the agency may collect the information for not more than 1 year.

"(d)(1) For any proposed collection of information contained in a proposed rule—

"(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

"(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

"(2) When a final rule is published in the Federal Register, the agency shall explain—

"(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

"(B) the reasons such comments were rejected.

"(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

"(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

"(A) from disapproving any collection of information which was not specifically required by an agency rule;

"(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

"(D) from disapproving any collection of information contained in a final rule, if—

"(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

"(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

"(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

Proposed rule.

Federal Register,
publication.

Regulations.
Federal Register,
publication.

"(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

"(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

"(3) This subsection shall not require the disclosure of—

"(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

"(B) any communication relating to a collection of information which is not approved under this chapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

"(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

"(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

"(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

"(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

"(g) The Director may not approve a collection of information for a period in excess of 3 years.

"(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

"(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

"(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

"(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

"(A) publish an explanation thereof in the Federal Register;

and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

"(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

"(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

"(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(j)(1) The agency head may request the Director to authorize a collection of information, if an agency head determines that—

"(A) a collection of information—

"(i) is needed prior to the expiration of time periods established under this chapter; and

"(ii) is essential to the mission of the agency; and

"(B) the agency cannot reasonably comply with the provisions of this chapter because—

"(i) public harm is reasonably likely to result if normal clearance procedures are followed;

"(ii) an unanticipated event has occurred; or

"(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

"(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

"§ 3508. Determination of necessity for information; hearing

"Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard

or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

“§ 3509. Designation of central collection agency

“The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

“§ 3510. Cooperation of agencies in making information available

“(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

“(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties) that relate to the unlawful disclosure of information apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

“(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

“§ 3511. Establishment and operation of Government Information Locator Service

“(a) In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

“(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the ‘Service’), which shall identify the major information systems, holdings, and dissemination products of each agency;

“(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

“(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee

Establishment.

to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

“(4) consider public access and other user needs in the establishment and operation of the Service;

“(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

“(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

“(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.).

“§ 3512. Public protection

“(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this chapter if—

“(1) the collection of information does not display a valid control number assigned by the Director in accordance with this chapter; or

“(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

“(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

“§ 3513. Director review of agency activities; reporting; agency response

“(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

“(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

“(1) be taken to address information resources management problems identified in the report; and

“(2) improve agency performance and the accomplishment of agency missions.

“§ 3514. Responsiveness to Congress

“(a)(1) The Director shall—

“(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

Reports.

"(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

"(2) The Director shall include in any such report a description of the extent to which agencies have—

"(A) reduced information collection burdens on the public, including—

"(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

"(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter;

"(iii) a list of any increase in the collection of information burden, including the authority for each such collection; and

"(iv) a list of agencies that in the preceding year did not reduce information collection burdens in accordance with section 3505(a)(1), a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

"(B) improved the quality and utility of statistical information;

"(C) improved public access to Government information; and

"(D) improved program performance and the accomplishment of agency missions through information resources management.

"(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

"§ 3515. Administrative powers

"Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

"§ 3516. Rules and regulations

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

"§ 3517. Consultation with other agencies and the public

"(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

"(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

"(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

"(2) take appropriate remedial action, if necessary.

"§ 3518. Effect on existing laws and regulations

"(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

"(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

"(c)(1) Except as provided in paragraph (2), this chapter shall not apply to the collection of information—

"(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

"(B) during the conduct of—

"(i) a civil action to which the United States or any official or agency thereof is a party; or

"(ii) an administrative action or investigation involving an agency against specific individuals or entities;

"(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

"(D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

"(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

"(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

"§ 3519. Access to information

"Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Informa-

tion and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

“§ 3520. Authorization of appropriations

“There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter, and for no other purpose, \$8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.”

SEC. 3. BURDEN REDUCTION REGARDING QUARTERLY FINANCIAL REPORT PROGRAM AT BUREAU OF THE CENSUS.

Section 91 of title 13, United States Code, is amended by adding at the end the following new subsection:

“(d)(1) The Secretary shall not select an organization or entity for participation in a survey, if—

“(A) the organization or entity—

“(i) has assets of less than \$50,000,000;

“(ii) completed participation in a prior survey in the preceding 10-year period, as determined by the Secretary; and

“(iii) was selected for that prior survey participation after September 30, 1990; or

“(B) the organization or entity—

“(i) has assets of more than \$50,000,000 and less than \$100,000,000;

“(ii) completed participation in a prior survey in the preceding 2-year period, as determined by the Secretary; and

“(iii) was selected for that prior survey participation after September 30, 1995.

“(2)(A) The Secretary shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of organizations and entities participating in the survey.

“(B) To facilitate the provision of the assistance under subparagraph (A), the Secretary shall establish a toll-free telephone number.

“(C) The Secretary shall expand the use of statistical sampling techniques to select organizations and entities having assets less than \$100,000,000 to participate in the survey.

“(3) The Secretary may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by the Secretary.

“(4) For purposes of this subsection:

“(A) The term ‘small business concern’ means a business concern that meets the requirements of section 3(a) of the Small Business Act and the regulations promulgated pursuant thereto.

“(B) The term ‘survey’ means the collection of information by the Secretary pursuant to this section for the purpose of preparing the publication entitled ‘Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations’.”

SEC. 4. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as otherwise provided in this section, this Act and the amendments made by this Act shall take effect on October 1, 1995.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 3520 of title 44, United States Code, as amended by this Act, shall take effect on the date of enactment of this Act.

(c) **DELAYED APPLICATION.**—In the case of a collection of information for which there is in effect on September 30, 1995, a control number issued by the Office of Management and Budget under chapter 35 of title 44, United States Code—

(1) the amendments made by this Act shall apply to the collection of information beginning on the earlier of—

(A) the first renewal or modification of that collection of information after September 30, 1995; or

(B) the expiration of its control number after September 30, 1995.

(2) prior to such renewal, modification, or expiration, the collection of information shall be subject to chapter 35 of title 44, United States Code, as in effect on September 30, 1995.

Approved May 22, 1995.

44 USC 3501
note.

LEGISLATIVE HISTORY—S. 244 (H.R. 830):

HOUSE REPORTS: Nos. 104-37 accompanying H.R. 830 (Comm. on Government Reform and Oversight) and 104-99 (Comm. of Conference).

SENATE REPORTS: No. 104-8 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 141 (1995):

Feb. 22, H.R. 830 considered and passed House.

Mar. 6, 7, S. 244 considered and passed Senate.

Mar. 10, considered and passed House, amended.

Apr. 6, Senate and House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 31 (1995):

May 22, Presidential remarks.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

MAY 30 1995

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MEMORANDUM FOR THE REGULATORY WORKING GROUP MEMBERS

FROM: SALLY KATZEN ^{Signed}
SUBJECT: AMENDMENTS TO OMB RIA GUIDANCE

Attached is the draft Economic Analysis Guidance (formerly, Regulatory Impact Analysis) which our RWG subgroup has been working on over the past year. I would like to conclude review of this guidance and make it available for use by the agencies as soon as possible.

Therefore, I would appreciate your comments on this draft by **COB Tuesday, June 13, 1995**. Members of the DOT/CEA team (coordinated by CEA's Mike Toman) will also review the draft for technical issues.

Please send me your comments by fax at 395-3047; if you can send them sooner than the 13th, so much the better -- but after that date, silence will be interpreted as acquiescence.

Thanks as always for your help.

Attachment

APPENDIX V

Guidance for Economic Analysis of Federal Regulations Under Executive Order 12866

An Economic Analysis (EA) of a proposed or existing regulation should demonstrate that a proposed regulatory action is consistent with the regulatory philosophy provided in section 1(a) of Executive Order 12866 and meets the requirements of Section 6(a)(3)(C) of the Order. To do so, it should show that:

- There is adequate information concerning the need for and consequences of the proposed action;
- The potential benefits to society justify the potential costs (where it is recognized that not all benefits and costs can be described in monetary or even in quantitative terms); and
- Of the alternative approaches to the given regulatory objective, the proposed action will maximize net benefits to society, taking into account distributive impacts and equity.

The fundamental test of a satisfactory EA is whether it enables independent reviewers to make an informed judgment that the objectives of Executive Order 12866 are satisfied, i.e., that the proposed regulatory action is justified by the analysis presented. An EA that includes all the elements described below is likely to fulfill this requirement. Although variations consistent with the spirit and intent of the executive order may be warranted for some rules, most EAs should include these elements.

The guidance in this document is not in the form of a mechanistic blueprint, for a good EA cannot be written according to a formula. Competent professional judgment is indispensable for the preparation of a high-quality analysis. Different regulations may call for very different emphases in analysis. For one proposed regulation, the crucial issue may be the question of whether a market failure exists, and much of the analysis may need to be devoted to that key question. In another case, the existence of a market failure may be obvious from the outset, but extensive analysis might be necessary to estimate the magnitude of benefits to be expected from proposed regulatory alternatives. The amount of analysis (whether scientific, statistical, or economic) that a particular issue requires depends on the importance and complexity of the issue, the need for a rule, and the sensitivity of net benefits to the choice of regulatory alternatives.

Regulatory analysis inevitably involves uncertainties and requires informed professional judgments. Whenever an agency has questions about such issues as the appropriate analytical techniques to use or the alternatives that should be considered, it should consult with the Office of Management and Budget as early in the analysis stage as possible.

This document is written primarily in terms of proposed regulatory changes. However, it is equally applicable to the review of existing regulations (as called for under section 5 of E.O.12866). In this case and in the case of a proposed regulation, the regulation under review should be compared to a baseline case of not taking the proposed regulatory action and to reasonable alternatives.

Elements of an Economic Analysis

Preliminary and final Economic Analyses of economically "significant" rules (section 3(f)) should contain five elements. They are: (1) a statement of the potential need for the proposed action, (2) an examination of alternative approaches, (3) an analysis of benefits and costs, (4) the basis for choosing the proposed action, and (5) a statement of statutory authority. These elements are described in Sections I-V below.

I. STATEMENT OF POTENTIAL NEED FOR THE PROPOSED ACTION

In order to establish the potential need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure, and demonstrate that the proposed action is the best approach among all reasonable options for addressing it. If the problem does not constitute a market failure, the analysis should provide an alternative demonstration of compelling public need, such as improving governmental processes or addressing distributional concerns. If the proposed action is a result of a statutory or judicial directive, this situation should be so stated.

A. Market Failure

The analysis should determine whether there exists a market failure that is likely to be significant. In particular, the analysis should distinguish actual market failures from potential market failures that can be resolved at relatively low cost by market participants. Examples of the latter include spillover effects that affected parties can effectively internalize by negotiation, and problems resulting from information asymmetries that can be effectively resolved by the affected parties through vertical integration. Once a significant market failure has been identified, the analysis should show how adequately the regulatory alternatives to be considered address the specified market failure. The major types of market failure include: externality, natural monopoly, market power, and inadequate or asymmetric information.

1. **Externality.** An externality occurs when one party's actions impose uncompensated benefits or costs on another. Environmental problems are a classic case of externality. Another example is the case of common property resources that may become congested or overused, such as fisheries or the broadcast spectrum. A third example is a "public good," such as defense or basic scientific research, which is distinguished by the fact that it is inefficient, or impossible, to exclude individuals from its benefits.
2. **Natural monopoly.** A natural monopoly exists where a market can be served at lowest cost only if production is limited to a single producer. Local gas and electricity distribution services are examples.
3. **Market Power.** Firms exercise market power when they reduce output below what a competitive industry would sell. They may exercise market power collectively or unilaterally. Government action can be a source of market power, for example if regulatory actions exclude low-cost imports, allowing domestic producers to raise price by reducing output.
4. **Inadequate or asymmetric information.** Market failures may also result from inadequate or asymmetric information. The appropriate level of information is not necessarily perfect or full information because information, like other goods, is costly and, therefore, should not be produced when the costs of doing so exceed the benefits. The market may supply less than the appropriate level of information because it is often infeasible to exclude nonpayers from reaping benefits from the provision of information by others. In markets for goods and services, inadequate information can generate a variety of social costs, including inefficiently low innovation, market power, or inefficient resource allocation resulting from deception of consumers. Markets may also fail to allocate resources efficiently when some economic actors have more information than others.

The market may supply a reasonably adequate level of information. Seller advertising can be informative, because sellers may be able to increase sales by highlighting distinctive characteristics of their products. There are also a variety of ways in which "reputation effects" may serve to provide adequate information. Buyers may obtain reasonably adequate information about product characteristics even when the seller does not provide that information, for example, if buyer search costs are low (as when the quality of a good can be determined by inspection at point of sale), if buyers have previously

used the product, if sellers offer warranties, or if adequate information is provided by third parties. In addition, insurance markets are important sources of information about risks.

When inadequate or asymmetric information creates a market failure, any of the following regulatory approaches may be appropriate and, if so, should be considered in a benefit-cost analysis of proposed regulations. First, the government may mandate private information disclosure -- either directly, through product labeling requirements, or indirectly, through features of product liability law that may reduce liability or damages for firms that have provided consumers with notice. Second, the government may provide information directly. Third, the government may take actions to increase the degree to which the benefits of information can be appropriated by its suppliers, though in doing so it is necessary to take into account potential adverse effects from increased market power.

Government action may have unintentional harmful effects on the efficiency of market outcomes. This potential should be considered in a benefit-cost analysis. Moreover, for this reason there should be a presumption against the need for regulatory actions that, on conceptual grounds, are not expected to generate net benefits, except in special circumstances. A particularly demanding burden of proof is required to demonstrate the potential need for any of the following types of regulations:

- Price controls in competitive markets
- Controls on production or sales in competitive markets
- Mandatory uniform quality standards for goods or services, unless they have hidden safety hazards or other defects or involve externalities and the problem cannot be adequately dealt with by voluntary standards or information disclosing the hazard to potential buyers or users
- Controls on entry into employment or production, except (a) where indispensable to protect health and safety (e.g., FAA tests for commercial pilots) or (b) to manage the use of common property resources (e.g., fisheries, airwaves, Federal lands, and offshore areas).

B. Alternatives to New Federal Regulation

Even where a market failure exists, there may be no need for Federal regulatory intervention if other means of dealing with the market failure resolve the problem adequately or better than the proposed Federal regulation would. Among the alternative means that may be applicable are the judicial system (particularly liability cases to deal with health and safety), antitrust enforcement, and workers' compensation systems.

An important alternative that may be relevant is regulation at the State or local level. In determining whether there exists a potential need for a proposed Federal regulation, the analysis should examine whether regulation at the Federal level is more appropriate than regulation at the State or local level. This analysis may support regulation at the Federal level, for example to address interstate commerce issues. In this case, the analysis should attempt to determine whether the burdens on interstate commerce arising from different State and local regulations, including the compliance costs imposed on national firms, are so great that they outweigh the advantages of diversity, competition among governmental units for taxpayers and citizens, and local political choice. In some cases, the nature of the market failure may itself suggest the most appropriate governmental level of regulation. For example, pollution that spills across State lines (such as acid rain whose precursors are transported widely in the atmosphere) is probably best controlled by Federal regulation, while the strategy for cleaning up localized pollution is often more efficiently handled by local governments. Thus, some analysis may be necessary to determine which level of government can most efficiently regulate a specific market failure.

If the analysis does suggest a potential need for a Federal action, it also should consider alternatives of nonregulatory Federal measures. For example, as an alternative to requiring an action or the use of a particular product, it may be more efficient to subsidize it. Similarly, a fee or charge may be a preferable alternative to banning or restricting a product or action. An example would be an effluent discharge fee, which has been recommended as an efficient way to limit pollution, because it causes pollution sources with different marginal costs of abatement to control effluents in an efficient manner. In addition, legislative measures that make use of economic incentives, such as changes in insurance provisions or changes in property rights, should be considered. Finally, modifications to existing regulations should be considered if those regulations have created or contributed to a problem that the new regulation is intended to correct, and if such changes can achieve the goal more efficiently or effectively.

II. AN EXAMINATION OF ALTERNATIVE APPROACHES

The EA should show that the agency has considered the most important alternative approaches to the problem and must provide the agency's reasoning for selecting the proposed regulatory change over such alternatives. Ordinarily, it will be possible to eliminate some alternatives by a preliminary analysis, leaving a manageable number of alternatives to be evaluated by quantitative benefit-cost analysis according to the principles to be described in Section III. The number and choice of alternatives to be selected for detailed benefit-cost analysis is unavoidably a matter of judgment. There must be some balance between thoroughness of analysis and practical limits to the agency's capacity to carry out analysis. The agency should nevertheless explore modifications of some or all of a regulation's attributes or provisions to identify appropriate alternatives.

Alternative regulatory actions that should be explored to yield more efficient outcomes include the following:

1. More performance-oriented standards for health, safety, and environmental regulations. Performance standards are generally to be preferred to engineering or design standards because they allow the regulated parties the flexibility to achieve the regulatory objective in the most cost-effective way. In general, a performance standard should be preferred wherever that performance can be measured or reasonably imputed. It is misleading and inappropriate, however, to characterize a standard as a performance standard if it is set so that there is only one feasible way to meet it; as a practical matter, such a standard is a design standard. Performance standards should be applied with a scope appropriate to the problems the regulation seeks to address. For example, to create the greatest opportunities for the regulated parties to achieve cost savings while meeting the regulatory objective, air emission standards should be set on a plant-wide, firm-wide, or region-wide basis rather than vent by vent, provided this does not produce unacceptable distributional outcomes (such as "hot spots" from local pollution concentration).
2. Different requirements for different segments of the regulated population. For example, there might be different requirements for large and small firms. If such a differentiation is made, it should be based on perceptible differences in the costs of compliance or in the benefits to be expected from compliance. For example, some worker safety measures may exhibit economies of scale, that is, lower costs per worker protected in large firms than in small firms. It is not efficient to place a heavier burden on one segment of the regulated population solely on the grounds that it is better able to afford the higher cost; this has the potential to load disproportionate costs on the most productive sectors of the economy.
3. Alternative levels of stringency. In general, both the benefits and costs associated with a regulation will increase with the level of stringency (although marginal costs generally increase with stringency while marginal benefits decrease). It is important to consider alternative levels of stringency to better

understand the relationship between stringency and benefits and costs. This approach will increase the information available to the decisionmaker on the option that maximizes net benefits.

4. **Alternative effective dates of compliance.** The timing of a regulation may also have an important effect on its net benefits. For example, costs of a regulation may vary substantially over different compliance dates for an industry that requires a year or more to plan its production runs efficiently. In this instance, a regulation whose requirements provide sufficient lead time is likely to achieve its goals at a much lower overall cost than a regulation that is effective immediately.

5. **Alternative methods of ensuring compliance.** Compliance alternatives for Federal, state, or local enforcement include on-site inspection, periodic reporting, and compliance penalties structured to provide the most appropriate incentives. When alternative monitoring and reporting methods vary in their costs and benefits, promising alternatives should be considered in identifying the regulatory approach that maximizes net benefits. For example, in some circumstances random monitoring will be less expensive and nearly as effective as continuous monitoring in achieving compliance.

6. **Informational measures.** Measures to improve the availability of information include government establishment of a standardized testing and rating system (the use of which could be made mandatory or left voluntary), mandatory disclosure requirements (e.g., by advertising, labeling, or enclosures), and government provision of information (e.g., by government publications, telephone hotlines, or public interest broadcast announcements). If intervention is necessary to address a market failure arising from inadequate or asymmetric information, informational remedies will often be the preferred approaches. As an alternative to a mandatory standard, a regulatory measure to improve the availability of information has the advantage of being a more market-oriented approach. Thus, providing consumers information about concealed characteristics of consumer products gives consumers a greater choice than banning these products (for example, consumers may benefit more from information on energy efficiency than from a prohibition on sale of appliances or automobiles falling below a specified standard of energy efficiency).

Except for prohibiting indisputably false statements (whose banning can be presumed beneficial), specific informational measures must be evaluated in terms of their benefits and costs. Some effects of informational measures can easily be overlooked. For example, the costs of a mandatory disclosure requirement for a consumer product include more than the obvious cost of gathering and communicating the required information. They also include the loss of any net benefits of information displaced by the mandated information, the cost of any inaccurate consumer interpretation of the mandated information, and inefficiencies arising from the incentive that mandatory disclosure may give to overinvest in a particular characteristic.

Where information on the benefits and costs of alternative informational measures is insufficient to provide a clear choice between them, as will often be the case, the least intrusive alternative, sufficient to accomplish the regulatory objective, should be chosen. For example, it will often be sufficient for government to establish a standardized testing and rating system without mandating its use, because competing firms that score well according to the system will have ample incentive to publicize the fact.

7. **More market-oriented approaches.** In general, alternatives that provide for more market-oriented approaches, with the use of economic incentives replacing command-and-control requirements, should be explored. Market-oriented alternatives that may be considered include fees, subsidies, penalties, marketable permits or offsets, changes in liabilities or property rights (including policies that alter the incentive of insurers and insured parties), and required bonds, insurance or warranties. (In many instances, implementing these alternatives will require legislation.)

8. Considering specific statutory requirements. When a statute establishes a specific regulatory requirement and the agency has discretion to adopt a more stringent standard, the agency should examine the specific statutory requirement when the agency proposes or adopts a more stringent alternative.

III. ANALYSIS OF BENEFITS AND COSTS

A. General Principles

The preliminary analysis called for by Sections I and II will lead to the identification of a workable number of alternatives to be considered. The benefits and costs of each alternative must be measured against a baseline.

1. **Baseline.** The baseline from which the benefits and costs of each alternative are calculated should be specified as the best assessment of the way the world would look absent the proposed regulation. That assessment may consider a wide range of factors including the likely evolution of the market, likely changes in exogenous factors affecting benefits and costs, likely changes in regulations promulgated by the agency or other government entities, and the likely degree of compliance by regulated entities with other regulations. Often it may be reasonable for the agency to forecast that the world absent the regulation will resemble the present.

When more than one baseline appears reasonable or the baseline is very uncertain, and when the estimated benefits and costs of proposed rules are likely to vary significantly with the baseline selected, the agency may choose to measure benefits and costs against multiple alternative baselines as a form of sensitivity analysis. For example, the agency may choose to conduct a sensitivity analysis involving the consequences for benefits and costs of different assumptions about likely regulation by other governmental entities, or the degree of compliance with the agency's own existing rules. In every case, an agency must measure both benefits and costs against the identical baseline. The agency should also provide an explanation of the plausibility of the alternative baselines used in the sensitivity analysis.

2. **Evaluation of Alternatives.** Except where prohibited by law, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize expected net benefits (benefits minus costs). Benefits and costs that should be taken into account include potential economic, environmental, public health and safety, and other advantages. To the fullest extent possible, benefits and costs should be expressed in discounted constant dollars. Appropriate discounting procedures are discussed in the following section. Where monetization is not possible for certain elements of the benefits or costs that are essential to consider, other quantitative and qualitative measures of these elements should be provided (see sections 6, 7 and 8 below).

Information on distributive impacts and equity considerations related to the alternatives should accompany the benefit-cost analysis; these effects may be relevant to the agency decision but should be presented in the EA as an analysis separate from the benefit-cost analysis. Agencies should present a reasoned explanation or analysis to justify their choice among alternatives.

The distinction between benefits and costs in benefit-cost analysis is somewhat arbitrary, since a positive benefit may be considered a negative cost, and vice versa, without affecting the net benefit (benefits minus costs) decision criterion. This implies that the considerations applicable to benefit estimates also apply to costs and vice versa. The different issues are considered separately under benefits or costs in Sections B and C below according to where they most often arise.

If the proposed regulation is composed of a number of distinct provisions, it is important to evaluate the benefits and costs of the different provisions separately. The interaction effects between separate

provisions (such that the existence of one provision affects the benefits or costs arising from another provision) may complicate the analysis but does not eliminate the need to examine provisions separately. In such a case, the desirability of a specific provision may be appraised by determining the net benefits of the proposed regulation with and without the provision in question. Where the number of provisions is large and interaction effects are pervasive, it is obviously impractical to analyze all possible combinations of provisions in this way. Some judgment must be used to select the most significant or suspect provisions for such analysis.

3. Discounting. One of the problems that arises in developing a benefit-cost analysis is that the benefits and costs often occur in different time periods. When this occurs, it is not appropriate to simply add up the benefits and costs accruing over time for comparison purposes. Discounting takes account of the fact that resources (goods or services) that are available in a given year are worth more than the identical resources available in a later year. One reason for this is that resources can be invested so as to return more resources later. In addition, people tend to be impatient and to prefer earlier consumption over later consumption.

(a) Basic guidance. The basic guidance on discount rates for regulatory and other analyses is provided in OMB Circular A-94. The discount rate specified in that guidance is intended to be an approximation of the opportunity cost of capital, which is the before-tax rate of return to incremental private investment. The Circular A-94 rate, which was revised in 1992 based on an extensive review and public comment, reflects the rates of return on low yielding forms of capital such as housing as well as the higher rates of returns yielded by corporate capital. This average rate currently is estimated to be 7 percent in real terms (i.e., after adjusting for inflation). As noted in the A-94 guidance, agencies may also present sensitivity analyses using other discount rates, along with a justification for the consideration of these alternative rates.

Discounting is not the same as correcting for inflation. An inflation adjustment is made with a price index, whereas discounting to present value is done with a discount rate. Even constant-dollar benefits and costs (i.e., those adjusted for inflation) must be discounted to present values before benefits and costs in different years can be added together to determine overall net benefits. The discount rate should be expressed in real terms (i.e., corrected for expected inflation) whenever the benefits and costs are expressed in constant dollars. The real rate can be estimated by subtracting the expected rate of inflation from a market rate of interest that corresponds to the time period over which the benefits and costs are expected to flow. For example, if the nominal rate of interest is 10 percent and the forecast inflation rate over the same period is 3 percent, then the real rate of interest is approximately 7 percent.

In assessing the present value of benefits and costs from a regulation, it may be necessary to consider implications of changing relative prices over time. For example, increasing scarcity of certain environmental resources could increase their value over time relative to conventional consumer goods. In such a situation, it is inappropriate to use current relative values for assessing regulatory impacts. However, while taking into account changes over time in relative values may have an effect similar to discounting environmental impacts at a lower rate, it is important to separate the effects of discounting from the effects of relative price changes in the economic analysis. In particular, the discount rate should not be adjusted for expected changes in the relative prices of goods over time. Instead, any changes in relative prices that are anticipated should be incorporated directly in the calculations of benefit and cost streams.

In general, the discount rate should not be adjusted to account for the uncertainty of future benefits and costs. Risk and uncertainty should be dealt with according to the principles presented in Section 4 below and not by changing the discount rate.

Even those benefits and costs that are hard to quantify in monetary terms should be discounted. In many instances where it is difficult to monetize benefits, agencies conduct regulatory "cost-effectiveness" analyses instead of net benefits analyses. When the effectiveness of alternative options is measured in units that accrue at the same time that the costs are incurred, annualizing costs is sufficient and further discounting of non-monetized benefits is unnecessary; for instance, the annualized cost per ton of reducing certain polluting emissions can be an appropriate measure of cost-effectiveness. However, when effectiveness is measured in units that accrue later than when the costs are incurred, the annualized cost per unit must be calculated after discounting for the delay between accrual of the costs and the effects. For example, if regulations can prevent adverse health effects that occur only after a long period of exposure, agencies should discount the health benefits to the year in which the costs accrue. Regardless of the discounting procedure selected for any nonmonetized benefits, the economic analysis must contain a schedule indicating when all benefits and costs are expected to occur.

(b) Additional guidance. Modern research in economic theory has established a preferred model for discounting, sometimes referred to as the shadow price approach. The basic concept is that economic welfare is ultimately determined by consumption; investment affects welfare only to the extent that it affects current and future consumption. Thus, any effect that a government program has on public or private investment must be converted to an associated stream of effects on consumption before being discounted.

Converting investment-related benefits and costs to their consumption-equivalents as required by this approach involves calculating the "shadow price of capital." This shadow price reflects the present value of the future changes in consumption arising from a marginal change in investment, using the consumption rate of interest (also termed the rate of time preference) as the discount rate. The calculation of the shadow price of capital requires assumptions about the extent to which government actions -- including regulations -- crowd out private investment, the social (i.e., before-tax) returns to this investment, and the rate of reinvestment of future yields from current investment.

Estimates of the shadow price are quite sensitive to these assumptions. For example, in some applications it may be appropriate to assume that access to global capital markets implies no crowding out of private investment by government actions or that monetary and fiscal authorities determine aggregate levels of investment so that the impact of the contemplated regulation on total private investment can be ignored. Alternatively, there is also evidence that domestic saving affects domestic investment and that regulatory costs may also reduce investment. In these cases, more substantial crowding out would be an appropriate assumption.

The rate of time preference is also a complex issue. Generally, it is viewed as being approximated by the real return to a safe asset, such as Government debt. However, a substantial fraction of the population does little or no saving and may borrow at relatively high interest rates.

Thus, there are several practical challenges to be overcome for the shadow price approach to be used correctly. Agencies wishing to use this methodology should secure approval from OMB prior to doing so, and must clearly explain their solutions to the methodological and empirical challenges noted above.

(c) Intergenerational analysis. Comparisons of benefits and costs across generations raise special questions about equity, in addition to conventional concerns about efficiency. One approach to these questions is to follow the discounting procedures described above and to address equity issues explicitly rather than through modification of the discount rate.

An alternative view is that it is particularly important to use a special social rate of time preference when conducting intergenerational analyses in order to properly value changes in consumption in different generations. For example, one philosophical perspective is that the social marginal rate of

substitution between the well-being of members of successive generations may be less than the individual rate of time preference, and that future generations should not have their expected welfare discounted just because they come later in time. Instead, this view suggests that discounting should reflect only the growth of per capita consumption and the corresponding decrease in marginal utility over time. As this approach uses a consumption-based rate of interest, costs and benefits must also be adjusted to reflect the shadow price of capital. As in other cases when agencies seek to use the shadow price of capital approach, they should consult with OMB prior to conducting special analyses of regulations having substantial intergenerational effects.

4. Treatment of Risk and Uncertainty. The objects and effects of regulatory actions frequently can be known or predicted only in terms of their probability of occurrence. The term "risk" refers to a probability distribution over a set of outcomes; for example, the risk of contracting cancer from exposure to a chemical means the probability of contracting cancer from that exposure, the risk of a financial loss of \$X means the probability of losing \$X, and so on.

When benefits are risky, individuals generally value them less than if they were certain; when costs are risky, they are generally appraised at more than the average value. For example, riskier financial instruments must generally earn a higher average rate of return in order to attract investors. Similarly, the owner of a facility may be willing to pay more to reduce the probability of fire than the reduction in expected loss, because of aversion to the risk of the loss. This also explains why property owners are willing to buy fire insurance at a price that exceeds expected losses.

Evaluations of risk-reducing regulations must thus include two conceptually distinct assessments: a *risk assessment* that, in part, characterizes quantitatively the probabilities of occurrence of outcomes of interest; and a *valuation of risk changes* that includes both expected losses avoided (or expected gains) and a valuation of the increased or reduced risk. It is essential that both parts of such evaluations be conceptually consistent. In particular, risk assessments must be conducted in a way that permits their use in a more general benefit-cost framework. In other words, they must be conducted in a manner consistent with economic principles of valuing risky outcomes.

The evaluation of risky or uncertain outcomes associated with regulatory action raises a number of scientific difficulties. Key issues involve the quality and reliability of the data, models, scientific inferences, and other information used in risk analyses. Analysts rarely, if ever, have complete information. It may be difficult to identify the full range of effects that a regulation may have. Data relating to effects that can be identified may be sketchy, incomplete, or subject to substantial measurement error or bias. Little definitive may be known about the structure of key relationships and therefore about appropriate model specification. All of these are reflected in the uncertainties about outcomes that have to be incorporated.

These problems are particularly noticeable in health and ecological risk assessment, in which the range of quantitative estimates of risk can span several orders of magnitude. Uncertainties about these hazards tend to be large due to gaps in fundamental scientific knowledge. Reliance on indirect data (such as inferring human effects from animal tests) and on data generated from screening studies designed to avoid false negatives (failing to detect hazards that actually occur) tend to err on the side of false positives (indicating the presence of hazards that are actually nonexistent). Further problems arise from reliance on models that cannot be fully validated:

Treatment of uncertainty must be guided by the principles of *full disclosure* and *transparency*. The full available set of data sources, inferences, and assumptions must be identified and evaluated explicitly, together with complete justifications of choices made, and assessments of the effects of these choices on the analysis. Data and assumptions should be presented clearly and in a manner that permits

explicit quantitative evaluation of their incremental effects. Assumptions should be consistent with the best available scientific information. Thus, for example, low-dose toxicity extrapolations must be consistent with physiological knowledge, assumptions about environmental fate and transport of contaminants must be consistent with principles of environmental chemistry, and so on. The cumulative effects of assumptions and inferences must also be evaluated explicitly, and each must be justified in light of its cumulative effects as well as on its own merits. The material provided should permit the reader to replicate the analysis and quantify the effects of key assumptions. Such analyses are becoming increasingly easy to perform because of advances in computing power and new methodological developments; thus, the level and scope of disclosure and transparency should increase over time.

The assumptions and inferences traditionally used to construct quantitative characterizations of the probabilities of occurrence of health, safety, or ecological effects are frequently chosen to reflect unstated preferences for protecting public health and the environment (for example, using high-end estimates of emissions, exposure, or toxicity). For example, many agencies routinely incorporate safety factors into parameter estimates or choose model specifications in order to account for uncertainty and unmeasured variability. Such procedures are inappropriate because they imply unsubstantiated levels of conservatism in that cumulate across assumptions and do not necessarily reflect social preferences for reducing risk.

The appropriate level of protection is a policy choice rather than a scientific one. Adjustments for uncertainty should be made explicitly according to economic principles. This implies that risk assessments must provide estimates of baseline and incremental risk on average, and the dispersion around the average. Thus, quantitative estimates of central tendency of risk must be provided in addition to variances, low-end and high-end estimates, and other measures of dispersion. Overall uncertainty is typically a consequence of uncertainties about many different factors. Appropriate statistical techniques must be used to combine uncertainties about separate factors into an overall probability distribution reflecting overall uncertainty about risk, not just a characterization of worst cases. When analytic methods cannot be used, Monte Carlo simulation or other methods may be useful for providing more complete information.

Results should be reported so as to reflect the degree of uncertainty present in order to prevent creating misleading impressions. It is imperative to avoid false precision. The accuracy with which quantitative estimates are reported must be supported by the quality of the data and models used. In all cases, the level of precision must be stated explicitly.

Quantitative analyses should convey as much information as possible regarding underlying uncertainties. Available methods include:

- *Sensitivity analysis*, carried out by conducting analyses over the full range of plausible values of key parameters and plausible model specifications. One important form of sensitivity analysis involves estimating "switch points", that is, critical parameter values at which estimated net benefits change sign. Sensitivity analysis is useful for evaluating the robustness of conclusions about net benefits with respect to changes in model parameters. Sensitivity analysis should convey as much information as possible about the likely plausibility or frequency of occurrence of different scenarios (sets of parameter values) considered.
- *Monte Carlo analysis* and other simulation methods can be used to derive probability distributions of the net benefits of alternative policy choices. It requires explicit quantitative estimation of probability distributions of the variability or error characterizing each parameter and/or model specification, which are then combined to derive an overall probability

distribution of net benefits. Parameter or model probability distributions may be derived statistically (for example, directly from population data or indirectly from regression or other statistical models) or by assumption. This approach has the advantage of weighing explicitly the likelihood of alternative outcomes, permitting evaluation of their relative importance. Because of the sensitivity of such simulations to assumptions about correlations between parameters, the likelihood that a particular specification is correct, omitted factors, and assumptions about the distribution of parameters, etc., special care should be taken to address these potential pitfalls.

- *Delphi methods*, which involve derivation of consensus estimates by groups of experts, can be used to identify subjective upper and lower bound estimates, variances around mean estimates, and other measures indicating uncertainty.
- *Meta-analysis* involves combining data or results from a number different studies. For example, one could re-estimate key model parameters using combined data from a number of different sources, improving estimation accuracy. Alternatively, one could use parameter estimates (elasticities of supply and demand, implicit values of mortality risk reduction) from a number of different studies as data points, and analyze variations in those results as functions of potential causal factors. Care must be taken to ensure that the data used are compatible, that appropriate statistical methods are used, that spurious correlation problems are considered, and so on.

New methods may become available in the future as well. This guidance is not intended to discourage or inhibit their use.

Uncertainty may arise from a variety of fundamentally different sources, including lack of data, variability in populations or natural conditions, limitations on fundamental scientific knowledge (both social and natural) resulting in ignorance about key relationships, or underlying randomness. The relative importance of these different sources may suggest different policy responses.

- When uncertainty is due largely to inadequate data collection (lack of information), the appropriate policy response may be to defer action pending further study. But information is an economic good, and further study is justifiable as a policy alternative only when the prospective benefits of improved policy decisions outweigh the incremental costs of collecting the needed information. Even if an agency proposing to defer action for further study can justify its inability to perform a thorough benefit-cost analysis, it must present at least rough estimates of prospective incremental benefits and costs of further study.
- When uncertainty is due largely to observable variability in populations or natural conditions, the appropriate policy response may be to refine targeting, that is, to differentiate policies across key subgroups. A benefit-cost test is appropriate in this case as well: The incremental benefits of improved efficiency from targeting must outweigh any incremental costs of monitoring and enforcement. Agencies proposing improved targeting should provide at least rough estimates of prospective incremental benefits and costs, although thorough benefit-cost analyses are preferable.

Other issues arise specifically in the context of valuing risky outcomes. As noted above, risk-averse individuals are willing to pay more for outcomes with equal expected net benefits but less uncertainty, that is, a less dispersed probability of occurrence. Evaluations of regulations affecting uncertain outcomes must thus address the size of net benefits under alternative conditions, the probabilities that those alternative conditions occur, errors involved in estimation, and preferences about risk. The

intrinsic value of risk reduction, or risk premium, can be incorporated into net benefits estimates by expressing benefits and costs in terms of their *certainty equivalents*, defined as benefits and costs occurring with certainty that have a value equal to sets of risky benefits and costs. The certainty equivalent of the net benefits of a regulation with uncertain (risky) net benefits is generally smaller than the expected value of those net benefits, because risk has an intrinsically negative value (risk-bearing is costly). However, the certainty equivalent of the net benefits of a risk-reducing regulation is generally larger than the expected value of the net benefit because it includes the intrinsic value of risk reduction or risk premium associated with the reduction in risk.

Regulation-induced changes in expenditures on self-protection, mitigation, or other risk-reduction measures should be included in estimates of expected benefits and costs. Individuals' risk premia may also be included as benefits of risk-reducing policies or costs of risk-increasing policies. The importance of including estimates of individuals' willingness to pay varies. If those affected by a regulatory action have diversified sources of income, if the risk affects a small share of income or wealth, or if individuals have sufficient flexibility in production methods or sources of employment, then willingness to pay for marginal reductions in pure uncertainty will tend to be small enough to ignore. Only in cases where risks are large relative to income or wealth do risk premia become important. The Federal government often should be treated as a risk-neutral entity because of its high degree of diversification and the fact that changes caused by regulatory action are typically quite small relative to the size of the national economy, which imply that risk premia associated with regulatory action are negligible and should thus not be included in regulatory benefit-cost analyses.

As noted in the previous section, the discount rate generally should not be adjusted as a device to account for the riskiness of future benefits or costs. Any allowance for risk should be made by adjusting the monetary values of uncertain benefits or costs (for the year in which they occur) so that they are expressed in terms of their certainty equivalents. The adjustment for uncertainty may well vary over time because the degree of uncertainty may change. For example, price forecasts are typically characterized by increasing uncertainty (forecast error) over time, because of increasing likelihood of unforeseen (and unforeseeable) changes in market conditions as time passes. In such cases, the certainty equivalents of net benefits will tend to change systematically over time; these changes must be taken into account in analyzing regulations that have substantial effects over a long time period. Uncertainty that increases systematically over time will result in certainty equivalents that fall systematically over time; however, these decreases in certainty equivalents will mimic the effects of an increase in the discount rate only under special circumstances.

5. Assumptions. Where benefit or cost estimates are heavily dependent on certain assumptions, it is essential to make these assumptions explicit and, where alternative assumptions are plausible, to carry out sensitivity analyses based on these assumptions. If the value of net benefits changes sign with alternative plausible assumptions, further analysis to develop more evidence on which of the alternative assumptions is the most appropriate may be necessary. Because the adoption of a particular estimation methodology sometimes implies major hidden assumptions, it is important to analyze estimation methodologies carefully to make hidden assumptions explicit.

The effectiveness of proposed rules may depend in part upon agency enforcement strategies, which may vary over time as agency priorities and budgetary constraints change. Because an agency usually cannot commit to an enforcement strategy at the time the rule is promulgated, the analysis of a rule's benefits and costs should assume that compliance with the rule is complete. There may be circumstances when other assumptions should be considered as well. The analysis should also differentiate between the benefits and costs of a new rule, given an assumed level of compliance, and the implications of changes in compliance with an existing rule.

6. International Trade Effects. In calculating the benefits and costs of a proposed regulatory action, generally no explicit distinction needs to be made between domestic and foreign resources. If, for example, compliance with a proposed regulation requires the purchase of specific equipment, the opportunity cost of that equipment is ordinarily best represented by its domestic cost in dollars, regardless of whether the equipment is produced domestically or imported. The relative value of domestic and foreign resources is correctly represented by their respective dollar values, as long as the foreign exchange value of the dollar is determined by the exchange market. Nonetheless, an awareness of the role of international trade may be quite useful for assessing the benefits and costs of a proposed regulatory action. For example, the existence of foreign competition may make the demand curve facing a domestic industry more elastic than it would be otherwise. Elasticities of demand and supply frequently can significantly affect the magnitude of the benefits or costs of a regulation.

Regulations limiting imports -- whether through direct prohibitions or fees, or indirectly through an adverse differential effect on foreign producers or consumers relative to domestic producers and consumers -- raise special analytic issues. The economic loss to the United States from limiting imports should be reflected in the net benefit estimate. However, a benefit-cost analysis will generally not be able to measure the potential U.S. loss from the threat of future retaliation by foreign governments. This threat should then be treated as a qualitative cost (see section 7).

7. Qualitative Benefits and Costs. Effects that cannot be fully quantified may be considered. Those effects that can be quantified should be presented along with appropriate qualitative information. Presentation of monetized benefits and costs along with the quantified effects of alternative actions is the preferred approach. However, it is recognized that monetization of some of the effects of regulations is often difficult if not impossible and that even quantification of some effects may not be easy.

Accordingly, irrespective of the presentation of monetized benefits and costs, the EA should present physical (or other quantitative) measures of the effects of the alternative actions along the same or similar dimensions as a monetary measure: such as magnitude, timing, and likelihood, plus other relevant dimensions (e.g., irreversibility and uniqueness). For instance, assume the effects of a water quality regulation include increases in fish populations and habitat over the affected stream segments and that it is not possible to monetize such effects. It would then be appropriate to describe the benefits in terms of stream miles of habitat improvement and increases in fish population by species (as well as to describe the timing and likelihood of such effects, etc.). Care should be taken, however, when estimates of monetized and physical effects are mixed in the same analysis. Such mixing raises the possibilities for double-counting of benefits, an issue that should then be carefully addressed in the EA. Finally, the EA should distinguish between effects unquantified because they were judged to be relatively unimportant, and effects that could not be quantified for other reasons.

8. Distributional Effects and Equity. Those who bear the costs of a regulation and those who enjoy its benefits often are not the same people. The term "distributional effects" refers to the description of the net effects of a regulatory alternative across the population and economy, divided up in various ways (e.g., income groups, race, sex, industrial sector). Benefits and costs of a regulation may also be distributed unevenly over time, perhaps spanning several generations.

Attempts to incorporate distributional concerns directly into benefit-cost analysis would require the establishment of unequal weights for different groups in society. This is a matter for policymakers. In the absence of a consensus set of weights, direct inclusion of distributional concerns in benefit-cost analysis is impractical.

Nevertheless, where distributive effects are thought to be important, the distributional effects of various regulatory alternatives should be described quantitatively, if possible including the magnitude,

likelihood, and incidence of effects on particular groups. Effects on the distribution of income that are transmitted through changes in market prices can be important, if difficult, to capture. The EA should also present information on the streams of benefits and costs over time as well as present value estimates, particularly where intergenerational effects are concerned.

Judgments made about the fairness of the distribution of policy effects are judgments about equity. There are no generally accepted principles for determining when one distribution of net benefits is more fair than another. Thus, the EA should be careful to describe distributional effects without judging their fairness. These descriptions should be broad, focusing on large groups with small effects per capita as well as on small groups experiencing large effects per capita. Equity issues not related to the distribution of policy effects should be noted when important and described quantitatively to the extent feasible.

B. Benefit Estimates

The EA should state the beneficial effects of the proposed regulatory change and its principal alternatives. In each case, there should be an explanation of the mechanism by which the proposed action is expected to yield the anticipated benefits. An attempt should be made to quantify all potential real incremental benefits to society in monetary terms to the maximum extent possible. A schedule of monetized benefits should be included that would show the type of benefit and when it would accrue; the numbers in this table should be expressed in constant, undiscounted dollars. Any expected incremental benefits that cannot be monetized, such as an increase in the rate of introducing new technology, should be explained.

The EA should identify and explain in detail the data or studies on which benefit estimates are based. Where benefit estimates are derived from a statistical study, the EA must provide sufficient information so that an independent observer can determine the representativeness of the sample, whether it was extrapolated from properly in developing aggregate estimates, and whether the results are statistically significant.

For regulations addressing health and safety risks, the calculation of expected potential benefits should derive from the agency's estimate of the mean value of the reduction in risk attributable to the standard. Estimates of the prevailing level of risk and of the reduction in risk to be anticipated from a proposed standard should be unbiased expected-value estimates rather than hypothetical worst-case or high end estimates. Extreme safety or health results should be weighted (along with intermediate results) by the probability of their occurrence to estimate the expected result implied by the available evidence. In addition, to the extent possible, the distribution of probabilities for various possible results should be presented. This will allow for a reasoned determination of the appropriate level of protection by decisionmakers. The level of protection to be provided should derive from the decisionmaking process, not from adjusting the risk or benefit estimates in a conservative direction at the information-gathering or analytical stages of the process. Conservative estimates should be presented as complements to expected value estimates.

It is important to guard against double-counting of benefits. For example, if a regulation improves the quality of the environment in a community, the value of real estate in the community might rise, reflecting the greater attractiveness of living in the improved environment. Inferring benefits from changes in property values is complex. On the one hand, the rise in property values may reflect the capitalized value of these improvements. On the other hand, benefit estimates that do not incorporate the consequences of land use changes will not capture the full effects of regulation. For regulations with significant effects on land uses, these effects must be separated from the capitalization of direct regulatory impacts into property values.

1. **General Considerations.** The concept of "opportunity cost" is the appropriate construct for valuing both benefits and costs. The principle of "willingness-to-pay" captures the notion of opportunity cost by providing an aggregate measure of what individuals are willing to forgo to enjoy a particular benefit. Market transactions provide the richest data base for estimating benefits based on willingness-to-pay, as long as the goods and services affected by a potential regulation are traded in markets. Estimation problems arise in a variety of instances, of course, where prices or market transactions are difficult to monitor. Markets may not exist in some instances, forcing regulatory analysts to develop appropriate proxies that simulate market exchange. Indeed, the analytical process of deriving benefit estimates by simulating markets may suggest alternative regulatory strategies that create such markets.

Either willingness-to-pay (WTP) or willingness-to-accept (WTA) can provide an appropriate measure of benefits, depending on the allocation of property rights. The common preference for WTP over WTA measures even where WTA is appropriate is based on the empirical difficulties in estimating the latter.

Estimates of willingness-to-pay based on observable and replicable behavior deserve the greatest level of confidence. Considerably less confidence should be conferred on benefit estimates that are neither derived from market transactions nor based on behavior that is observable or replicable. Of course, innovative benefit estimation methodologies may be necessary in some cases and should be encouraged. However, reliance upon such methods intensifies the need for quality control to ensure that estimates derived conform as closely as possible to what would be observed if markets existed.

2. **Principles for Valuing Directly Observable Benefits.** Ordinarily, goods and services are to be valued at their market prices. However, in some instances, the market value of a good or service may not reflect its true value to society. If a regulatory alternative involves changes in such a good or service, its monetary value for purposes of benefit-cost analysis should be derived using an estimate of its true value to society (often called its "shadow price"). For example, suppose a particular air pollutant damages crops. One of the benefits of controlling that pollutant will be the value of the crop saved as a result of the controls. If the price of that crop is held above the unregulated market equilibrium price by a government price-support program, it will overstate the value of the benefit of controlling the pollutant. The social value of the benefit should be calculated using a shadow price for crops subject to price supports. The estimated shadow price should reflect the value to society of marginal uses of the crop (e.g., the world price if the marginal use is for exports). If the marginal use is to add to very large surplus stockpiles, the shadow price would be the value of the last units released from storage minus storage cost. Therefore, where stockpiles are large and growing, the shadow price is likely to be low and could well be negative.

3. **Principles for Valuing Benefits That Are Indirectly Traded in Markets.** In some important instances, a benefit corresponds to a good or service that is indirectly traded in the marketplace. Important examples include reductions in health-and-safety risks, the use-values of environmental amenities and scenic vistas. To estimate the monetary value of such an indirectly traded good, the willingness-to-pay valuation methodology is still conceptually superior. As noted in Sections 4 and 5 immediately following, alternative methods may be used where there are practical obstacles to the accurate application of direct willingness-to-pay methodologies.

A variety of methods have been developed for estimating indirect benefits. Generally, these methods apply statistical techniques to distill from observable market transactions the portion of willingness-to-pay that can be attributed to the benefit in question. Examples include estimates of the value of environmental amenities derived from travel-cost studies, hedonic price models that measure differences or changes in the value of land, and statistical studies of occupational-risk premiums in wage rates. For all these methods, care is needed in designing protocols for reliably estimating benefits or in adapting the results of previous studies to new applications. The use of occupational-risk premiums is especially vexing since the risks, when recognized, are voluntarily rather than involuntarily assumed, and the

sample of individuals upon which premium estimates are based commonly is skewed toward more risk-tolerant people.

Contingent-valuation methods have become increasingly common for estimating indirect benefits, but the hypothetical nature of the methods and the complexities of the goods being valued by this technique raise issues about its accuracy in estimating willingness to pay compared to methods based on (indirect) revealed preferences. Accordingly, value estimates derived from contingent-valuation studies have a greater burden of analytical care than studies based on observable behavior. For example, the contingent valuation instrument must portray a realistic choice situation for respondents -- where the hypothetical choice situation corresponds closely with the policy context to which the estimates will be applied. The practice of contingent valuation is rapidly evolving, and agencies relying upon this tool for valuation should demonstrate that the methods used reflect advances in the state of the art.

4. Principles and Methods for Valuing Goods That Are Not Traded Directly or Indirectly in Markets. Some types of goods, such as preserving environmental amenities apart from their use and direct enjoyment by people, are not traded directly or indirectly in markets. The practical obstacles to accurate measurement are similar to (but generally more severe than) those arising with respect to indirect benefits, principally because there are few or no related market transactions to provide data for willingness-to-pay estimates.

For many of these goods, particularly goods providing "nonuse" values, contingent-valuation methods may provide the only analytical approaches currently available for estimating values. The absence of observable and replicable behavior with respect to the good in question, combined with the complex and often unfamiliar nature of the goods being valued argues for great care in the design and execution of surveys and in the rigor of analysis. In the absence of such efforts, analyses based heavily on the values of such goods and services ordinarily would fail the test of a satisfactory EA.

5. Methods for Valuing Health and Safety Benefits. For health and safety benefits, a distinction should be made between risks of nonfatal illness or injury and fatality risks.

(a) Nonfatal illness and injury. Although the willingness-to-pay approach is conceptually superior, measurement difficulties may cause the agency to prefer valuations of reductions in risks of nonfatal illness or injury based on the expected direct costs avoided by such risk reductions. For example, an injury-value estimate from a willingness-to-pay study may be an average over a specific combination of injuries of varying severity. If the average injury severity in such a study differs greatly from the injury severity addressed by the regulatory action, then the study's estimated injury value may not be appropriate for evaluating that action. More generally, willingness-to-pay estimates may be unavailable or too tentative to provide a solid base for the evaluation. The agency should use whatever approach it can justify as most appropriate for the decision at hand, keeping in mind that direct cost measures can be expected to understate the true cost. Costs should also be appropriately discounted to reflect the latency period between exposure and illness.

The primary components of the direct-cost approach are medical and other costs of offsetting illness or injury; costs for averting illness or injury (e.g., expenses for goods such as bottled water or job safety equipment that would not be incurred in the absence of the health or safety risk); and the value of lost production. Possibly important costs that may be omitted by the use of the direct-cost approach are the costs of pain, suffering and time lost (due to illness, injury, or averting behavior) from leisure and other activities that are not directly valued in the market. The present value of the expected stream of costs should be included. For long-term chronic illness or incapacitation the direct-cost approach may be particularly problematic compared to a willingness-to-pay estimate analogous to the valuation of mortality risks (discussed below).

Valuing lost production and other time-related costs gives rise to a number of methodological concerns. For occupational illness or injury, lost production can be measured by losses in workers' value of marginal product. In valuing the effects of broader environmental hazards, however, attention must be given to the composition of the population exposed. For example, some portion of the working-age population may be unemployed. Values must also be imputed to the loss of homemaker services provided by nonworking parents; valuing these losses according to the wage rates for hired domestic caregivers may understate the true loss to the household. Finally, the valuation of health impacts on children through the direct-cost approach is especially problematic since their zero opportunity cost in the labor market is not a good proxy for the social cost of childhood illness. The agency should use whatever approach it can justify but should provide a clear explanation of the assumptions and reasoning used in the valuation.

(b) Fatality Risks. Reductions in fatality risks as a result of government action are best monetized according to the willingness-to-pay approach. The value of changes in fatality risk is sometimes expressed in terms of the "value of statistical life" (VSL) or the "value of a life". These terms are confusing at best and should be carefully described when used. It should be made clear that these terms refer to the willingness to pay for reductions in risks of premature death (scaled by the reduction in risk being valued). That is, such estimates refer only to the value of relatively small changes in the risk of death. They have no application to the certain postponement of the death of an identifiable individual.

There is also confusion about the term "statistical life." This term refers to the sum of risk reductions expected in a population. For example, if the annual risk of death is reduced by one in a million for each of two million people, that represents two "statistical lives" saved per year (two million x one millionth = two). If the annual risk of death is reduced by one in 10 million for each of 20 million people, that also represents two statistical lives saved.

Another way of expressing reductions in fatality risks is in terms of the "value of statistical life-years extended" (VSLY). For example, if a regulation protected individuals whose average remaining life expectancy was 40 years, then a risk reduction of one fatality would be expressed as 40 life-years extended. This approach allows distinctions in risk-reduction measures based on their effects on longevity, such as regulations that disproportionately protect young people (e.g., motor vehicle safety regulations) or elderly people (e.g., regulations controlling carcinogens). It is important to bear in mind, however, that willingness to pay for risk reduction will reflect social values as well as longevity considerations.

As described below, there are several ways that the benefits of reduced mortality risk reduction can be estimated. In considering these alternatives, however, it is important to keep in mind the larger objective of consistency in the estimates of benefits applied across regulations and agencies for comparable risks, subject to legal limitations. Failure to maintain such consistency leads to unnecessary costs of risk reduction and failure to achieve the most risk reduction from a given level of resources spent on risk reduction. The valuation of mortality risk reduction is an evolving area in terms of results and methodology. Agencies generally should utilize valuation estimates, either explicitly or implicitly calculated, that are consistent with the current state of knowledge when the analysis is being performed, and should show that their approach to valuation reflects the current state of knowledge. Significant deviations from the prevailing state of knowledge should be justified.

6. Alternative Methodological Frameworks for Estimating Benefits from Reduced Fatality Risks.

Several alternative ways of incorporating the value of reducing fatality risks into the framework of benefit-cost analysis may be appropriate. These may involve either explicit or implicit valuation of fatality risks, and generally involve the use of estimates of the VSL from studies on wage compensation for occupational hazards, on consumer product purchase and use decisions, or from a small literature

using contingent valuation approaches. Because these estimates may not be entirely appropriate for the risk being evaluated in some cases (e.g., the use of occupational risk premia for environmental hazards), however, agencies should provide a justification for their selection of estimates and for any adjustments of the estimates to reflect the nature of the risk being evaluated.

One acceptable explicit valuation approach would be for the agency to select a single estimate of the value of reductions in fatality risk at ordinary risk levels (e.g., below 10^{-4} annually) and use this value consistently for evaluating all its programs that affect ordinary fatality risks. Where the analysis uses a range of alternative values for reductions in fatality risk, it may be useful to calculate break-even values, as in other sensitivity analyses. This requires calculating the borderline value of reductions in fatality risk at which the net benefit decision criterion would switch over from favoring one alternative to favoring another (i.e., the value of fatality risk at which the net benefits of the two alternatives are equal). This method will frequently be infeasible because of its computational demands, but where appropriate, it may be a useful addition to the sensitivity analysis.

An implicit valuation approach could entail calculations of the net cost per unit of reduction in fatality risk (cost per "statistical life saved"), with net costs defined as costs minus monetized benefits. This must be used with care since there is a serious potential pitfall: It is not correct to choose between two mutually exclusive alternatives by selecting the alternative with lowest net cost per statistical life saved. An alternative with higher cost per life saved may nonetheless yield higher net benefit to society by saving more statistical lives (i.e., by providing greater aggregate risk reduction).

This pitfall can be avoided by calculating the incremental cost per life saved of alternative measures. Alternatives should be arrayed in order of increasing reductions in expected fatalities. Generally this will also correspond to increasing incremental cost. (It is possible that there will be some initial economies of scale, with declining incremental costs. If incremental costs are declining over a broad range of alternative measures it is likely that there are flaws in the definition of the measures or the estimation of their effects.) The incremental cost per life saved then can be calculated for each adjacent pair of alternatives. With this construction, the choice to undertake a certain set of measures while eschewing others implies a lower and upper bound for the value per life saved; it must be at least as large as the incremental cost of the most expensive measure undertaken, but not as large as the cheapest measure not undertaken. In contrast to explicit valuation approaches, this avoids the necessity of specifying in advance a value for reductions in fatality risks. However, the range of values should be consistent with estimated values of reductions in fatality risks calculated according to the willingness-to-pay methodology.

While there are theoretical advantages to using a value of statistical life-year-extended approach, current research does not provide a definitive way of developing estimates of VS LY that are sensitive to such factors as current age, latency of effect, life years remaining, and social valuation of different risk reductions. In lieu of such information, there are several options for deriving the value of a life-year saved from an estimate of the value of life, but each of these methods has drawbacks. One approach is to use results from the wage compensation literature (which focus on the effect of age on WTP to avoid risk of occupational fatality). However, these results may not be appropriate for other types of risks. Another approach is to assume that the VS LY is a linear function of average expected years of life remaining in the population from which the VSL was estimated (i.e., divide the VSL by average expected life years remaining). A third is to annualize the VSL using an appropriate rate of discount and the average life years remaining. Neither of these latter two approaches provides an independent estimate of VS LY; they simply rescale the VSL estimate. Agencies should consider providing estimates of both VSL and VS LY, while recognizing the developing state of knowledge in this area.

Whether the VSLs (or VS LYs) are chosen explicitly or are an implicit outcome of a cost-effectiveness approach, the choice of estimates *ideally* should be based on a comparison of the context of the regulation affecting risks and the context of the study or studies being relied on for value estimates. The literature identifies certain attributes of risk that affect value. These attributes include the baseline risk, the extent to which the risk is voluntarily or involuntarily assumed, and features (such as age) of the population exposed to risk. For regulations affecting some segments of the population (e.g., infants) more than those groups which have provided most of the information used to estimate VSLs (e.g., working-age adults), the use of VSLs from the literature may not be appropriate. At a minimum, differences in regulatory and study contexts should be acknowledged and a rationale for the choice of value estimate offered.

Based on the literature, both the scale of baseline risks and their degree of voluntariness appear to affect VSLs. However, the risk from an involuntary hazard typically is too small to represent a significant portion of baseline risk. (For example, average annual mortality risks for men aged 55-64 are about two per hundred, while occupational fatality risk reductions typically achieved by regulations are between two per ten thousand and two per million annually.) In such cases it may be legitimate to assume that the valuation of risks can be treated as independent of baseline risk.

To value reductions in more voluntarily incurred risks (e.g., those related to motorcycling without a helmet) that are "high," agencies should consider using lower values than those applied to reductions in involuntary risk. When a higher-risk option is chosen voluntarily, those who assume the risk tend to be more risk-tolerant, i.e., they place a relatively lower value on avoiding risks. Empirical studies of risk premiums in higher-risk occupations suggest that reductions in risks for voluntarily assumed high risk jobs (e.g., above 10-4 annually) are valued less than equal risk reductions for lower-risk jobs. However, when occupational choices are limited the assumption of occupational risks may be more involuntary in nature.

C. Cost Estimates

1. General Considerations. The opportunity cost of an alternative is the value of the benefits foregone as a consequence of that alternative. For example, the opportunity cost of banning a product (e.g., a drug, food additive, or hazardous chemical) is the foregone net benefit of that product. It is measured by changes in producers' and consumers' surpluses. (Producers' surplus is the difference between the amount a producer is paid for a unit of a good and the minimum amount the producer would accept to supply that unit. It is measured by the area between the price and the supply curve for that unit. Consumers' surplus is the difference between what a consumer pays for a unit of a good and the maximum amount the consumer would be willing to pay for that unit. It is measured by the distance between the price and the demand curve for that unit.) As another example, even if a resource required by regulation does not have to be paid for because it is already owned by the regulated firm, nonetheless, the use of that resource to meet the regulatory requirement has an opportunity cost equal to the net benefit it would have provided in the absence of the requirement. Any such foregone benefits for an alternative should be monetized wherever possible and either added to the costs or subtracted from the benefits of that alternative. Any costs that are averted as a result of an alternative should be monetized wherever possible and either added to the benefits or subtracted from the costs of that alternative.

All costs calculated should be incremental, that is, they should represent changes in costs that would occur if the regulatory alternative is chosen compared to costs in the base case (ordinarily no regulation or the existing regulation). Future costs that would be incurred even if the regulation is not promulgated, as well as costs that have already been incurred (sunk costs), are not part of incremental

costs. If marginal cost is not constant for any component of costs, incremental costs should be calculated as the area under the marginal cost curve over the relevant range.

Costs include, but are not limited to, private-sector compliance costs and government administrative costs. Costs that are not monetary outlays should be included and should be given a monetary value wherever possible. Such costs may include the value (opportunity cost) of benefits foregone, losses in consumers' or producers' surpluses, discomfort or inconvenience, and loss of time. A schedule of monetized costs should be included that would show the type of cost and when it would occur; the numbers in this table should be expressed in constant, undiscounted dollars. Any expected incremental costs that cannot be monetized should be explained. An important type of cost that often cannot be quantified is a slowing in the rate of innovation or of adoption of new technology. For example, regulations requiring a costly and time-consuming approval process for new products or new facilities may have such costs, as may regulations setting much more stringent standards for new facilities than existing ones.

Two accounting cost concepts that should not be counted as costs in benefit-cost analysis are interest and depreciation. The time value of money is already accounted for by the discounting of benefits and costs. Generally, depreciation is already taken into account by the time distribution of benefits and costs. One legitimate use for depreciation calculations in benefit-cost analysis is to estimate the salvage value of a capital investment.

2. Real Costs Versus Transfer Payments. An important, but sometimes difficult, problem in cost estimation is to distinguish between real costs and transfer payments. Transfer payments are not genuine costs but payments for which no real good or service is received in return. While transfers should not be included in estimates of the benefits and costs of a regulation, they may be important for describing the distributional effects of a regulation. If there are significant benefits or costs resulting from regulations that involve changes in tax receipts and deadweight losses, it may be appropriate to consider these also. Monopoly profits, insurance payments, government subsidies and taxes, and distribution expenses are four potential problem areas.

(a) Monopoly profits. If, for example, sales of a competitively produced product were restricted by a government regulation so as to raise prices to consumers, the resulting monopoly profits are not a benefit of the rule, nor is their payment by consumers a cost. The real benefit-cost effects of the regulation would be represented by changes in producers' and consumers' surpluses.

(b) Insurance payments. Potential pitfalls in benefit-cost analysis may also arise in the case of insurance payments, which are transfers. Suppose, for example, a worker safety regulation, by decreasing employee injuries, led to reductions in firms' insurance premium payments. It would be incorrect to count the amount of the reduction in insurance premiums as a benefit of the rule. The proper measure of benefits is the value of the reduction in worker injuries, monetized as described previously, plus any reduction in real costs of administering insurance (such as the time insurance company employees needed to process claims) due to the reduction in worker insurance claims. Reductions in insurance premiums that are matched by reductions in insurance claim payments are changes in transfer payments, not benefits.

(c) Indirect taxes and subsidies. A third instance where special treatment may be needed to deal with transfer payments is the case of indirect taxes (tariffs or excise taxes) or subsidies on specific goods or services. Suppose a regulation requires firms to purchase a \$10,000 piece of imported equipment, on which there is a \$1,000 customs duty. For purposes of benefit-cost analysis the cost of the regulation for each firm ordinarily would be \$10,000, not \$11,000, since the \$1,000 customs duty is a transfer payment from the firm to the Treasury, not a real resource cost. This approach, which implicitly assumes that the equipment is supplied at constant costs, should be used except in special

circumstances. Where the taxed equipment is not supplied at constant cost, the technically correct treatment is to calculate how many of the units purchased as a result of the regulation are supplied from increased production and how many from decreased purchases by other buyers. The former units would be valued at the price without the tax and the latter units would be valued at the price including tax. This calculation is usually difficult and imprecise because it requires estimates of supply and demand elasticities, which are often difficult to obtain and inexact. Therefore, this treatment should only be used where the benefit-cost conclusions are likely to be sensitive to the treatment of the indirect tax. While costs ordinarily should be adjusted to remove indirect taxes on specific goods or services as described here, similar treatment is not warranted for other taxes, such as general sales taxes applying equally to most goods and services or income taxes.

(d) Distribution expenses. The treatment of distribution expenses is also a source of potential error. For example, suppose a particular regulation raises the cost of a product by \$100 and that wholesale and retail distribution expenses are on average 50 percent of the factory-level cost. It would ordinarily be incorrect to add a \$50 distribution markup to the \$100 cost increase to derive a \$150 incremental cost per product for benefit-cost analysis. Most real resource costs of distribution do not increase with the price of the product being distributed. In that case, either distribution expenses would be unchanged or, if they increased, the increase would represent distributor monopoly profits. Since the latter are transfer payments, not real resource costs, in neither case should additional distribution expenses be included in the benefit-cost analysis. However, increased distribution expenses should be counted as costs to the extent that they correspond to increased real resource costs of the distribution sector as a result of the change in the price or characteristics of the product, or if regulation directly affects distribution costs.

D. Expenditure Rules

Regulations establishing terms or conditions of Federal grants, contracts, or financial assistance call for a different form of regulatory analysis than do other types of regulation. In some instances, a full-blown benefit-cost analysis may be appropriate to inform Congress and the President more fully about the desirability of the program, but this would not ordinarily be required in an EA. The primary function of the EA for this type of regulation should be to verify that the terms or conditions are the minimum necessary to achieve the purposes for which the funds were appropriated. They should not contain conditions in pursuit of goals that are not germane to the purpose for which the funds were authorized and appropriated. Beyond controls to prevent abuse and to ensure that funds appropriated to achieve a specific purpose are channeled efficiently toward that end, maximum discretion should be allowed in the use of Federal funds, particularly when the recipient is a State or local government.

IV. RATIONALE FOR CHOOSING THE PROPOSED REGULATORY ACTION

The EA should include an explanation and justification of the reasons for choosing the selected regulation. Ordinarily, the regulatory alternative selected should be the one that achieves the greatest net benefits. If legal constraints prevent this choice, they should be identified and explained, and their net cost should be estimated.

Where uncertainties are substantial or a large proportion of benefits cannot be monetized, other methods of summarizing the benefit-cost analysis may sometimes be appropriate. When alternative forms of presentation are used, the objective must continue to be the maximization of net benefits (except where prohibited by law). Alternative criteria must be used with care because of the potential for errors or misinterpretation.

Agencies need not calculate the internal rate of return for a regulation. The internal rate of return is often difficult to compute and is problematical when multiple rates exist. It must not be used as a

criterion for choosing between mutually exclusive alternatives. As a criterion for choosing between alternatives that are not mutually exclusive, it has no advantages over the criterion of maximizing the present value of net benefits.

Benefit-cost ratios, if used at all, must be used with care to avoid a common pitfall. Whether a regulation's benefits are greater (or less) than its costs can be determined by whether its benefit-cost ratio is greater (or less) than one. However, it is a mistake to choose among mutually exclusive alternatives by selecting the alternative with the highest ratio of benefits to costs. An alternative with a lower benefit-cost ratio than another may have the higher net benefits.

In cases where some important benefits cannot be assigned monetary values, cost-effectiveness analysis should be used where possible to evaluate alternatives. Costs should be calculated net of monetized benefits. Where some benefits are monetizable and others are not, however, a cost-effectiveness analysis will generally not yield an unambiguous choice; nevertheless, such an analysis is helpful for calculating a "breakeven" value for the unmonetized benefits (i.e., a value that would result in the action having positive net benefits). Such a value can be evaluated for its reasonableness in the discussion of the justification of the proposed action. Cost-effectiveness analysis should also be used to compare regulatory alternatives in cases where the level of benefits is specified by statute.

V. STATUTORY AUTHORITY

The EA should include a statement of determination and explanation that the proposed regulatory action is within the agency's statutory authority.

FURTHER READING

Edith Stokey and Richard Zeckhauser, *A Primer for Policy Analysis*. Chapters 9 and 10 provide a good introduction to basic concepts.

E. J. Mishan, *Economics for Social Decisions: Elements of Cost-Benefit Analysis*. Assumes some knowledge of economics. Chapters 5-8 should be helpful on the important subjects of producers' and consumers' surpluses (not discussed extensively in this guidance document).

W. Kip Viscusi, *Risk By Choice*. Chapter 6 is a good starting point for the topic of valuing health and safety benefits. Other more technical sources are given in the bibliography.

Robert Cameron Mitchell and Richard C. Carson, *Using Surveys to Value Public Goods: The Contingent Valuation Method*. Provides a valuable discussion on the potential strengths and pitfalls associated with the use of contingent-valuation methods.

V. Kerry Smith, Ed., *Advances in Applied Micro-economics: Risk, Uncertainty, and the Valuation of Benefits and Costs*.

Judith D. Bentkover, Vincent T. Covello, and Jeryl Mumpower, Eds., *Benefits Assessment: The State of the Art*.

Myrick Freeman, *The Measurement of Environmental and Resource Values: Theory and Methods*. A comprehensive high-level treatment of environmental valuation issues.



OFFICE OF THE VICE PRESIDENT
WASHINGTON

March 13, 1995

MEMORANDUM FOR THE REGULATORY POLICY ADVISORS TO THE PRESIDENT

DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIR OF THE COUNCIL OF ECONOMIC ADVISORS
ASSISTANT TO THE PRESIDENT FOR SCIENCE AND TECHNOLOGY
ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF TO THE VICE PRESIDENT
ASSISTANT TO THE PRESIDENT AND COUNSEL
ASSISTANT TO THE PRESIDENT FOR DOMESTIC POLICY
ASSISTANT TO THE PRESIDENT FOR INTERGOVERNMENTAL AFFAIRS
ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY
ASSISTANT TO THE PRESIDENT AND STAFF SECRETARY
DEPUTY ASSISTANT TO THE PRESIDENT AND DIRECTOR OF THE OFFICE OF
ENVIRONMENTAL POLICY
ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS

FROM: ELAINE KAMARCK

SUBJECT: REGULATORY REFORM

The Vice President will hold the next regulatory review session on the subject of health care on Tuesday, March 14, from 5:30 to 6:30 in the Ceremonial Office. Attached is a copy of the revised regulatory meeting schedule.

PROPOSED MEETING SCHEDULE

as of March 12, 1995

March 14 (Tues)	Healthcare	DPC
March 14 (Tues)	NPR Workshop at OTS	NPR
March 15 (Wed) 4:00 Ceremonial Office	<i>Prebriefing on Regulation of Science, Technology and IT</i>	OSTP
March 21 (Tues)	Workplace Safety & Labor	DPC
March 22 (Wed)	NPR Workshop at OTS	NPR
March 23 (Thurs))	Workplace Safety & Labor (con't) Regulation of Science, Technology (IT & Regulation to be rescheduled)	DPC OSTP
March 28 (Tues)	Customer Service and IT issues summary	OVP
March 30 (Thurs)	Reprise	

TO INSERT: DOT(Coast Guard), Agriculture, Energy & Natural Resources

NPR will update and circulate revised schedules as appropriate.

The current Economist has an article on Regulatory Reform (p.25). I assume that you saw the front page article in the Post on "Forging an Alliance for Deregulation."

The regulatory reform workshops provided by NPR will continue to be scheduled weekly, every Wednesday from 2:00PM to 4:00PM.

All meetings with the Vice President (the meetings listed above that are not italicized) are held in the Vice President's Ceremonial Office in the Old Executive Office Building. Times are fluid, depending upon his schedule, but have usually been within the 4:00PM to 6:00PM time block. For more information about the time, please call 456-2816 *on the day of the meeting only* and ask for Mary O'Connor. Mary will not know the time until the day of the meeting.

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If you want to add someone to, or delete someone from this fax list, please call in their name and fax number to: Bob Knisely, 632-0150, x170.
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Kathleen A. McGinty
Chair

M E M O R A N D U M

To: Regulatory Advisors
From: Katie McGinty
Re: Transmitting Draft Reinventing Environmental Regulation Report
Date: March 6, 1995

As you know, on January 25 the Reinventing Environmental Regulation Working Group made a presentation to the Vice President and the regulatory advisors group outlining a range of possible changes to our system of environmental management. At the close of that session, the Vice President directed the staff of the National Performance Review and the Council on Environmental Quality to work with other White House offices and the Environmental Protection Agency to develop a reinvention package. The Vice President indicated that the package should be crafted to build support among businesses, environmentalists, and state and local governments.

On February 9 the group delivered to the Vice President a draft package containing 47 specific actions. After reviewing the package, the Vice President requested additional refinements. The attached document is the product of that effort. The report focuses upon 25 "High Priority Actions."

Three appendices to this document are still being developed: (1) one-pagers on the 25 High Priority Actions; (2) A list of Other Significant Actions; and (3) a summary of Clinton/Gore Administration actions over the last two years to reform the environmental regulatory system.

The NPR has scheduled a meeting with the Vice President and the regulatory advisors group for Tuesday, March 7 to discuss this report. This meeting is in preparation for an event that has been scheduled for March 16 for the President and the Vice President to unveil the Administration's package to reinvent environmental regulation.

In the course of developing the February 9 report to the Vice President, CEA and OIRA raised some additional ideas that were not included in the group's report. Those "Additional Reinvention Ideas" are also attached. These issues could be raised at Tuesday's meeting.

If you have questions concerning this report, please contact Keith Laughlin of my staff at 66550. If you have questions about Tuesday's meeting, please contact the NPR at 632-0150.

ADDITIONAL REINVENTION IDEAS

There are a number of additional possibilities for reinventing environmental regulation which would reduce costs, reduce and streamline compliance requirements, and increase state and local participation in environmental decisionmaking without compromising environmental objectives. These possibilities involve changes in existing regulation and legislative changes focused primarily on the Resource Conservation and Recovery Act (RCRA). The emphasis is on the major "regulatory engines" within EPA's various programs. These and other reforms would be buttressed by a greater general role for benefit-cost analysis in lieu of technology-driven standards where not expressly prohibited by statute.

Solid Waste: A variety of surgical legislative changes to RCRA to make its costs commensurate with its benefits, including setting land disposal restrictions based on risk versus technology standards; deferral to other regulatory programs (EPA, DOT, and OSHA) to avoid pyramiding of regulatory requirements; greater reliance on risk-reductions tailored to site characteristics, with emphasis on off-site damages that affect the population at large; reductions of unnecessary burdens on materials recycling; reduced paperwork requirements; and flexibility for states to adapt national standards to their own circumstances through regulatory negotiation. A complementary administrative remedy would tighten listing requirements to focus on discarded versus reused or recycled materials.

Water: Administrative changes include reduction of unnecessary burdens in stormwater control program, with greater consideration of economic factors in developing cost-effective management plans; greater use of rulemaking flexibility in water effluent guidelines to target cost-effective options with the greatest expected ambient water quality benefits; and aggressive development and initiation of watershed-level effluent trading programs. Complementary legislative actions include deletion of requirement for annual review of water effluent guidelines, shifting emphasis to the ambient water quality standards themselves; and authorization for effluent trading below source effluent standards provided water quality standards are satisfied.

Air: A variety of administrative changes (minor new source review under Title V, increased flexibility in I/M and stationary source monitoring requirements) would reduce compliance burdens and expand partnerships with states, localities, and the private sector without compromising air quality. Reinterpretation of the maximum available control technology (MACT) requirements for hazardous pollutant under the 1990 Clean Air Act (allowing an emissions reduction floor of 88% versus 94%) could have the potential to substantially reduce costs without adding greatly to emissions (tighter standards could be retained where cost-effective). The cost-effectiveness of the "open markets" trading program currently being developed by EPA will be enhanced if rules do not unduly limit trading possibilities by discounting traded emission credits or imposing undue certification requirements. Other changes that could improve the performance of the Clean Air Act would require legislative action (relaxation of the prohibition on considering cost in setting ambient air quality standards, institution of additional incentive-based mobile source emission reduction options).

Reinventing Environmental Regulation

**The National Performance Review
The Council on Environmental Quality
The Environmental Protection Agency**

March 16, 1995

3/6 DRAFT – FOR DISCUSSION PURPOSES ONLY

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OVERVIEW

"Do we need more common sense and fairness in our regulations? You bet we do. But we can have common sense and still provide safe drinking water. We can have fairness and still clean up toxic waste dumps. And we ought to do it."

President Clinton
January 24, 1995

Executive Summary

We are in the midst of an exciting transitional period for our nation's environmental policy. The modern era of environmental protection began in 1970 with the first Earth Day, the passage of landmark legislation, and the creation of the Environmental Protection Agency. We have accomplished much in 25 years to protect the health of our people and preserve natural wonders for future generations. But much remains to be done.

It is time to draw upon the lessons we have learned over the last 25 years to reinvent environmental protection for the 21st century. We have learned that the American people are deeply committed to a clean and healthy environment for their children and communities. We have learned that pollution is a sign of economic inefficiency and business can make money by preventing it. We have learned that better decisions result from a collaborative process with people working together, than from an adversarial process that pits them against each other. And we have learned that regulations that provide flexibility -- but demand accountability in achieving our environmental goals -- can provide greater protection at a lower cost.

This report contains a comprehensive set of 25 High Priority Actions that will make substantial improvements to the existing regulatory system, while taking significant steps toward a new and better environmental management system for the 21st century.

25 Years of Progress

Since the first Earth Day almost 25 years ago, the American people have enjoyed dramatic improvements in public health, worker safety, and the natural environment. A few examples of this success include:

- lead in the average American's bloodstream has dropped by 25 percent since 1976;
- since 1991, fifty million Americans no longer breathe unhealthy air;
- millions of Americans can now fish and swim in formerly polluted waters because municipal waste water treatment has virtually eliminated raw sewage from our waters;
- the most dangerous and persistent pesticides are no longer used or sold; and
- the bald eagle -- once close to extinction -- has been removed from the list of endangered species.

Improvements in the quality of our air, our water, and our land represent investments in the future that will pay dividends for generations to come.

To achieve this tremendous success, we have often used a prescriptive, or "command-and-control" approach. Under this system, Federal and state governments have set standards, issued permits for pollutant discharges, and then inspected, monitored and enforced the standards set for each environmental statute. We have also relied almost exclusively on "end-of-pipe" solutions. By regulating emission points to the air, water, and land we have addressed many of our most egregious environmental problems.

While much has been accomplished, much remains to be done. We face continued degradation of our rivers, lakes, and streams; growing evidence of the public health impact from toxic chemicals; continued pressures on fisheries and forests; and increasing incidence of asthma and other pollution-related illnesses.

But as we address these remaining environmental problems, this prescriptive end-of-pipe approach is reaching a point of diminishing returns. It is imposing ever greater costs on society, sometimes for a marginally smaller return. It sometimes requires costly actions that defy common sense. By focussing resources on attaining minimal compliance, it can discourage technological innovation that could achieve environmental benefits beyond

compliance. This approach can place large burdens on small businesses and small communities, while failing to protect adequately low-income and minority populations. While the prescriptive end-of-pipe approach has been successful in reducing dramatically pollution from emission points, our remaining pollution problems tend to be more diffuse and less amenable to top-down solutions. While this approach was right for its time, the time has come to reinvent environmental protection to address our remaining environmental challenges in a way that is smarter, cheaper, and more effective.

"Command-and-control" regulation and end-of-pipe strategies will always be possible policy options as we seek to address future environmental problems. They will be chosen if they are the most efficient, effective -- or only -- solutions to particular problems. But we have learned a lot about what works and what doesn't. As we seek solutions to complex problems in the future, we will draw upon that knowledge to identify innovative approaches that will achieve even greater levels of environmental protection at a lower cost.

Since 1970, we have learned that the adversarial approach that has often characterized environmental protection reduces opportunities to solve problems through cooperation. Shared decision-making offers opportunities the current system often precludes. In an atmosphere of trust, people can bridge differences, find common ground, and identify solutions. To reinvent environmental protection, we must first build trust among traditional adversaries.

We have learned that a healthy environment and a healthy economy go hand-in-hand. This growing awareness is demonstrated by the strong support that the concept of sustainable development has received from both industry and environmentalists across the country and around the world. Our economic and our environmental goals must be mutually reinforcing.

We have learned that setting "performance standards" and allowing the regulated community to find the best way to meet them can get results cheaper and quicker -- and cleaner -- than mandating design standards or specific technologies. We can promote both lower-cost environmental protection and innovation in pollution control and prevention technology. Using economic incentives along with performance standards encourages innovation. The lowest-cost, most innovative, and most effective compliance strategies earn a greater return in the marketplace. Accountability and responsibility must accompany this increased flexibility so that our citizens have confidence that our environmental goals are, in fact, being met.

And we have learned that Washington, D.C. is not the source of all the answers. There is growing support for shifting some decision-making authority -- and responsibility -- from the Federal government to local communities.

A Vision for the Next 25 Years

We are at a crucial moment in time: the transition between a regulatory system that has served us well for the last 25 years, and the creation of a new system to ensure environmental quality in the future. It is too early to tell exactly what the new system will look like, but based upon experience gained over the last 25 years, some things are clear.

Environmental protection must be driven by clear and measurable national goals. Success will be measured by achieving environmental results, not simply adherence to procedures. We must integrate environmental, social, and economic policy-making so such policies are mutually supportive, not conflicting.

We must rely on an open and inclusive decision-making process that will empower states, tribes, communities, and individual citizens to participate. In particular, low-income and minority citizens must have a meaningful voice in decisions that affect their lives. We must maximize information as a tool to inform policy makers and empower citizens.

We must encourage environmental stewardship by individuals, businesses, and government. We must provide flexibility in the means of achieving environmental goals, while demanding accountability that goals be met. Rather than focusing upon a pollutant-by-pollutant approach to management, attention must shift to developing management strategies for whole facilities, whole economic sectors, and even whole communities.

This new management system will require everyone to accept new roles and responsibilities. Individuals will have new responsibilities as consumers and as decision makers. Business will make environmental protection a strategic consideration that will be designed into their products and services, not considered after the fact. State, tribal, and local governments will serve as full partners in the development and implementation of policies to achieve national goals. EPA will expand beyond its traditional role of regulator to become a partner providing information and research to empower local decision-makers.

Reinvention Yes, Rollback No

How do we attain this vision of the future? The 25 High Priority Actions assembled in this report provide the road map. The first set of High Priority Actions, listed under the heading "Improvements to the Current System" (page 8), are examples of immediate steps to fix problems associated with today's regulatory structure.

But we can't be satisfied with simply improving elements of a regulatory system that has evolved piece-by-piece over 25 years. By implementing the second set of High Priority

Actions, included under the heading "Building Blocks for a New System" (page 14) we will test performance-based strategies that could eventually replace some or all of the current system.

The Clinton/Gore Administration is committed to reinventing our environmental management system so it will protect more and cost less. But we are not starting from scratch. In the last two years, the Administration has already made tremendous progress in reforming our environmental regulatory system (See Appendix C, page ?). In the year ahead, we will continue that progress by implementing the ambitious agenda contained in this report.

But let no one misunderstand us. This effort to reinvent environmental regulation does not imply compromise on the environmental goals to be achieved. While increased flexibility is a central principle of our reinvention effort, flexibility is not a codeword for loophole. Those who abuse this new flexibility will find the old tools still at hand to enforce the law.

The American people, in poll after poll, cite their determination to achieve high standards of environmental quality. This Administration will never surrender to those who would undercut protection of public health and the environment under the guise of "regulatory relief." America does not need dirtier air or dirtier water. The historic protections we have built over the last 25 years must be maintained, sustaining the promise of a clean and healthy environment that has been made and renewed by almost every President since Teddy Roosevelt. We will work with the new Congress whenever possible, but we will not allow them to take us backwards. Reinvention yes, rollback no.

The Administration will adhere to the 10 principles on the next page as we reinvent environmental regulation. These principles are also useful for assessing other initiatives that claim to reform environmental regulations. Some "reform" proposals that are currently under debate simply don't meet the test. Such proposals seek to undermine the regulatory system, not improve it. They would create more bureaucracy, more uncertainty, and more litigation, while seriously threatening protection of public health and the environment. Rather than bringing people together to solve problems in a cooperative, collaborative manner, these rash proposals polarize further a debate that has been polarized for too long already. But even more troubling, because such proposals are intended solely to paralyze the current system, they offer no vision for protecting our families and communities in the future.

The American people expect more than that. They want -- and deserve -- an environmental management system that protects the health of their children and their communities in an effective and efficient manner. That is not too much to ask. The Clinton/Gore Administration committed to achieving that goal.

Principles for Reinventing Environmental Regulation

1. Protecting public health and the environment are important national goals and individual citizens, businesses, and government must take responsibility for the impact of their actions.
2. Regulation must be designed to achieve environmental goals in a manner that minimizes costs to individuals, business, and other levels of government.
3. Our environmental regulatory system should be results-oriented, providing maximum flexibility in the means of achieving our environmental goals, but demanding accountability for the results.
4. Preventing pollution is preferable to end-of-pipe controls.
5. Whenever feasible and effective, market incentives should be utilized to achieve environmental goals.
6. The best science, the best economics, and America's values must be reflected in environmental regulation.
7. Government regulations must be understandable to those who are affected by them.
8. Whenever possible, decision-making should be collaborative, not adversarial, giving citizens the opportunity and the information to participate actively in the decisions that affect them. Such decision-making should devolve to local communities, consistent with broader national interests.
9. Federal, state, tribal, and local governments must work as partners to achieve common environmental goals.
10. Citizens must not be subjected to disproportionate environmental hazard because of their economic situation, their ethnicity, or the color of their skin.

25 HIGH PRIORITY ACTIONS

"We are at a crossroads. The decisions we make today will determine whether we leave to future generations an attractive, livable world or an ever-escalating series of problems. More than ever, we must work vigorously to advance the twin goals of environmental protection and economic growth."

Vice President Gore
July 15, 1994

Our strategy to reinvent environmental regulation will proceed on two tracks that will converge in the future to produce a new era of cleaner, cheaper, and smarter environmental management. The first track is a set of High Priority Actions (page 8) targeted to fixing problems with today's regulatory programs. These actions demonstrate our commitment to providing flexibility, sparking innovation, and demanding accountability; to cutting red tape; to encouraging collaboration; and to focussing upon achieving environmental results in local communities, rather than adherence to bureaucratic procedures in Washington.

The second track is a set of High Priority Actions (page 14) designed to develop innovative -- even revolutionary -- alternatives to the current regulatory system. We will enter into partnerships with businesses, environmentalists, states and communities to test alternative management strategies for single facilities, industrial sectors, or geographic areas. The knowledge gained from such bold experimentation will lay the groundwork for developing a new environmental management system for the 21st century.

This dual strategy is a comprehensive approach to continually improving our environmental management system to help achieve our twin goals of environmental protection and economic growth. One-page descriptions of these 25 High Priority Actions can be found in Appendix A (page?). In addition to the High Priority Actions, a set of Other Significant Actions can be found in Appendix B (page ?).

IMPROVEMENTS TO THE CURRENT SYSTEM

Performance and Market-based Regulations

Regulatory policies that rely on market-based incentives in concert with performance standards greatly expand the scope of cost-effectiveness and innovation, by allowing the lowest cost and most innovative compliance strategies.

1. **Open-market air emissions trading.** EPA will issue an emissions trading rule for smog-creating pollutants that will allow states to obtain automatic approval for open market trading of emission credits with accountability for quantified returns. Expanding use of market trading on a local and regional level will give companies broad flexibility to find lowest cost approaches to emission reductions. The rule will provide an additional trading option -- some states will choose to pursue allowance-based systems, which are already under development in several areas, while others will choose this new approach.
2. **Effluent trading in watersheds.** EPA will place top priority on breaking through the institutional inertia that hinders effluent trading beyond technological baselines. Trading can be used to achieve higher water quality in watersheds at lower cost than inflexible discharge requirements for individual sources.

Setting Priorities based on Scientific Analysis of Risk

Sound and credible environmental decisionmaking depends on good science and good data. When hazards are understood and risks have been fully assessed, remedies can be crafted with precision. Twenty-five years ago, little was known about environmental hazards and far less about the risks they posed. Through the years, we have considered both the hazards and how best to assess the resulting risks. We must remain at the cutting edge of risk assessment -- including independent peer review of the science used in regulatory decisions, so such actions will mitigate risk in the most efficient and effective manner possible.

3. **Refocus RCRA on high-risk wastes.** The regulation of hazardous wastes will be reformed so that: low risk wastes exit RCRA; states are allowed latitude in designing management requirements for low-risk, high-volume wastes generated during environmental cleanup operations; and, working with stakeholders, a new "common-sense" definition of solid waste will be developed to simplify industry compliance with RCRA rules.
4. **Refocus drinking water treatment requirements on highest health risks.** EPA will reorder its priorities for drinking water regulations based on a careful analysis of public health risks and discussions with stakeholders. While working on this realignment, EPA will request a postponement of court-ordered deadlines for drinking water regulations. Additionally, EPA will boost support for voluntary efforts to immediately reduce risks through improved management of water treatment facilities and will tailor drinking water monitoring requirements to reflect local contaminant threats.
5. **Expand use of risk assessment in local communities.** EPA has sponsored the development of computer software to train its employees in risk assessment. As part of an expanded risk training program, EPA will provide (at cost) this computer program to local governments, small businesses, and local citizens groups. This tool will allow estimates of exposures and human health risks on a site-specific basis. The broad availability such a tool -- together with training and access to other risk tools and data bases -- will increase public understanding of risk assessment and empower citizens participate in environmental decisions in an informed manner.

Sharing Decision Making

No one has a greater interest in local environmental decisions than the people who are affected by them. States, tribes and communities are anxious for greater autonomy and responsibility for results. EPA is taking an activist role in moving environmental decisions and accountability to the level closest to the problem -- be it state, tribal, local, or the citizen. A major part of achieving a shift in authority is building the capacity at the local level to solve local problems. Upon enactment of necessary legislation, EPA will vigorously pursue:

6. **Flexible funding for states and tribes.** EPA will provide an option for state and tribal governments to combine their existing grant funds to reduce administrative burdens and improve environmental performance. Under these Performance Partnership Grants, states and tribes will be able to target funds to meet their specific needs, as long as they are consistent with environmental requirements. These grants would be subject to performance criteria negotiated between the EPA Administrator and the grant recipients.

7. **Local environmental assistance grants.** This new assistance grant is designed for small towns, cities and counties interested in upgrading environmental planning and prevention, consistent with national goals set forth within the enabling legislation. The amount of each grant to an entitled city or county, and for the states to disburse to smaller communities within each state, will be determined by statutory formula, based on population and factors of local environmental need and financial circumstances. Applications will detail the proposed use of all grant funds, and will include a comprehensive, cross-media needs assessment, prepared with broad participation of local stakeholders.

OR

Sustainable development challenge grants. This new competitive action grant is directed at local formulation of comprehensive, place-based management that connects sustainable economic development with sound environmental practices. Within legislatively set national objectives, stakeholders will be challenged to produce coordinated programs, using the action grant to mobilize, organize and attract community and private sector participation. A successful application must demonstrate a high level of stakeholder involvement, funding requirements and availability of other sources of funds. Recipients will be expected to leverage direct private sector investment for place-based environmental protection.

(NOTE: We must discuss these options for a new community-based environmental grant program. A new program is needed if we are serious about devolving authority to local communities, but such a decision must be made in the context of REGO II and other budget related decisions.)

Cutting Red Tape

Continuing the work started under Vice President Gore's National Performance Review, EPA will search out opportunities to simplify and reduce paperwork, whether up front during the permitting process, or in recordkeeping and reporting. By June of this year, EPA will review all of its regulations and identify those that should be eliminated or simplified. These actions will preserve essential data needed to measure environmental results and determine compliance with the law, but will eliminate low-value requirements. The three examples below illustrate EPA's commitment to eliminating red tape by reducing paperwork, simplifying reporting, and consolidating rules for easier understanding.

8. **25% reduction in paperwork.** EPA will reduce overall reporting and recordkeeping burden hours by 25 %, beginning with local governments and small businesses. Initiatives already underway include expanded use of electronic reporting and recordkeeping, and use of a single form for FIFRA and TSCA reporting. EPA will meet extensively with industry, states and other interested groups to identify additional ways of minimizing reporting and recordkeeping requirements
9. **Single-form emission reports.** To replace the multitude of reporting forms for different kinds of pollution discharges for one facility, EPA will create a consolidated form for routine emission reporting. Given the enormity of this change and the logistics involved, consolidated reporting will begin with FIFRA and TSCA data and, based on the experience gained, scale up to other environmental statutes.
10. **Consolidated federal air rules (one-industry -- one rule).** EPA will provide industries with a single rule that details all Federal air compliance requirements for an industry sector (e.g., chemical industry), so there is an easy understanding of emission limitations and monitoring, recordkeeping and reporting requirements. This project will eliminate conflicting and duplicative regulations and, should reduce compliance costs by up to 25% (check number) with no measurable loss of environmental protection. This project will lead to consolidated rules for other media.

Better Accountability, Compliance and Enforcement

While environmental requirements can and will be made more flexible and cost effective, the public will continue to expect compliance with the law and accountability for results. We will encourage good actors and provide incentives for compliance while preserving a level playing field and deterring violations through targeted enforcement actions. We will encourage compliance through incentives for self-policing, including penalty reductions and testing of third-party auditing and self certification, and will provide more effective assistance to small businesses seeking to comply with environmental regulations. We will maintain the level playing field through effective enforcement that targets the highest risks and most significant noncompliance problems. Many of these initiatives will be coordinated through EPA's new Environmental Leadership Program.

11. **Risk-based enforcement.** EPA will target enforcement actions against significant violations that present the greatest risks to human health and the environment. This will require development of tools that allow analysis of risk as well as patterns of violations among corporations and facilities within a particular sector. EPA will also seek to eliminate requirements that every facility within a certain category be inspected annually -- to allow for better targeting.
12. **Encourage self-policing by small businesses and communities.** The nation will enjoy greater environmental protection if small businesses and small communities invest their limited resources in achieving compliance, not paying fines and penalties. Thus, EPA will provide up to 180 days for small businesses to correct violations identified through federal or state technical assistance programs without fear of fines or penalties. A similar approach will be used for small communities.
13. **Small business compliance assistance centers.** EPA will develop national customer service centers for several small business sectors (including printing, metal finishing, auto service stations) that face multiple environmental requirements. The centers will support trade associations and state small business associations through plain-English guides to compliance, electronic access to information linking pollution prevention and compliance opportunities, and by cutting paperwork and consolidating reporting for the affected industries.

14. **Incentives for disclosure and correction.** To reward today's responsible companies and eliminate costly litigation and red tape, EPA will provide incentives through reduced penalties for companies that disclose and promptly correct violations -- except for criminal violations, imminent and substantial endangerment, or repeat violations.
15. **Self certification.** Compliance through self certification can reduce the reporting burden for those environmental requirements not associated with emissions or risk data. EPA will develop a self certification programs for pesticide registrants, and then expand self certification into other program areas.

The Power of Information

Information -- the sharing of data -- is central to all aspects of environmental decisionmaking, whether in government programs or in encouraging citizens to be involved in environmental protection decisions. Government and citizens need better baseline information about prevailing environmental conditions, about the effects of pollution, about the success of mitigation strategies, and about costs and benefits of the strategies and the impacts they prevent. and EPA needs to make sure that information is made available to all. Alternative performance-based systems of environmental protection -- such as facility-, sector-, and community-based approaches -- can only succeed if high quality information is

16. **Center for environmental information and statistics.** EPA will administratively create a new center, reporting directly to the Administrator, that will be charged with assessing, consolidating and disseminating information to all stakeholders. The center will serve all stakeholders -- creating products that fill ascertained needs of its customers. The center will be designed using recommendations from an independent study that evaluates additional data needs (and unnecessary data elements currently collected), EPA data management systems and technological improvements that can increase efficiency and access.
17. **Public electronic access.** EPA will significantly expand its existing programs (e.g., Public Information Center, hotlines) to make information from all EPA programs available through Internet and other electronic means that many Americans can access directly from their homes, schools and libraries.

BUILDING BLOCKS FOR A NEW SYSTEM

It isn't enough to focus on improving the current regulatory system. Incremental changes will never get us where we ultimately need to be. As we move toward the 21st century, it is imperative that we challenge ourselves to step outside the context of the existing system. The High Priority Actions that follow will test the building blocks for an alternative performance-based system that could eventually replace all or part of our traditional environmental management system.

Alternative Performance-based Strategies

EPA has developed a coordinated series of projects designed to test new management approaches that can provide increased flexibility while ensuring accountability. The goals of the projects are to move from an adversarial to a collaborative process, to reward technological innovation and encourage multi-media pollution prevention, and to decentralize and integrate economic and environmental decisionmaking in communities with increased citizen involvement. Participants in these projects will demonstrate a commitment to environmental quality by setting environmental goals *beyond* what the law requires while involving community participation in the goal-setting and accountability process. In return, participants will be allowed increased flexibility and cooperation from the Federal government to reach their environmental goals most effectively. After enactment of necessary legislation, EPA will sponsor the following projects:

18. **Facility-based alternative strategies.** For those companies that are seeking to use more flexible approaches to achieve environmental results, EPA (working through the Common Sense Initiative) will conduct a new program that will stress performance-based flexibility. This initiative will authorize the Administrator to allow a facility to replace the requirements of the current regulatory system with the requirements of an alternative management strategy that will result in environmental performance superior to that which would be achieved by full compliance with current laws and regulations. Other requirements will be that alternative strategies are "transparent" so that citizens can examine assumptions contained in the strategy and track progress toward meeting promised results; that it won't create worker safety or environmental justice problems;

that the alternative management strategy enjoys the support of the community surrounding the facility; and that the alternative strategy is enforceable.

19. **Sector-based alternative strategies.** Through the use of industry covenants, EPA and several industries will demonstrate how adjustments and modifications in environmental regulatory requirements can achieve more cost-effective environmental results. The industries involved in the Common Sense Initiative will provide the first opportunities to test this approach.
20. **Community-based alternative strategies.** EPA will join with a limited number of communities to conduct pilot projects that will shift environmental management focus from adherence to bureaucratic procedures in Washington to developing community driven strategies for achieving environmental and economic results. The pilots will apply the concepts contained in the facility-based and sector-based programs to a geographic area, building on the Administration's Empowerment Zone and Ecosystem Management Initiatives. These pilots will integrate the mutually supportive goals of economic development and environmental protection at the community level with full public participation.
21. **Agency-based alternative strategies.** EPA will work with other federal agencies that have environmental responsibilities to ensure that their programs achieve environmental results in the most cost-effective manner, while eliminating needless bureaucratic procedures. The initial pilot in this effort will focus on two to four Department of Defense facilities. EPA and DOD will enter into a cooperative agreement to define performance goals and jointly devise an optimal approach to achieve those goals. The approach will combine pollution prevention, compliance and technology research projects.

New Tools for Government and Industry

In addition to sponsoring alternative strategy pilot programs, EPA will place increased emphasis on developing new management tools for government and industry to utilize in implementing new environmental management systems.

22. **Third-party audits for industry compliance.** One approach for streamlining compliance oversight is to use independent, certified, private sector firms to audit industry performance. The Environmental Leadership program, with input from environmental groups, will develop criteria for third-party audits which assure the public that environmental requirements are being met. Subsequently, a pilot program - - designed to lower cost and be attractive to companies -- will be conducted to demonstrate compliance audits by independent third parties.
23. **Multi-media permitting.** For those companies that are looking for ways to consolidate all their permitting requirements, EPA will conduct several demonstrations of multi-media "one-stop" permits. By addressing all of the releases in a single permit that assures that environmental standards will be met but includes performance standard approach, can assure comprehensive environmental protection, encourage pollution prevention, minimize delay and duplication and allow facility managers to use lowest cost solutions.
24. **Design for Environment -- green chemistry challenge.** EPA and the chemical industry will jointly sponsor cash prizes and national awards for companies that develop pollution prevention processes for chemical production and use. Major targets will be using renewable resources for chemical production, substituting solvents that do not contribute to air pollution, and designing new chemicals and chemical processes that are more safely made and that are safe for the environment.
25. **Technology verification centers.** Under the President's Environmental Technology Initiative, EPA will establish six to eight pilot verification centers this year to provide independent evaluation of the performance and cost of new technologies. Formation of stakeholder groups to guide development of these centers is underway.

REGULATORY REFORM
TUESDAY, FEBRUARY 21, 1995

I am determined to see reform of our regulatory system, so that it **costs less, meddles less, and puts more responsibility in the hands of people**. Today, I will take several specific additional steps to reform regulation, and charge our regulators with responsibility to carry them out. But while we reform, we must remember why we have these standards. **We must not strip away safeguards for our children, our workers, our families**. There are proposals pending in the Congress that go beyond reform, that would freeze or gut our ability to protect the public. And they are simply unacceptable. -- President Clinton, February 21, 1995.

CREATING A LESS BUREAUCRATIC GOVERNMENT

Since we took office 2 years ago, we have been determined to create a **less bureaucratic and more flexible** government. Regulation -- like the rest of government -- badly needs repair. Too often, rule writers in Washington set forth detailed lists of do's and don't's, instead of setting clear goals and challenging the private sector to come up with ways to meet them.

ANNOUNCING A NEW REGULATORY REINVENTION INITIATIVE

We have made progress reforming regulation, but there is more to do. That's why the President today announced a Regulatory Reinvention Initiative including the following steps:

- **Page-by-Page Review of Rules.** Regulators must immediately check each rule they implement to see if it is **obsolete**; if there is a **private sector alternative**; if self-regulation or a state or local government could do the job more effectively? The results of those reviews must reach the President's desk **by June 1**.
- **Performance by Results.** The President instructed regulators to develop ways to judge performance by results -- **by its ability to improve the health and safety of our people**, not by their ability to increase bureaucracy and red tape.
- **Reform Guided by Reality.** The President ordered regulators to convene immediately groups consisting of front-line regulators and the people affected by them around the country - **not lawyers talking to other lawyers in Washington**.
- **Partnerships.** The President began the move away from a system where lawyers write volumes to one where people create partnerships by asking each regulatory agency to submit proposals for negotiated rule-making.
- **Vice President's Review.** In the coming months, the Vice President will submit a series of **regulatory reform proposals** on the environment, health, food, financial institutions and worker safety. The President will send them to Congress.

KEEPING PROTECTIONS FOR HEALTH, SAFETY AND THE ENVIRONMENT.

Republicans in Congress are considering "reform" proposals that would **hurt the middle class and benefit powerful interests**. Those proposals would **cost lives and dollars**, and the President said today that they are **simply unacceptable**. The GOP is also considering an ill-advised regulatory moratorium that would strip government's ability to protect the public's health, safety and environment. It would block efforts to ensure the safety of our food, make cars safer, improve the accuracy of mammograms. The President made clear that such a moratorium **goes too far**.

FOR DISCUSSION ONLY--NOT FOR DISTRIBUTION

EQUAL OPPORTUNITY WORKING GROUP
REGULATORY POLICY REVIEW

FEBRUARY 14, 1995

I. INTRODUCTION

- A. Principles
- B. Statutory Framework
- C. Ground Rules

II. PROPOSALS

- A. Eliminate certain paperwork requirements.
 - 1. Labor: eliminate CC 257.
modify regulations governing affirmative action plan regulations.
 - 2. EEOC.
 - 3. Education.
 - 4. HHS.
- B. Improve compliance by targeting enforcement.
 - 1. Labor: Target--worst first basis.
(requires modifications to EEO-1?)
 - 2. EEOC: Reviewing charge processing.
Paired auditors/testers.
 - 3. Education.
 - 4. HHS.
 - 5. Any room here for reliance on or reference to state or local agencies?
- C. Use incentive-based compliance and enforcement system.
 - 1. Labor: Create system of ratings to trigger different enforcement strategies.
New award to recognize high performers.
 - 2. EEOC.
 - 3. Education.
 - 4. HHS.
- D. Provide better information to employees and employers.
 - 1. Labor. Nationwide training and technical assistance.
 - 2. EEOC: Greater training and technical assistance.
 - 3. Education.
 - 4. HHS.
- E. Consolidate functions to provide "one-stop" shopping for customers.
 - 1. Intra-Agency
 - a. Labor.
 - b. EEOC.

- c. Education.
- d. HHS: Coordinate intra-agency complaint investigations.
- e. DOT: ADA Enforcement.

2. Inter-Agency

- a. Existing MOU's, etc.
- b. NLRB-EEOC Coordination: ADA.
- c. Information Exchange.
- d. Proposals for Further Consolidation:
Pros and Cons.

F. Seek Consensual Development, Compliance and Enforcement of Regulations.

- 1. Labor.
- 2. EEOC: ADR Task Force.
- 3. Education.
- 4. HHS.

III. IDEAS REJECTED.

- A. EEOC/OFCCP Consolidation.
- B. Performance-based Standards.
- C. Third Party Certification.
- D. Internal Grievance Procedures.

PROPOSED MEETING SCHEDULE

2/3/95

December 21 (Wed.)	Cross-cutting issues & general approaches	OIRA
January 5 (Thurs.)	Takings, remaining cross-cutting issues, and customer service	OIRA; OVP
January 12 (Thurs.)	Customer service	OVP
January 17 (Tues.)	Team leaders meeting	OVP; OIRA
January 18 (Wed.)	<i>Pre-briefing on environment</i>	OEP
January 25 (Wed.)	Environment	OEP
January 27 (Fri.)	<i>Pre-briefing on financial institutions</i>	NEC & CEA
January 31 (Tues.)	<i>Pre-briefing on small business</i>	OIRA
February 2 (Thurs.)	Small business	OIRA
February 7 (Tues.)	Financial institutions	NEC & CEA
February 8 (Wed.)	<i>Pre-briefing on food and drugs, and health industry regulation</i>	DPC
February 9 (Thurs.)	VP time (subject to be announced)	[]
February 13 (Mon.)	<i>Pre-briefing on workplace safety, education, and labor issues</i>	DPC
February 14 (Tues.)	Food and drugs, and health industry regulation	DPC
February 15 (Wed.)	<i>Pre-briefing on equal employment opportunity</i>	WH Counsel
February 16 (Thurs.)	Workplace safety, education, and labor issues	DPC
February 17 (Fri.)	<i>Pre-briefing on regulation of science, technology, and info. tech.</i>	OSTP
February 21 (Tues.)	Equal employment opportunity	WH Counsel
February 23 (Thurs.)	Regulation of science, technology, and info. tech.	OSTP
February 28 (Tues.)	Customer and info. tech. issues summary	OVP
March 1 (Wed.)	Reprise	[]

TO INSERT: (1) DOT/Coast Guard; (2) Agriculture; (3) Energy/Natural Resources

Regulatory Policy Review
Equal Opportunity Working Group

AGENDA
January 27, 1995

- I. ADA Summary
- II. Identifying Bold Ideas
 - A. Decision Not To Regulate--e.g., Education
 - B. Self-Auditing
 - C. Conciliation/ADR
 - D. Others?
- III. Interagency Cooperation and Coordination
- IV. Presentation Planning

**Regulatory Reform Working Group
Equal Opportunity**

	<u>NAME</u>	<u>AGENCY/OFFICE</u>	<u>TELE. NO.</u>	<u>FAX NO.</u>
1	Abner Mikva	White House Counsel	456-2632	456-6279
2	Marvin Krislov	White House Counsel	456-7903	456-1647
3	Joel Klein	White House Counsel	456-6611	456-6279
4	Steve Neuwirth	White House Counsel	456-7903	456-1647
5	Douglas Letter	White House Counsel	456-7901	456-1647
6	Chris Cerf	White House Counsel	456-6229	456-2146
7	Beth Nolan	White House Counsel	456-6229	456-2146
8	C.D. Mills	White House Counsel	456-7900	456-1647
9	Kathi Whalen	White House Counsel	456-7900	456-1647
10	Cliff Sloan	White House Counsel	456-7900	456-1647
11	Clarissa Cerda	White House Counsel	456-7903	456-1647
12	Peter Yu	NEC	456-2801	456-2223
13	Stephen Warnath	White House Domestic Policy	456-5576	456-7028
14	Isabelle Pinzler ¹	Department of Justice	514-6715	307-2572
15	Liz Savage	Department of Justice	514-4279	514-0293
16	Harriet Rabb	Health & Human Services - OGC	690-7714	690-7998
17	Anna Durand ²	Health & Human Services - OGC	690-6318	690-7998
18	Lisa Silverberg	Health & Human Services - OCR	619-0585	619-3437
19	Andrew Hyman	Health & Human Services - OGC	690-6318	690-7998
20	Steve Winnick ³	Department of Education	401-6000	401-5391
21	Norma Cantu	Department of Education - OCR	205-5413	205-5381
22	Judith Winston	Department of Education - OGC	401-6000	401-5391
23	Ellen Vargyas ⁴	Equal Employment Opportunity Commission	663-4637	663-4639
24	Claire Gonzales	Equal Employment Opportunity Commission	663-4915	663-4912
25	Tom Williamson ⁵	Department of Labor - Solicitor	219-7675	219-7257
26	Bernard E. Anderson	Department of Labor		
27	Shirley J. Wilcher	Department of Labor - OFCCP	219-9475	219-6195
28	Chris Edley	Office of Management & Budget	395-3120	395-4639

¹ Contact person for Agency.

² Contact person for Agency.

³ Contact person for Agency.

⁴ Contact person for Agency.

⁵ Contact person for Agency.

MEMORANDUM

DATE: October 20, 1994

TO: Members of Regulatory Development Teams for The Improving America's School Act (IASA)

FROM: Mike Smith, Tom Payzant and Jamie Studley

RE: Guidance on IASA Regulation Development

As we move to the next phase of IASA implementation, it is important that we all think about how to structure regulations and guidance that will be consistent with the underlying principles of the reauthorized IASA, including flexibility and results-driven accountability.

We have begun to construct a framework for thinking about regulations -- both whether to regulate and how:

PRINCIPLES FOR DECIDING WHETHER TO REGULATE

The starting assumption should be: we should not regulate on a particular matter or issue unless it is absolutely necessary (e.g., the law requires us to regulate; a regulation, as opposed to non-regulatory guidance, is critical to promoting an underlying policy of the Administration.) This assumption applies to all programs and activities.

This means:

- o do not regulate where there is no demonstrated problem; i.e., avoid regulating to solve problems that are merely imagined.
- o do not regulate if the problem can be solved adequately without regulating, e.g., through local decisions, or through non-regulatory guidance by ED. In other words, always think first about whether non-regulatory guidance would suffice.
- o do not regulate if the parties or situations to be regulated are so different from each other that a uniform solution would do more harm than good.
- o do not regulate in the face of ambiguity alone unless such ambiguity will create a real problem if not resolved through a legally binding interpretation. (Multiple possible approaches to carrying out a statutory provision do not in themselves warrant regulatory clarification, although there may be times where a regulation could promote greater flexibility than the statutory provision makes apparent.)

PRINCIPLES FOR DECIDING HOW TO REGULATE

If a regulation is necessary:

- o Regulate no more than the minimum necessary to solve the identified problem (i.e., avoid overkill).
- o Minimize burden and promote multiple approaches to meeting the requirements of the law.
- o Permit federally-funded activities to be integrated with state and local reform activities.
- o Assess the costs and benefits of the regulation (both quantifiable and non-quantifiable) and ensure that the benefits justify the costs.
- o To the extent feasible, establish performance objectives, rather than specify the manner of compliance that regulated parties must adopt.
- o To the extent feasible, allow market or institutional forces and incentives to achieve the desired result.
- o Try to put yourself in the position of our customers.

call from Bowsher at 11:45

THE WHITE HOUSE
WASHINGTON

January 5, 1995

MEMORANDUM FOR JOEL KLEIN, BRUCE LINDSEY, CLARISSA CERDA,
CHRIS CERF, JEFF CONNAUGHTON, MARVIN KRISLOV, DOUG LETTER,
CHERYL MILLS, STEVE NEUWIRTH, CLIFF SLOAN, KATHI WHALEN

FROM: BETH NOLAN *BN*

RE: Regulatory Reform

Attached are two charts.

The first chart lists information-gathering assignments for the Equal Opportunity Working Group, for which our Office is responsible. Please contact the general counsels of the agencies assigned to you to (1) collect agency regulations on equal employment and other equal opportunity matters, and (2) determine if the agency has any views on problem areas or difficulties. We should seek especially to assess if those doing business with the agency have expressed views or concerns that should be addressed. Please emphasize that we are gathering information only at this point.

Because we are on a short lead, please try to gather this information by January 16, 1994. I will let you know early next week about other phases of our review.

The second chart shows the groups working on regulatory reform, at least as I understand them to date. I have assigned at least one lawyer to monitor each of these groups. Our role may go (or, in some cases, already has gone) well beyond monitoring in certain areas, depending on the work of the group.

Would you please review this list, and take responsibility for checking in with the office responsible for the review group. If I have assigned more than one person to a group that deserves no more than one person, please decide between/among yourselves who will work on the matter.

cc: Abner Mikva

Chart One
Regulatory Reform -- Equal Opportunity

Information Gathering re Agency Regulations

<u>Agency</u>	<u>Person Responsible</u>
Agriculture	Sloan
Commerce	Whalen
Defense	Mills
Education	Krislov
Energy	Cerda
HHS	Neuwirth
HUD	Connaughton
Interior	Neuwirth
Justice	Mills
Labor	Cerf
State	Letter
Transportation	Cerf
Treasury	Cerda
VA	Letter
EPA	Connaughton
OMB	Whalen
EEOC	Krislov
SBA	Sloan
OPM	Connaughton

Regulatory Reform Working Groups

Review Group	Office Responsible	Counsel Lawyers
Takings	DPC (Carol Rasco); OEP (Katie McGinty)	Krislov
Cross-Cutting Issues and General Regulatory Approaches	OIRA (Sally Katzen)	Lindsey, Nolan, Neuwirth, Krislov
Environment, Energy, and other Natural Resources	OEP/CEQ (Katie McGinty)	Lindsey, Neuwirth
Financial Institutions	NEC/CEA (Peter Yu/Joe Stiglitz)	Sloan, Letter
Small Business	OIRA	Sloan
Regulation of Science, Technology and Information Technology	OSTP (Jack Gibbons)	Nolan, Cerda
Customer Service in the Regulatory Environment	OVP (Elaine Kamarck)	Nolan, Whalen
Food & Drug	DPC/CEA (?)	Cerf
Health Industry	DPC/CEA (?)	Letter
Transportation	NEC (Peter Yu)	Cerda, Cerf
Workplace Safety and Labor	DPC (Paul Weinstein)	Krislov
Agriculture	NEC (Peter Yu)	Letter
Consumer Products Safety	CEA (Joe Stiglitz)	Whalen
Biotechnology	OSTP (Jack Gibbons)	Mills
Research	OSTP (Jack Gibbons)	Nolan, Cerda
Education	DPC (Paul Weinstein)	Krislov, Mills

PROPOSED MEETING SCHEDULE
1/5/95 (version 2)

*	December 21 (Wed.)	Cross-cutting issues & general approaches	OIRA
[1.]	January 3 (Tues.)	No meeting	[]
2.	January 5 (Thurs.)	Takings, remaining cross-cutting issues, and, as time allows, customer service & use of information technology in regulation	OIRA; OVP
[3.]	January 10 (Tues.)	No meeting	[]
4.	January 12 (Thurs.)	Customer service & use of info. tech. in regulation	OVP
5.	January 17 (Tues.)	Financial institutions	NEC & CEA
6.	January 19 (Thurs.)	Environment, energy, and other natural resources	OEP
7.	January 24 (Tues.)	Small business	OIRA
[8.]	January 26 (Thurs.)	TBA	[]
9.	January 31 (Tues.)	Food and drugs, and consumer product safety	DPC/CEA (?)
10.	February 2 (Thurs.)	Health industry regulation	DPC
11.	February 7 (Tues.)	Workplace safety, education, and labor issues	DPC
12.	February 9 (Thurs.)	Equal employment opportunity	WH Counsel
13.	February 14 (Tues.)	Regulation of science, technology, and info.tech.	OSTP
[14.]	February 16 (Thurs.)	TBA	[]
15.	February 21 (Tues.)	Customer and info.tech. issues summary	OVP
[16.]	February 23 (Thurs.)	TBA	[]
[17.]	February 28 (Tues.)	TBA	[]
<hr/>			
18.	March 1 (Wed.)	Reprise	[]

January 4, 1995

RISK AND COST-BENEFIT ANALYSIS TENETS

The Administration strongly endorses the proper use of risk and cost-benefit analysis as part of the Federal rulemaking process. Risk and cost-benefit analysis are particularly valuable tools in helping agencies make decisions that would reduce risks to health, safety, and the environment in a sensible and cost-effective manner. The Administration therefore supports risk and cost-benefit legislation that is fair, effective, and affordable, rather than designed to burden the regulatory process with unnecessary and costly requirements. What follows are the tenets that, taken together, give meaning to this approach.

1. **Agency Requirements from Executive Order 12866:** In promulgating a significant regulation that addresses risk, an agency should be prepared to state that it has done the following:
 - **Evaluate Appropriateness of Regulatory Solution.** An agency has clearly identified the problem it intends to address, assessed the significance of that problem, and determined that regulation is an appropriate means of solving, and is likely to solve, that problem.
 - **Good Data and Analysis:** An agency has based its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.
 - **Benefits Justify Costs (measured both quantitatively and qualitatively).** An agency has assessed both the costs and the benefits of a regulation, including both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures that are difficult to quantify but are nonetheless essential to consider, and determined that the benefits justify the costs.
 - **Cost-Effectiveness.** An agency has determined that the approach selected is cost-effective in achieving its regulatory objective.
 - **\$100 million threshold.** Legislation requiring risk and cost-benefit analyses as part of the regulatory process should be limited in mandatory application to

regulations having an annual effect on the economy of \$100 million or more.

2. Specific Risk Requirements

- **Transparency/Explain Assumptions.** Risk analyses should explain the agency's assumptions, including who or what is being protected and why.
- **Appropriate Peer Review/Peer Review Plan.** Agencies should have a peer review plan for reviewing risk assessments and should make it available to the public. The plan should include criteria indicating which type of risk analyses will be subject to peer review.
- **Provide Meaningful Explanation of Risks, Including Relevant Comparisons.** Risk comparisons should be meaningful to the public and provide information relevant to the decision.
- **No Micromanagement.** The objective of any risk and cost-benefit legislation should be to promote the transparent application of analytic methodologies that are suitable for the problem at hand, but not to prescribe particular methodologies or technologies, which are often case-specific and continually evolving.
- **Commensurability.** The amount of resources devoted to risk analysis and cost-benefit analysis should be commensurate with the significance of the regulatory decision to be made.
- **No Modification of Existing Law by Implication.** Risk and cost-benefit analysis requirements should not be construed to amend, modify, alter, or supersede the requirements of other statutory provisions. Where existing statutes require regulations whose benefits do not justify their costs or are not cost-effective, Congress should be so notified.
- **Improve R & D.** Legislation should support research necessary to improve the development and implementation of risk analysis.

3. **No Judicial Review.** The objective of any legislation should be to improve the regulatory process, not to create unproductive paper record requirements or further opportunities for litigation.

THE WHITE HOUSE
WASHINGTON

January 19, 1995

MEMORANDUM FOR ABNER MIKVA, JOEL KLEIN, BRUCE LINDSEY, JEFF CONNAUGHTON, CLARISSA CERDA, CHRIS CERF, MARVIN KRISLOV, DOUG LETTER, CHERYL MILLS, STEVE NEUWIRTH, CLIFF SLOAN, KATHI WHALEN

FROM: BETH NOLAN 

SUBJECT: Regulatory Policy Review -- EEO Working Group

As I mentioned in the staff meeting:

1.) The EEO Working Group is meeting Friday, January 20, from 10 am to 12 noon, in Room 476. Representatives from certain agencies (Justice, Education, HHS, EEOC, Labor) and from the EOP will be present. This is an important meeting, and I urge every one who can to attend.

So that I know how many to expect, would you please let Stephen Waudby know if you will attend (6-6229).

2.) If you have not gotten your agency EEO materials to me, would you please do so today.

Thanks.

Regulatory Policy Review
EEO Working Group

January 20, 1995

10 am - 12 noon
Room 476, OEOB

Agenda

1. Introduction -- Abner Mikva
2. Goals of Regulatory Policy Review -- Beth Nolan
3. Agency Participants -- Marvin Krislov
 - Justice -- Deval Patrick
Isabelle Pinzler, Poli Marmolejos
 - OMB -- Chris Edley
 - EEOC -- Ellen Vargas
 - Labor -- Tom Williamson
Shirley Wilcher, Bernard Anderson
 - Education -- Steve Winnick
 - HHS -- Harriet Raab
Anna Durand, Andrew Hyman
4. Next Meetings

GUIDING PRINCIPLES

WE WILL MOVE FROM GOOD INTENTIONS, TO GOOD REGULATIONS, by encouraging participation, by simplifying the process and the resulting regulations, and by adopting a new strategy to ensure that national interests are protected.

We will:

1. adopt a customer service orientation
2. seek input and involvement from all interested parties
3. fairly balance competing interests
4. consider whether direct federal involvement is necessary
5. use innovative approaches such as market mechanisms
6. use consensual decision making where possible
7. write regulations that are simple, clear and understandable
8. coordinate to avoid duplication and inconsistency
9. interpret and enforce regulations in a reasonable way
10. measure results to check our effectiveness

And we will take advantage of information technology everywhere we can to meet these goals.

Memorandum for the Vice President

CC: Chief of Staff
Date: January 18, 1995
Through: Elaine Kamarck
From: NPR Staff
Subject: **Alternative to "How" Regulations Are Implemented**

Last week's meeting of the regulatory reform working group looked at customer service. In the meeting, we tried to emphasize two things.

First, much, if not most, of what bothers those being regulated is how we go about implementing existing regulations. The current approach is based on mistrust — like our systems for managing federal workers. And we keep score of regulatory success in terms of citations, fines, and civil filings.

Second, there is a great deal of experience to show that a trust-based, partnership approach produces compliance results that meet or beat those achieved with our current enforcement style. The partnership approach uses the same ideas as our customer service model. To demonstrate success with this approach among regulators, we talked about Customs-Miami, OSHA's consultation programs, EPA's 33/50 program, and the consultative approach taken in Sweden, Germany, France, the UK, and elsewhere.

We have outlined a program that seeks to make partnership the basic approach to how we implement regulations — in a real hurry. To get this new approach in place we think we need a blitz at four levels, completed by March 1, 1995.

- **Agency heads** — you and the President would talk to all of them at once in Room 450 with a basic message that we need to make a major change in a hurry or face loss of much of what has been built — "fear of extinction message". Added one-on-one time with the heads of EPA, OSHA and EEOC could help deal with their central role.
- **Washington Senior Staff** — we would put together an "SES to SES" session with the same message that the agency heads received.
- **Field Supervisors** — for the people that manage inspectors day-in and day-out, we would need a kickoff session and a continuing training program. Kickoff could be done with FEBs. We might line things up to focus on EPA/OSHA regions. We'd do a video, covering at least the Customs-Miami model, plus some session guidelines. We'd include customers in the first sessions to get the new approach started. We'd attend as many as we could, enlisting Lynn Gordon from Customs and others with the new experience to help.

- **Front-line Staff** — for the people in touch with customers, we'd do a national, two day stand-down of inspection activities, during which agencies would do retraining in the new approach. This would be modeled on the Navy's stand-down for safety training. Activities that deal with imminent, serious hazards to health, safety and property would be managed so that no added risk is created.

To support this, we think we need the following ingredients.

- **An Executive Order** — it would reject the current approach based on mistrust of the majority; explain that the new emphasis is on creating compliance and verifying it, not on enforcement; direct agencies to put the Miami model in place; set down the basic steps in that model (see Attachment 1); and set some deadlines for training and reporting on new performance measures. The level of detail would be like that of the customer service executive order.
- **New Agency Specific Mission Statements** — agencies would need to retool these. We can draft some examples.
- **Agency Specific Customer Service Standards** — customers need a basis for judging what to expect from agencies under the new approach. If we don't set some expectations, the customers will set their own.
- **New Agency Specific Performance Measures** — these will focus everyone on outcomes and customer satisfaction, dropping fines, citations and legal referrals.
- **Revised Budgets** — Revise current year spending so that more money is allocated to consultative efforts than to command and control efforts. Prepare plans to increase the consultative percentage in outyears.

We could add actions from the list at Attachment 2 to increase the impact of our program.

Alternatives to the Moratorium.

With the actions outlined here, we would address the big issue of how regulations are implemented, and be in position to point out that the moratorium proposal misses this central issue entirely. You and the President would have at least two choices.

- **Reject the Moratorium, and Announce Our Program:** The message would be that the moratorium is harmful and doesn't even address the biggest problem.
- **Seek a Delay in the Moratorium Based on Our Program:** The message would be let's try this new approach first, building on it to use partnership in dealing with our other regulatory issues.

Discussion of these ideas is scheduled first on the agenda for the January 19, 1995 meeting of your regulatory reform working group.

Attachment 1
Miami Model Actions

- Local agency management will hold regular meetings among federal agencies, state agencies, local agencies, regulated entities, and the affected public. Local organizations, like the Chamber of Commerce, will be engaged to facilitate this dialog.
- Information technology links will be set up to support doing business with the regulated entities.
- Agencies will judge the performance of field operations based on compliance, not on citations, fines or prosecutions. All agency management reports will be revised to track compliance and outcomes.
- Training and consultation will be provided to regulated entities so they know how to comply. Agencies would create manuals for self-assessment, clear enough so that regulated entities would know what to expect.
- Enforcement priority will be put on the worst problems and no time will be spent on other problems until the big issues are dealt with.
- Sunset dates will be set for all internal rules. Only rules specifically justified will be put back in place after the sunset date.

Attachment 2

Other Impact Actions

- Assign our high impact players to high impact positions. Hammer award winners and other managers who have demonstrated success with the partnership approach should be reassigned to top positions in agencies drawing the greatest fire.
- Arrange Vice Presidential visits to agencies to collect the worst in current operating rules and regulations. Agencies would team up with customers to identify rules, paperwork and regulations that upset customers and add little value. These teams would be given hammers for solutions that simplify or dispose of the offending items.
- Create an electronic, on-line “department of business.” Here, in FedWorld for example, individual companies would find regulatory assistance, trade assistance, financial assistance, and a technical ombudsman to help them succeed.