

NLWJC - Kagan

Counsel - Box 027 - Folder 002

Regulatory Reform-Old Stuff [2]

I. Overview -- KM

A. Reforms: From "Command & Control" to Performance

1. Administrative changes
2. Changes within current legislative framework
3. Wholesale statutory framework changes
(e.g., Bubbles, tradeable permits, taxes/fees, multimedia approaches)

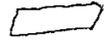
B. Reinvention

1. Sector-based
2. Place-based

II. CEA/NEC Presentation on Performance-Based System and Decision Framework

III. EPA Presentation of Low-Hanging Fruit and Customer Service Proposals

REINVENTING ENVIRONMENTAL PROTECTION



WHAT STANDARDS

| | | |
|------------|-------------------------|--------------------------|
| Who sets | national | federal |
| How set | legislation; litigation | negotiation; cooperation |
| What basis | technology | risk; benefits |
| What level | deminimis risk | benefits justify costs |

HOW MEET

| | | |
|---------------|------------------|-----------------------------|
| What source | point | bubble |
| What medium | single | multiple |
| What scope | source by source | trading; banking |
| What measures | uniform | site specific; intermittent |

HOW ENCOURAGE

| | | |
|------------|----------------|--------------------------------|
| What tools | penalize; fine | price; insure; bond; privatize |
| What help | inform; fund | inform; match |

HOW MANAGE

| | | |
|-----------------|----------------------------|-------------------------------|
| What oversight | inspection | certification; audit; tiering |
| What frequency | monitor | sample |
| What workload | multi-agency; multi-report | one-stop; streamline |
| Who run | national; delegation | federal |
| What priorities | various | net social benefit |

BACKGROUND PAPER: ENVIRONMENT AND NATURAL RESOURCE REGULATORY REFORM

Society has achieved important benefits from expenditures on environmental protection and natural resource management: health threats from pollution have been reduced, recreational and cultural amenities are maintained, and natural resources are used productively. However, given the scope and potential intrusiveness of government actions related to the environment and natural resources, efforts to make government regulation more effective in order to lower its costs and enhance environmental benefits are clearly worth considering. Public and private expenditures on environmental protection are estimated to be \$140 billion/year, or roughly 2.2 percent of GDP. Only about 15 percent of this is direct expenditure by the federal government; the rest is expenditure by other parties. Government management and regulation of other natural resources, while smaller in scope, remain important federal activities that intersect large public concerns with both public goods and private property.

The options described below are based on several presumptions already accepted in previous briefings on cross-cutting issues and general regulatory approaches:

1. Performance-based standards with economic incentives for compliance are to be used in lieu of design standards whenever and wherever possible to achieve environmental goals -- control outcomes, not inputs.
2. The process of regulation -- including methods of monitoring and certifying performance and correcting environmental problems -- needs to be made more innovative and less costly.
3. Environmental goals need to reflect a better balancing of environmental, economic, and social interests of the various interested parties, who need to play a substantial part in determining the balance -- public input and participation, along with strong partnerships with other levels of government, are key to success.

The first two points are concerned with **how** we regulate. The last point concerns **what** regulatory standards are established and **who** is involved in regulatory decisionmaking. This partition of the issues into how, what, and who is used to group the concrete options for regulatory reinvention described below. In practice, however, the issues are interrelated. The discussion that follows also can be seen as a sequence of increasingly more sweeping reforms. Sequential change can generate immediate benefits and build upon almost a quarter century of analysis of problems with the current system. However, others argue that without a full integration of environmental, economic, and social issues in a "place-based" system, regulatory reform will not fully address people's needs.

There are already several examples of agency efforts to improve the performance of environmental and natural resource regulation. EPA's Common Sense Initiative is an experiment in non-adversarial efforts to establish integrated environmental plans tailored to the specific circumstances of various industries. EPA also is seeking to expand the scope for emissions trading programs, subject to existing statutory constraints. DOI is working to reduce the compliance burden of the ESA by promoting regional permitting and other reforms. Both EPA and DOI are seeking to make regulation more effective by focusing on ecosystem management where appropriate. These good starting points need to be expanded and other innovations need to be adopted in undertaking more comprehensive reform of environmental and natural resource management.

HOW

1. Performance Standards, Bubbles and Trading

These concepts already have been reviewed in the regulatory cross-cut sessions, and there are a large number of specific reform possibilities for environmental and natural resource regulation that could generate very large cost savings. Some of the most promising include:

- a. Expanded emissions trading in urban airsheds for NO_x, VOCs, and other air pollutants, including experiments to integrate mobile sources and to make mobile source technology standards more flexible (e.g., tradable fleet emissions standards).
- b. Introduction of watershed-level effluent trading, including experiments to integrate agricultural and other nonpoint sources through local management plans.
- c. Expanded use of plant-level and site-level emissions and effluent averaging and expanded use of unified cross-media site plans for environmental programs (the Yorktown model).
- d. Elimination of redundant technology standards in CAA, CWA, RCRA where ambient or risk-based standards already are established, and development of risk-based standards to replace technology standards in other cases; coordination across statutes to lessen redundancy.
- e. Ecologically sound trading programs for ESA habitat protection and CWA wetlands protection.

Considerations:

- Some of these reforms require legislative changes in statutes not currently up for reauthorization (but which may get reopened anyway); more aggressive interpretations of existing statutes could allow more administrative changes.
- To ensure environmental quality with performance standards and trading, new investments in monitoring capacity would be needed; however, the savings from reform likely would be substantial even with these investments, and innovative monitoring and compliance methods could be used as described below.
- Trading programs work best with minimal restrictions, but some restrictions are needed to limit risks of local or regional hot spots or habitat destruction; relaxing restrictions on pollution offsets will increase flexibility but work against pollution reductions below the standards (an issue that can be addressed directly in setting the standards).
- Innovation is needed in blending expert judgment with public participation in making these regulatory changes; among the issues to be addressed is the mix of federal, state, and local authority and responsibility in designing new programs.

2. Incentives, Monitoring, and Compliance Procedures

Voluntary compliance can often be achieved through appropriate charges for the use of resources. In addition, the cost of compliance can be reduced by promoting innovation in monitoring rather than prescribing methods, using statistical sampling methods to cost-effectively assess performance, and targeting enforcement efforts at the subset of potential violators of greatest concern rather than using blanket enforcement methods. Examples include:

- a. Applying benefit-cost tests to continuous monitoring methods, and expanding the scope for lower-cost statistical sampling to determine compliance with (tradable or nontradable) emission requirements.
- b. Creating incentives for accurate self-reporting by combining streamlined regular reporting requirements with penalties and more oversight for violations.
- c. Lowering reporting requirements for firms using inherently less polluting technologies, and for firms (or agricultural sources) able to certify that they have installed reliable pollution prevention or control programs with independent third-party verification (encouraging the development of a professional environmental audit industry).
- d. Using community or regional habitat permitting under ESA, and promoting mitigation banking under ESA and CWA wetlands programs; providing waivers or

compensation for small landowners; good environmental targeting of agricultural land retirement programs.

e. Raising fees and renegotiating contracts for natural resource uses (grazing lands, timberlands, water, mining sites, landfill space, floodplain insurance) to reflect the full social cost of the resource uses; consideration of environmental effects in agricultural support programs.

f. Correcting uneconomic pricing of resources in the transportation sector (road financing, parking tax subsidies, "pay-at-the-pump" car insurance), and using vehicle emissions-based registration fees to create incentives for greater targeting of emissions reductions to the most polluted areas.

g. Expanding use of insurance and bonding requirements to internalize the costs of environmental risks associated with new products, production technologies, waste disposal methods, and monitoring strategies (lower premiums reward lower risk, and insurers provide objective information about risk).

Considerations:

- Raising fees is politically unpopular; building support requires showing the costs of less effective methods and being prepared to deal with equity issues.
- More flexible monitoring systems could lead to some increase in the actual or perceived risk of environmental damage; these concerns can be shrunk through experimentation, insurance/bonding, and public participation.
- Innovation is needed in blending expert judgment with public participation in making these regulatory changes; among the issues to be addressed is the mix of federal and local authority and responsibility in designing new compliance programs.

3. Enhancing Cooperation, Reducing Gridlock in Regulation

Superfund exemplifies the high "transactions costs" associated with a litigious approach to environmental protection, but other programs, like ESA, have major process-related costs as well. A combination of changes in current liability provisions and institutional changes to enhance public participation in a cooperative setting are worth considering. Potential reforms include:

- a. Greater use of reg-negs to promote agreement on environmental actions; attempting analogous open and cooperative bargaining in legislative crafting.
- b. A variety of specific Superfund reforms such as innocent landowner or prospective purchaser considerations and liability reform.

c. Moving beyond citizen suits and other burdensome judicial review requirements to more effective public input and participation in environmental decisionmaking.

Considerations:

- More cooperative decisionmaking and more effective policymaking will limit demand for citizen suits.
- Reg-negs do not guarantee that outcomes truly reflect a broad public interest, since the process might be "captured" by some participants; there is a continuing government role in providing information and ensuring the integrity of decision processes.
- Public input needs to be balanced with expert input in determining environmental actions.

WHAT AND WHO

4. Targeting the Best Regulatory Goals

While substantial efficiencies are possible from improved regulatory methods, much of the cost of environmental regulation is related to the strictness of the standards embedded in environmental laws and regulations. There is nothing wrong with strict standards per se; they can play a vital role in protecting public health and maintaining appropriate environmental stewardship. However, Executive Order 12866 requires that regulations generate benefits sufficient to justify the costs, taking into account a variety of quantitative and qualitative factors, and intangible as well as tangible concerns. Regulations failing to reach this standard invite public ire and cynicism that fuel obstructionism, as seen in the Contract proposals on risk assessment. Failure to consider the full range of relevant physical, ecological, and social science information in designing regulations, either by custom or because of statutory limitations, limits the quality of government decisionmaking and stymies informed public participation.

Because standards should reflect the public interest broadly defined, the "what" and "who" of environmental regulation are inextricably linked. Some of the proposals for reforming regulatory standards also involve shifts in regulatory roles and jurisdictions. Other issues related to the "who" of regulation are discussed below. Examples of reforms involving environmental standards include:

- a. Identifying disparities in unit costs of reducing mortality risks across programs, and reallocating efforts to make the results more uniform and hence more cost-effective; programs with extraordinarily costly standards include Superfund and SDWA.

- b. "Worst first" allocation of Superfund resources.
- c. Elimination of current statutory proscriptions on *considering* costs in establishing standards under CAA, CWA; establishment of a more systematic process (consistent with the Executive Order) for scrutinizing benefits and costs of both new and existing programs.

Considerations:

- Greater assurance of widespread and informed citizen participation will be needed to ensure an equitable and politically feasible outcome; this highlights the need for more environmental education.
- Regulatory benefits and comparability of risks remain uncertain for a number of pollutants, while costs inherently are easier to gauge; this argues for more scientific analysis of benefits to avoid underestimating them, while acknowledging that analysis also is costly and moving ahead where knowledge is imperfect but available.
- Changes in standards may require reopening some legislation.

5. Redistributing Federal and State/Local Responsibilities

Devolution to the states of responsibility for what are essentially local concerns may make it possible to increase the effectiveness of environmental regulation by moving it closer to the people who will reap its benefits and bear its costs. This can be a response to the criticism of unfunded mandates. On the other hand, legitimate roles for national government may remain because of entanglement of local and broader environmental concerns; protection of interstate commerce; efficiencies in the provision of knowledge and technology; safeguards for the integrity of public participation; and equity issues. Examples of possible actions include:

- a. Devolution of SDWA standards, perhaps subject to a federal minimum.
- b. Devolution of some or all authority for standard setting for Superfund and RCRA.
- c. Local discretion in the management of Superfund site cleanups, such as greater flexibility in brownfields management, ability to independently conclude voluntary cleanup agreements with responsible parties.
- d. Greater flexibility in local management of air quality measures (simplification of SIP process).
- e. Greater bottom-up interstate coordination in watershed management (water quality, habitat, wetlands).

f. Devolution of control over some public lands to states, Indian tribes, or to private actors such as environmental organizations.

Considerations:

- State and local leaders may resist having to take responsibility or may engage in "races to the bottom;" federal minimum standards and subsidies might in practice essentially recreate a national system.
- State/local government leaders, other organized stakeholders, and individual citizens would need increased information and technology assistance in many cases to effectively discharge the functions required; this argues for a continued federal role in collecting and disseminating information about environmental quality, risks, and technology options.
- Lack of uniformity may create additional compliance cost burdens.

OEP BACKGROUND PAPER

SHIFTING THE FOCUS OF ENVIRONMENTAL MANAGEMENT FROM CENTRAL BUREAUCRACIES TO LOCAL COMMUNITIES

January 18, 1995

(1) Building Trust

For the last 25 years, environmental policy making has been characterized by extreme polarization and a lack of trust. We have the opportunity to move toward a system that is less adversarial, more flexible, and more decentralized. But any attempt to reinvent the system along these lines must begin by building trust among traditional adversaries.

(2) Cooperation, Not Confrontation

The adversarial nature of the current system of environmental protection diminishes opportunities for cooperative partnerships to solve problems in conference rooms, rather than court rooms. A system based upon collaboration and cooperation would offer opportunities to solve problems that the current system precludes.

By bringing together people from all sides of an issue in an atmosphere of trust, common ground can be found; differences can be bridged, and new solutions can be identified that lead to consensus without requiring unacceptable compromise from any party. The government must learn to facilitate face-to-face problem solving among historical adversaries rather than simply imposing regulatory solutions.

(3) Providing Flexibility, Demanding Accountability

Much has been accomplished in the last 25 years with traditional command-and-control regulation. There may be circumstances in the future in which command-and-control regulation is the best solution to a specific problem. However, a lack of trust has led federal policy makers to rely upon overly prescriptive regulation to address environmental problems. There is a growing consensus that this overly prescriptive approach often provides too little environmental benefit for every dollar spent. As a result, there has been a growing chorus from industry saying: "Set clear environmental goals, but give us the flexibility to achieve them in the most cost-effective way possible." This sentiment has created considerable support for "performance-based regulation."

Many environmentalists view such sentiments with suspicion for at least two reasons. First, they question whether flexibility is a codeword for loophole. They want assurances that the process will be sufficiently "transparent" to ensure that goals will in fact be attained.

they question whether this emphasis upon flexibility in achieving standards is a trojan horse for actually rolling back the standards, themselves.

To build sufficient trust to reinvent the current system, flexibility must be closely tied to accountability. The environmental community -- and the American people -- must be assured that reform means both lower costs and greater levels of protection. That will require meaningful enforcement to ensure that environmental goals are achieved. Most industry advocates of flexibility understand that less prescriptive approaches must be tied to tough accountability provisions for both substantive and political reasons.

The implementation of a performance-based system could be modeled on the sector-by-sector approach used by the Dutch.

(4) Empowering Citizens

Environmentalists will require a quid pro quo from industry if they are to support greater regulatory flexibility. In addition to transparency in the process, their primary requirements will be increased citizen involvement in the decision making process to ensure accountability. The Administration's Superfund reform proposal acknowledged this tradeoff by including a title allowing future use to be considered when determining the level of cleanup required, and a title increasing citizen involvement in the process.

Increased citizen involvement raises three critical issues that must be addressed in any serious reform proposal: (1) Citizen access to information; (2) Increased environmental literacy to help citizens interpret such information; and (3) Building citizen capacity to compete with industry in a collaborative decision making process.

Information. The power of information to build trust and to assist in identifying creative solutions cannot be over-emphasized. The Toxic Release Inventory (TRI) has been a major success in increasing citizen access to information and changing industry behavior without conventional regulation. Citizens must have even greater access to such data if industry expects environmentalists to support increased flexibility.

Literacy. Increased environmental literacy is supported strongly by both environmentalists and industry. Environmentalists view environmental literacy as critical to effective citizen participation in decision making. Industry believes that environmental literacy is imperative if citizens are going to understand how to set priorities based on risk reduction.

Capacity. A collaborative approach to decision making is resource intensive. If we want to move toward a system where decisions are made in conference rooms, not court rooms, citizens must have the capacity to compete with business and industry on

a level playing field. If environmentalists feel that they will be outgunned by industry resources, they will fall back on litigation as their primary tool to achieve their goals. Serious questions concerning capacity have already arisen in regard to EPA's Common Sense Initiative.

(5) Devolving Authority

The major message of November's election is the feeling that the federal government is just too big. A consensus is emerging that we must devolve authority to the state and local level whenever feasible. This larger trend is entirely consistent with the need to empower citizens to become much more involved in decisions affecting their local communities. This trend toward decentralization requires a bottom-to-top reexamination of federalism and the environment. We must develop new criteria for defining the appropriate federal role in a new system of environmental protection.

(6) Integrating Economic, Environmental and Social Policy Making

As our economic, environmental, and social problems have become more complex, we have begun to understand that they must be addressed in a systemic fashion, not one at a time. The President's Council on Sustainable Development acknowledges these interconnections by referring to the "three legs of the stool." The Council's policy recommendations will strongly emphasize integrating economic, environmental, and social policy making so that they are mutually reinforcing. Such an approach is the best way to avoid unnecessary conflicts between jobs and the environment or development and preservation.

(7) Encouraging Civic Involvement

But there is also a fourth leg of the stool: governance. This fourth leg is the way that we resolve conflicts among the other three. Over the last 100 years, we have relied increasingly upon government regulation to resolve disputes between citizens. While this policy has accomplished much, it has created an adversarial approach to problem solving, absolved citizens of the responsibility of solving problems face-to-face, and encouraged the pursuit of individual interests at the expense of the common good.

By empowering citizens to participate actively in solving problems -- rather than having solutions imposed in Washington -- we will identify environmental solutions that will protect more, cost less, and will be politically sustainable. For environmental solutions that are more expensive, we will be able to achieve a higher level of acceptance of such costs by the community if they are able to understand better the objective to be achieved by such solutions and take part in developing them.

In addition to making government more efficient and responsive, reinventing government should seek to encourage civic involvement in communities across America by empowering citizens to participate in decisions that affect their families and their communities.

(8) A Place-Based Approach to Governance

A place-based system would shift the focus of environmental policy from bureaucratic procedures in Washington to environmental results in communities. While we would begin with a set of national goals or standards, this approach would build upon the performance-based regulatory system discussed earlier by giving local communities flexibility in achieving such goals. This approach would expand beyond the confines of the current regulatory system to combine key concepts from several innovative Administration initiatives.

The concepts contained in the following quotations referring to reinventing government, ecosystem management, and citizen empowerment -- if taken together -- represent a bold and innovative approach to reinventing regulation:

REINVENTING GOVERNMENT

"For too long, government programs have operated like stovepipes, with a separate program and mandate for each narrowly perceived problem. A reinvented government will do it differently. A reinvented government can use what I call the virtual department of Cleveland approach. If Cleveland outlines a plan in which we can help, we can create a team of people from all agencies to help get the job done. They won't really be a department of Cleveland. But while they work, the agency boundaries will disappear and they can work together as if they were a department until the job's done."

Vice President Gore
Harvard Commencement Address

ECOSYSTEM MANAGEMENT

"The premise of bioregionalism is a widespread understanding and acceptance of not only the complexity and interrelatedness of natural systems, but also their multiple values to the human community. This awareness allows the citizens of a watershed or other natural system to see themselves in relationship to their environment and, thereby, bring a new perspective to political and economic decisions affecting their regions.

...With an informed appreciation and understanding of ecological relationships, communities can provide integrated responses to resource issues. This model of localized decision making offers a way of overcoming, or at least working through, some of the traditional antagonisms that have plagued environmental policy at the

national level: conservation vs. preservation; jobs vs. environment; utilitarian vs. inherent values of natural resources. By focusing holistically on a specific ecosystem, the communal judgement can be brought to bear in a manner that transcends these divisions."

Jon Cannon
Assistant Administrator, EPA

COMMUNITY EMPOWERMENT

"We believe the best strategy to community empowerment is a community-driven comprehensive approach which coordinates economic, physical, environmental, community, and human needs. Through new partnerships among federal and local governments, the private sector, community organizations, and residents, we can build vibrant, secure communities that offer hope to their citizens."

Secretary Cisneros

If we combine the (a) "virtual Department of Cleveland" approach to economic development policy; (b) the ecosystem management approach to environmental policy, and (c) add the community-driven comprehensive planning approach contained in the community empowerment initiative, we would dramatically reinvent federal environmental management.

By combining these concepts, we would have a mechanism for devolving authority and empowering citizens. Communities would be empowered to develop their own integrated economic, environmental, and social policy strategies based upon the special needs of the people and the place. Rather than simply issuing regulations, the federal government would serve as an on-the-ground partner in developing and implementing community strategies. Rather than dividing citizens through adversarial proceedings, the federal government would encourage citizens to work together toward the common good.

A place-based system is a bold and innovative approach to reinventing environmental regulation for the 21st century.

JUDGE -

THEY SAID YOU

RECEIVED THE "ATTACHED
January 12, 1995 STATEMENT" AT
THE MEETING YESTER-
DAY.JH
yes

MEMORANDUM FOR REGULATORY WORKING GROUP

FROM: Sally Katzen

SUBJECT: Principles for Risk Analysis.

Attached is a statement of policy on risk assessment, management and communication. The principles are designed to define risk analysis and its purposes, and to generally guide agencies as they use risk analysis in the regulatory context. They are intended to provide a general framework -- a structure stating basic principles upon which a wide consensus now exists.

The principles are aspirational rather than prescriptive. Their application requires flexibility and practical judgment. The science of risk assessment is rapidly changing and its use is a function of a number of factors -- including legal mandates and available resources -- that vary from one regulatory program to another. We therefore do not offer these principles as conclusive, complete or irrevocable; they are intended to be used as a point of departure for future efforts within individual agencies and the Executive Branch broadly.

The principles should be interpreted and applied as a whole. Particular sections should not be quoted or extracted in isolation. The principles are not intended to provide the basis for judicial review or legislation.

Senate GOP Plans To Target 'Worst' Regulations First

In their effort to overhaul the regulatory process, Senate Republicans plan a review of federal regulations — aimed at targeting the “worst” areas first — and plan to have subgroups of a regulatory task force watching the workings of major committees to ensure future rules are not burdensome, **Sens. Christopher Bond, R-Mo., and Kay Bailey Hutchison, R-Texas,** said Thursday.

The two head a Senate task force on regulatory reform announced earlier this month, and say they plan shortly to compile broad legislation along with **Senate Majority Leader Dole and Sen. Don Nickles, R-Okla.,** aimed at revamping the way federal regulators issue rules.

Asked which regulations qualify as

“the worst,” Hutchison put environmental rules at the top of the list.

She charged Endangered Species Act rules hold private lands for ransom, criticized EPA auto emissions testing requirements and said the Clean Air Act needs to be amended. Hutchison also named OSHA rules and FDA delays in approving drugs and the so-called DeLaney clause of the Federal Food Drug and Cosmetic Act, which prohibits concentrations of cancer-causing pesticides in processed foods.

Bond said the task force will work to compile a list of the worst areas, and plans hearings around the country.

Asked what they would do once they came up with that list, the senators said members of the subgroups may work to address the issues through the au-

thorizing committee, or the task force may seek to remedy the problems through the appropriations process.

According to Hutchison, the regulatory reform measure will be a comprehensive bill, a key component of which will be to require cost-benefit analyses, a scientific basis for rules and risk assessment. In addition, legislators want to make regulating agencies accountable for implementing the laws as intended by Congress.

As in the House, the senators plan first to move legislation creating a regulatory moratorium.

Bond said some of the regulations imposing the greatest burdens on small business include employment requirements, OSHA and some EPA rules, as well as the 1990 Affordable Housing Act.

Riegle To Chair Public Relations Firm And Form PAC

Former **Sen. Donald Riegle, D-Mich.,** who left office last week after 28 years in the House and Senate, will become chairman of the executive committee of Shandwick Public Affairs-Washington, it was disclosed Thursday.

Riegle also will be a part-time professor at Michigan State University's Eli Broad College of Business and the Eli Broad Graduate School of Management. He holds a master's degree in business from MSU.

And the former Senate Banking Committee chairman, who came to grief several years ago due to contributions he received from savings and loan figure Charles Keating, plans to remain a player in the realm of political finance. He is forming his own PAC and will bankroll it with the almost \$400,000 in leftover campaign donations, the *Detroit News* reported.

Riegle, who recently sold his home in suburban Virginia and bought a house near Traverse City, Mich., plans to divide his time between there, Washington and East Lansing, Mich. — the home of MSU.

Shandwick Public Affairs-Wash-

ington includes as clients Chrysler, McDonald's and Northwest Airlines. It is an arm of London-based Shandwick, a company that has 85 principal offices in North America, Europe and Asia — and which touts itself as the world's second largest public relations firm.

“We have entered an era where public-minded private sector growth is the key to stability and higher living standards, and where collaborations and cooperation among business, government and labor will drive success,” Riegle told the *News*. “It was a central theme of my Senate work.”

Riegle listed \$391,418 in cash on hand in his latest FEC report. Whatever is not used to cover remaining bills will be converted into a PAC, former Riegle chief of staff David Krawitz told the paper.

Most of that money is left over from Riegle's last Senate campaign in 1988, Krawitz said. After deciding against running for a fourth Senate term in September 1993, he returned almost \$190,000 to individual donors and \$25,000 to PACs, according to FEC reports.

Keating helped to raise almost \$80,000 for Riegle's 1988 campaign, and then sought help from Riegle and

four other senators in an effort to stave off federal regulators. Riegle later returned Keating's money and refused further contributions from the banking industry. The Senate Ethics Committee ultimately rebuked him for poor judgment.

In addition to his business, education and political pursuits, Riegle has signed on with Leading Authorities Inc., a Washington-based speakers' bureau. It plugs the former Banking Committee chairman as “one of the Senate's most sought after speakers ... now available for lectures and commentary on American Politics, Banking & Financial Services, Health Care Reform Taxes & Trade.”

His asking price per speech: \$5,000.

Also formally off the job market now is former **House Speaker Fole**. The Washington state Democrat will stay in Washington, D.C., as a partner with the law firm of Akin, Gum Strauss, Hauer & Feld, where he will concentrate on international affairs.

The firm made an official announcement Thursday. Foley, who will concentrate on international affairs, said he was “looking forward to returning to the practice of law.”

THE WHITE HOUSE

WASHINGTON

December 21, 1994

To: Joel Klein
Bruce Lindsey
Cheryl Mills
Steve Neuwirth
Cliff Sloan
Chris Cerf
Doug Letter
Kathi Whalen
Clarissa Cerda
Marvin Krislov
Vicki Radd

From: Beth Nolan *B*

Re: Regulatory Reform

Ab has asked me to coordinate our office's response to the Regulatory Reform project. We have one big project ourselves -- EEO regulations -- and there are many other projects ongoing in the EOP in which we may wish to participate.

I'd like everyone in the office who has an interest in any aspects of Regulatory Reform to meet together, so we can discuss how to proceed.

I've set a meeting for tomorrow, Thursday, at 2:00 pm in my office, 136. If you can't make it, let me know. Otherwise, I'll see you then.

cc: Ab Mikva

EJde

January 4, 1995

MEMORANDUM FOR THE REGULATORY ADVISORS AND AGENCY REGULATORY REFORM WORKING GROUP

FROM: Sally Katzen

SUBJECT: Meeting on Cross-Cutting Regulatory Issues

We now have a date and time for the regulatory cross-cut meeting. It will be held tomorrow, Thursday, January 5th, from 4:00 p.m. to 6:00 p.m. in the Vice President's Office, OEOB, Room 274.

Attached please find an agenda and briefing paper for the meeting.

**CROSS CUTTING ISSUES
AND
GENERAL REGULATORY APPROACHES**

Second Installment
January 5, 1995

The approaches discussed below are those on the list distributed for the December 21st meeting that were not discussed at that meeting; you may recall we have already touched on performance standards, bubbles/marketable permits, audited self regulation, contractual mechanisms, and (briefly) regulatory budget. For purposes of our further consideration, we suggest the following order: ✓

1. Enhance Public Participation
2. Streamline Paperwork
3. Provide Incentives to Review Existing Regulations
4. Revisit Federalism Issues
5. Eliminate Statutory Deadlines
6. Use of Information
7. Introduction to Customer Service Issues

1. Enhance Public Participation: A variety of laws and rules limit the ability of regulators to talk with those to be regulated (or those intended to benefit from the regulation). While these restrictions were imposed for good reason to curb abuses ("smoke filled rooms"), they now often serve more as a barrier to meaningful communication between the rule-writers and those affected by the regulation. Consequently, important information is too often not exchanged, creating a gap between the good intentions of rulewriters and the practical realities of life.

Two paths for improvement exist:

(1) **Reduce current barriers**

Full Scale Reform

(a) Eliminate all administrative, pre-NPRM, ex parte rules; and *(not by leg)*

(b) ~~Seek repeal of the Federal Advisory Committee Act (FACA), or~~ carve out exemptions for State/local/tribal governments, for scientific or technical advisors, or for operations or mechanical advisors or consultants.

Any (all) meetings would be accompanied by simple disclosure of when who met with whom about what (as in E.O. 12866).

Pro:

-- E.O. 12866 calls for vetting proposals with those affected, but agencies claim their rules preclude them from doing so.

-- Would provide reality check and might produce better way to do the regulation.

-- Would reduce adversarial relationship in rulemaking.

Con:

-- Would encourage suspicions of undue influence by big business.

-- These "sunshine" provisions were advocated by Democrats and strongly supported by Democratic constituencies.

-- Consultation can be time consuming and expensive.

(2) **Encourage more formal consultation**

(a) Select several high-profile regulatory negotiations;

(b) Establish a consultation system based on the

"European model," where goverment, business, and

interest groups meet to negotiate on an industry-wide basis an approach to a perceived problem.

Pro:

- Leads to better understanding of the issues
- Those who participate in developing solutions more readily accept and support them
- Reduces adversarial environment

Con:

- Heavy up-front costs (both in time and resources)
- Sunshine can lead to posturing and confrontation
- Difficult to find/fund representatives of the public

Current Uses: Numerous agencies have made efforts to reach out to stakeholders (see E.O. 12866 One-Year Report, pp. 14-23 for examples).

Potential Uses: Virtually all regulations could be improved with earlier consultation with affected parties and with reality check in final stages. A super reg-neg could be convened to deal with a particularly controversial regulatory issue (e.g. ergonomics, etc.) to highlight responsiveness to concerns.

2. Streamline Paperwork: Many small businesses, local governments, and citizens know their Federal government primarily through its forms and reporting requirements. Because these are frequently unintelligible, duplicative, burdensome, or annoying, they are among the most often criticized aspects of the government. In fact, to many, paperwork is the Federal government.

Streamlining government paperwork can be done through a number of means:

(1) Establishing a "paperwork budget" and reducing "burden hours" by a specific percentage (the theory underlying the Paperwork Reduction Act);

(2) Giving agency heads authority to waive information requirements if it can be demonstrated that certain information can be more effectively collected by another means or from another source;

(3) Precluding incorporation of the actual form in rules so it can be modified without full notice and comment procedures.

(4) Using technology to make information easier to submit and to make better use of information submitted.

Pros

- Addresses a major public complaint about government.
- Reduces costs and burdens, particularly on small businesses.
- Facilitates changes based on experience, changed circumstances, etc.

Cons

- Percentage reduction is arbitrary.
- Information is needed for compliance and enforcement.
- If form is not in rule, question may arise about enforceability.
- Not all regulated entities are computerized.

Current Uses: The Paperwork Reduction Act gives some authority to OIRA for (1) and (4), but there has been no higher level reinforcement. Some agencies routinely follow (3).

Potential Uses: All agencies could take paperwork burden more seriously.

3. Provide incentives for agencies to review existing regulations:

Though "lookbacks" -- reform of current regulatory programs -- are included in Section 5 of E.O. 12866, it has proven more difficult than we would have anticipated for agencies to undertake these time consuming, generally thankless tasks. (See One-Year Report, chapter IV.) New incentives for re-engineering of current programs are necessary, particularly in a time of reduced resources.

Two approaches have potential:

(1) Require agencies to respond within a specified period of time to any **petition** (that includes specified information) to eliminate a particular regulatory provision. Petitions that must be denied because a particular provision is required by statute would be transmitted to the relevant congressional committees.

Pro

- This would encourage private parties to identify rules that impose unjustifiable costs on society.
- This would present Congress with potentially valuable information about ineffective regulatory statutes.
- This would further the idea of an accountable government, open to petitions from its citizens.

Con:

- The agencies might be overwhelmed with paper.
- Agencies' priorities (and use of limited resources) would be driven by special interest (petition writing) groups.
- Could raise expectations that cannot be realized.

(2) Agencies should periodically **examine** the costs and benefits of regulations that impose large costs and **repropose** rules where the actual costs and benefits differ markedly from those anticipated before the rule was promulgated.

Pro

- Would ease the burdens caused by inefficient regulations
- Would provide analytic data to improve techniques of estimating costs and benefits for future rules

Con:

- Would require use of agency resources, taking some away from the development of new regulations.

-- Would introduce additional controversy over selection of test cases.

Current Uses: Department of Treasury answers all correspondence with set time limit; Department of Transportation has done review of past rules without the reproposing piece.

Potential Uses: Each agency could choose (1) or (2) or a pilot project area within (1).

4. Revisit Federalism Issues. In addition to asking whether government should regulate and how it should regulate, we need also ask who --which level of government-- should do the regulating. In some cases, Congress has--for political reasons--felt obliged to address problems that are best addressed by States or localities. Conversely, in some instances, state and local governments have maintained partial control over areas better regulated solely by the central government.

These judgments should be revisited, particularly in light of larger trends shaping our economy and polity. Just as the functioning of markets may improve and render regulation obsolete, so the regulatory capacities of state and local entities may improve and render federal regulation unnecessary. And, in sectors in which concurrent federal and state regulation once made sense, the globalization of the economy may now support a preemptive federal role.

The justifications for federal regulation are familiar:

- o to ensure certain national values and objectives, such as the protection of civil rights.
- o to control externalities, such as interstate flows of pollutants;
- o to secure economies of scale, such as through investments in research;
- o to establish uniformity, where essential for interstate or international commerce;
- o to minimize collective-action problems, such as a deregulatory "race to the bottom" among the States; and
- o to redistribute resources among States or regions.

So too are the justifications for leaving regulation to state, local, and tribal jurisdictions:

- o to enhance local control and public participation;
- o to improve efficiency by tailoring solutions to local needs;
- o to encourage experimentation with different regulatory methods and goals.

Consider three suggested approaches:

- (1) Convene **summit** of Federal and State regulators in particular sectors to consider reallocating roles.
- (2) Require each agency to **nominate an area for devolution** to the states. Examples previously discussed include de-federalizing Superfund and Safe Drinking Water, where the federal role could be limited to cost-sharing

and technical assistance.

- (3) Provide authority for the head of an agency to grant **waivers** -- on a priority basis -- of any provision of the new law if a State, local, or tribal community: (1) was overburdened by unfunded federal requirements; (2) suffered from economic distress as measured by poverty, outmigration, joblessness, etc., or social distress; or (3) developed an innovative proposal to improve an economic or social condition or a federal program. Communities would have to provide a strategic plan which would describe the purposes for the waivers and a timetable with a sunset date of the waiver. These waivers would be temporary and would not be subject to judicial review.

5. Eliminate Statutory Deadlines: During the last decade, Congress has increasingly specified the time for issuing regulations, often without regard for the complexity of the task or the other priorities of the agency. We could seek legislation to eliminate or extend statutory deadlines for rulemaking proceedings.

Pro:

- Agencies would be able to set priorities, rather than being driven by statutory and judicial deadlines.
- Good science and good analysis would not be squeezed out by arbitrary deadlines.

Con:

- There would be little basis for forcing action unreasonably withheld by an agency.
- Some issues can be analyzed forever.

Potential Uses: EPA is now largely driven by statutory deadlines. Department of Education has also lived with very tight limits. Both would produce "more sensible" rules with more time.

6. Use of Information: Information disclosure may be used as a substitute for regulation. Providing information on a product or service, for example, would permit potential consumers to weigh risks for themselves, rather than having the government do it for them by banning or restricting use of the product or service.

Pro:

- The public rather than the government makes decisions regarding products and services.
- Less costly than traditional regulation.
- Faster to implement and to modify in response to changing circumstances.
- Could utilize modern technology for electronic dissemination of information.

Con:

- Assumes literate and educated consumer.
- Information must be carefully presented in a way that is easy to understand and useful to consumer decision-making.
- Mandatory information dissemination can be a form of burdensome, command-and-control regulation. If voluntary, information may lack uniformity or accuracy.
- May burden small entities disproportionately.

Current Uses:

- Food labeling provides uniform nutritional information for consumers, as well as food content labeling; safe food handling labels for fresh meat and poultry; fair packaging standards; textile/wool/fur content and care labeling on clothing; energy efficiency labeling; domestic content and country of origin; automobile fuel efficiency; drug information inserts.

Potential Uses:

- Provide information to and educate workers about repetitive stress syndrom rather than require compliance with design standards; improve food content labeling and eliminate food "standards of identity."

7. Introduction to Customer Service Issues: Regulators are notorious for not being customer friendly. This custom must change. Some modest proposals:

- o Require a political appointee in each agency to certify that he or she has read in its entirety and understands each rule that is promulgated.
- o Require each agency to establish an ombudsman to be available to those with questions or complaints.
- o Encourage compliance rather than penalties:
 - Prohibit agencies from appraising an employee's performance on the basis of the number of citations he or she issues [see recent DOL changes]
 - Give those who violate regulations notice and an opportunity to cure the violation before issuing a citation (exclude imminent health and safety risks)



OFFICE OF THE VICE PRESIDENT
WASHINGTON

January 4, 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 Thursday, January 5 in the Ceremonial Office from 4 pm - 6 pm.

At the January 5th meeting we will address the remaining cross-cutting issues and the takings strategy. As time allows, we will take up the issues of customer service and the use of information technology in the regulatory arena.

A tentative schedule for the rest of the meetings was distributed with the last meeting announcement -- however, due to the complexity of these issues and the large number of individuals and offices involved, this schedule will need to be modified.

It is important that we address important aspects of regulation which might not have been indicated on our earlier listings (ADA, for example). I need your help in ensuring that we're as comprehensive as possible, and that we all know who the lead will be on each subtopic. So, looking at the old schedule, please identify more specifically what subtopics you think fall under

the sector headings, as well as who you think should be taking the lead. Please send your suggestions to Jean Logan at NPR. Her fax number is 632-0390.

In seeking bold ideas, we need to speak to experts outside of the federal government. As you know, the Vice President has spoken publicly on several occasions about revamping the regulatory process. In preparing for these meetings, you should feel free to contact people outside this process to seek advice and input. However, the discussions with the Vice President and the ideas presented to him should remain in confidence.



To read

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EXECUTIVE ORDER

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REGULATORY PLANNING AND REVIEW

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Statement of Regulatory Philosophy and Principles. (a) The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should

assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) The Principles of Regulation. To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best

available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people. (a) The Agencies. Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) The Office of Management and Budget. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) The Vice President. The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of

general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) Agencies' Policy Meeting. Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) Unified Regulatory Agenda. For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) The Regulatory Plan. For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a

minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the

Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other

agency.

(e) Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) Agency Responsibilities. (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer

shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory

mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow,

the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a

Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10

working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads

or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

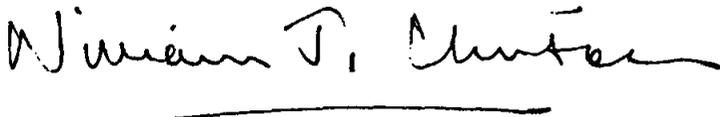
Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the

Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.



THE WHITE HOUSE,

September 30, 1993.



The Business Roundtable

Toward Smarter Regulation

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Toward Smarter Regulation

Update January 1995

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Executive Summary

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America is experiencing a dramatic increase in government regulation, with the most significant growth in the environmental, health, and safety areas. While the goals of many of these regulations may be laudable, there is a growing realization that we are wasting resources: Legislatures and agencies simply are not allocating limited resources in a cost-effective manner. We could achieve as good or better protection of human health and the environment at far less cost by regulating smarter.

Regulations are like "hidden taxes" that impose costs that are not readily apparent, yet are enormous. Just as the public must pay for government spending programs through higher taxes, they must also pay a high price for regulations – as customers, employees, and stockholders. The soaring costs of regulation stifle productivity, wages, and economic growth. Regulations also undermine jobs and international competitiveness. The increasing strain on our nation's resources brings into sharp focus the challenge for the '90s and beyond: The nation must not only reduce regulation, but when we choose to regulate, we must regulate smarter.

Regulators cannot regulate smarter unless their leaders allow it and demand it. Strong leadership must change the current incentives that drive agencies to create new regulations with little restraint, but offer virtually no reward for reforming or eliminating existing regulations or obviating the need for new ones.

Business is not alone in calling for regulatory reform; taxpayers, state and local governments, academics, members of Congress, the President and the Vice President have all expressed concern about the rising tide of regulations. To provide a framework for smarter regulation, The Business Roundtable recommends that federal, state, and local governments implement the following twelve tenets of rational regulation:

1. Risk-Based Priorities and Public Education: To provide more cost-effective protection to human health and the environment, regulatory priorities should be based upon realistic considerations of risk. Agencies must educate the public about the level of risks proposed for regulation compared to risks familiar to the public, as well as the cost of reducing that risk. The government should estimate the relative risks posed by different substances, products, or activities and decide whether, and

how, to regulate based on those risks. Resources should be committed where the greatest risks can be reduced at the least cost. The government should ensure that the public understands the magnitude of each risk compared to more familiar risks, as well as the costs of reducing that risk.

2. Risk Assessment and Risk Management: Risk assessment methodologies should be continuously improved, and agencies should establish a clear distinction between assessing risks and deciding how to manage them. The scientific process of risk assessment should be made as objective as possible, and uniform standards should be applied. Any necessary policy or scientific judgments should be disclosed. Cost-effective approaches to managing risks should be promoted.

3. Sound Science: Agency decision making should be grounded on the most advanced scientific knowledge currently available. New regulations should be based on the most advanced and credible scientific knowledge, and existing regulations and methods should be regularly updated to incorporate scientific advances. In making decisions and setting priorities based on risk, agencies should use "best estimates," not worst-case estimates of risk.

4. Benefit-Cost Analysis: Benefit-cost analysis should be utilized by agencies when developing regulations, with preference given the least costly regulatory alternative that accomplishes program objectives. First, agencies should use benefit-cost analysis to determine whether or not a proposal should be considered for adoption. Second, agencies should use cost-effectiveness analysis to select the regulatory option that achieves regulatory objectives in the least costly way.

5. Market Incentives and Performance Standards: Market-oriented solutions and performance standards should be favored over command-and-control regulation. Market-based regulatory approaches reproduce the efficiency of a free market by internalizing the cost of a regulated activity or substance. They allow regulated parties to meet or exceed regulatory goals in the least costly way. Moreover, market incentives and performance standards adapt to changed circumstances more quickly than government command-and-control regulation.

6. Productivity, Wages, and Economic Growth: Methodologies should be implemented and continuously improved to assess the impact of major regulations on productivity, wages, and economic growth, as well as the adverse impact on jobs and international competitiveness in industries that bear the burden of regulation. For our economy to grow, regulatory and economic goals must become complementary, not conflicting. Government must be more sensitive to the impact of regulation on wages, prices, jobs, and international competitiveness.

7. Coordination Among and Within Agencies: Coordination of regulatory activities among and within agencies should be improved to eliminate inconsistencies, duplication, and unnecessary regulatory burdens. To address problems within the jurisdiction of multiple agencies, a strong interagency committee should engage in strategic planning and develop a coordinated response before regulations are proposed. Each agency should also coordinate its programs that address different aspects of the same problem.

8. Openness: The entire regulatory process, including centralized Executive review and management of agency rule-making, should be open to public scrutiny to promote the quality, integrity, and responsiveness of agency decisions. Secrecy should be removed from the regulatory development and review process. More rules should be developed through regulatory negotiation, which involves open negotiations between regulators and interested parties.

9. Periodic Review: Programs and regulations should be periodically reviewed for purposes of determining whether they should be reformed, discontinued, or consolidated. Periodic review allows for government-wide priority setting through reforming or eliminating regulations, updating scientific methodologies, reorganizing an agency, or reallocating responsibility among agencies. Where appropriate, legislatures can ensure a stricter review process by setting firm deadlines by which they will be compelled to evaluate and vote for continuation of a program, or the program will terminate.

10. Federalism: Regulatory authority should be more rationally allocated among the federal, state, and local governments, and federal regulatory programs should avoid unfunded mandates.

Many activities and substances are controlled by a mix of federal and state regulation. Modern commercial realities demand a more cost-effective balance of federal and state regulation. The federal government is primarily responsible for achieving this balance and should carefully consider whether to preempt and regulate a field or leave the field to the states. The federal government should also refrain from directing state and local governments to administer or comply with federal programs without providing the necessary funds.

11. Paperwork Burdens: Paperwork burdens caused by regulatory programs should be expressly assessed and substantially reduced.

The massive paperwork burdens imposed on business, the public, and governments themselves must be reduced. The Paperwork Reduction Act and OIRA's paperwork control responsibilities should be strengthened. Moreover, administrative process costs – the inflexibility, unresponsiveness, and delay that characterize many regulatory programs – should be examined and reduced.

12. Regulatory Budget: A framework should be developed to account for expenditures required by regulations and to promote greater fiscal restraint on regulatory programs.

There is a pressing need for government to be more sensitive to the cumulative costs of regulations. Under a regulatory budget, agencies would have a powerful incentive to regulate in a more cost-effective manner; each agency could be limited in the amount of regulatory costs imposed on the economy each year.

* * *

A unique opportunity for meaningful regulatory reform presents itself. There is a growing consensus not only on the need for regulatory reform, but also on how to achieve it: Government must assess the seriousness of risks proposed for regulation, compare risks to be regulated to risks familiar to the public, disclose the costs of regulation, regulate only if the benefits outweigh the costs, and select the most cost-effective, market-driven method possible. This is smarter regulation. And smarter regulation is better regulation, for consumers, governments, and business alike. President Clinton's Executive Order on Regulatory Planning and Review espouses many of these principles for improving both regulations and the regulatory process itself.

However, the White House, Congress, agencies, and the states must all commit themselves to smarter regulation. The Business Roundtable recommends that governments at all levels implement these twelve tenets. *Our nation cannot afford to ignore the challenge to regulate smarter.*

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I. Introduction

Since the 1970s, our nation has implemented far-reaching regulatory programs to protect human health and the environment. Congress created new agencies – such as the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission – with broad responsibilities to reduce risks to public health, safety, and the environment. Older agencies, such as the Food and Drug Administration, have been given expanded regulatory authority. Sweeping legislative mandates have directed agencies to reduce risk to the environment, health, and safety, almost without compromise.

Some government intervention in the economy may be necessary to achieve desirable goals such as a cleaner environment, safer working conditions, and safer products. In many instances, specific regulations have been well-conceived and reasonably implemented. These efforts have produced substantial benefits for the country and its people.

And yet, even with the best of intentions, government simply is not allocating limited resources in a cost-effective manner. Despite a dramatic increase in environmental, health, and safety regulation, experience has taught us that often our regulatory efforts have been more costly and less effective than they could have been. Moreover, the enormous costs of federal and state regulations exert a heavy drag on the economy. They depress wages, stifle productivity and economic growth, drive up prices, and impede innovation. They also burden federal, state, and local governments. In our increasingly global economy, excessive regulation seriously undermines the competitiveness of U.S. businesses. Ultimately, the American public suffers.

The costs of regulation are undeniably high, and the costs of many regulations plainly outweigh their benefits. The annual cost of federal regulation was conservatively estimated at \$581 billion for 1993; it is projected to rise to \$662 billion by the year 2000.¹ Almost 75% of that cost increase is expected from additional environmental, health, and safety regulation.² According to EPA projections, by the year 2000 the United States will spend \$160 billion annually on pollution control alone – almost 90 percent more than was spent in 1987.³ Although economic regulation in areas such as transportation and energy has declined, cost reductions from earlier reforms have been dwarfed by new regulation in the environmental, health, and safety areas.⁴

Beyond the problems caused by the rising costs of government

regulation, the regulatory process itself has become unduly rigid, unresponsive, and inconsistent. These problems have sparked increasing concern about the rationality of the regulatory process and a growing determination to do something about it.

The Need For Priorities and Reform

Consumers, businesses, and governments all have a stake in regulatory reform. Federal, state, and local governments, like businesses, are part of the regulated community. The enormous liability of federal facilities and municipalities for Superfund cleanups is but one growing regulatory crisis faced by governments at all levels. To absorb the costs of regulation, businesses may be forced to raise prices, reduce production, eliminate jobs, cut research and development, or even go out of business entirely. Likewise, federal, state, and local governments may raise taxes or reduce services; some local governments may even face the prospect of bankruptcy.

Although the direct costs of regulation typically are imposed on businesses and governments, they ultimately are passed on to the American consumer through higher prices, diminished wages, reduced quality or availability of products and services, as well as through increased taxes. Per household, these costs total about \$5,900 per year.⁵

These soaring costs of government regulation come at a challenging time. The national debt now exceeds \$4 trillion – \$16,600 for every man, woman, and child in America.⁶ This expanding deficit makes it painfully obvious that our resources are limited. Many government priorities – including crime prevention, education, and defense – must compete for these limited resources. Any increase in regulation must be weighed against other legitimate priorities, as well as against its adverse impact on wages, productivity, and economic growth.

Too many regulations and regulatory programs have suffered from inadequate analysis and discipline. Both the Legislative and Executive Branches must share responsibility – first, to address this problem, and second, to cure it. The Business Roundtable believes that existing and proposed regulatory programs should ensure that:

- Stated goals are in fact attainable.
- Each program or regulation is worth the added cost to the nation (in increased prices and lower wages and productivity, for example).

- Each regulation is the most efficient means to achieve its objective and minimizes adverse economic impacts.

Toward "Smarter" Regulation

The regulatory process must be reformed. Governmental resources at all levels must be allocated more rationally. And business must devote its resources to becoming more innovative and productive. The question is not only how the nation can reduce regulation, but also how we can regulate smarter. This question is crucial in both good and bad economic times.

The concept of smarter regulation is not novel. The increasing regulatory burden has led to a growing demand for reform across a spectrum of American society – from leaders of all business sizes, academics, public interest groups, government officials, and the general public. This demand has already sparked some important steps toward reform; indeed, Vice President Gore's recent National Performance Review report expressed alarm at the cost of regulation and concluded:

We must clear the thicket of regulation by undertaking a thorough review of the regulations already in place and redesigning regulatory processes to end the proliferation of unnecessary and unproductive rules.⁷

To this end, President Clinton signed Executive Order 12866 on Regulatory Planning and Review on September 30, 1993. This Order carries forward the concern of the last three Administrations by calling for a vigorous regulatory planning and review process and embracing many principles that would improve both the regulatory process and regulations themselves.

However, the hard work necessary to "reinvent" regulation still lies ahead. To further this worthy goal, The Business Roundtable recommends that governments at all levels implement the following twelve tenets of rational regulation:

1. *Risk-Based Priorities and Public Education:* To provide more cost-effective protection to human health and the environment, regulatory priorities should be based upon realistic considerations of risk. Agencies must educate the public about the level of risks proposed for regulation compared to risks familiar to the public, as well as the cost of reducing that risk.

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2. *Risk Assessment and Risk Management:* Risk assessment methodologies should be continuously improved, and agencies should establish a clear distinction between assessing risks and deciding how to manage them.
3. *Sound Science:* Agency decision making should be grounded on the most advanced scientific knowledge currently available.
4. *Benefit-Cost Analysis:* Benefit-cost analysis should be utilized by agencies when developing regulations, with preference given the least costly regulatory alternative that accomplishes program objectives.
5. *Market Incentives and Performance Standards:* Market-oriented solutions and performance standards should be favored over command-and-control regulation. They allow regulated parties to meet or exceed regulatory goals in the least costly way.
6. *Productivity, Wages, and Economic Growth:* Methodologies should be implemented and continuously improved to assess the impact of major regulations on wages, productivity, and economic growth, as well as the adverse impact on jobs and international competitiveness in industries that bear the burden of regulation.
7. *Coordination Among and Within Agencies:* Coordination of regulatory activities among and within agencies should be improved to eliminate inconsistencies, duplication, and unnecessary regulatory burdens.
8. *Openness:* The entire regulatory process, including centralized Executive review and management of agency rulemaking, should be open to public scrutiny to promote the quality, integrity, and responsiveness of agency decisions.
9. *Periodic Review:* Programs and regulations should be periodically reviewed for purposes of determining whether they should be reformed, discontinued, or consolidated.
10. *Federalism:* Regulatory authority should be more rationally allocated among the federal, state, and local governments, and federal regulatory programs should avoid unfunded mandates.
11. *Paperwork Burdens:* Paperwork burdens caused by regulatory programs should be expressly assessed and substantially reduced.

12. *Regulatory Budget*: A framework should be developed to account for expenditures required by regulations and to promote greater fiscal restraint on regulatory programs.

Each of these tenets is explored in greater detail below.

II. Twelve Tenets of Rational Regulation

1. Risk-Based Priorities and Public Education: To provide more cost-effective protection to human health and the environment, regulatory priorities should be based upon realistic considerations of risk. Agencies must educate the public about the level of risks proposed for regulation compared to risks familiar to the public, as well as the cost of reducing that risk. The escalating costs of regulation and limited resources available make it imperative to establish priorities in environmental, health, and safety regulation. Despite the vast and expanding investment in programs to protect public health and the environment, there is a growing realization that we are not spending our money in the most cost-effective manner to achieve the greatest possible advances. All too often, regulatory priorities are based on misguided public perceptions of risk instead of valid scientific knowledge and reasoned analysis. Accordingly, there is a pressing need to establish a risk-based approach to environmental, health, and safety regulation and to provide the public with better information for evaluating and comparing risks that are candidates for regulation. The goal is not to put economic values before human values, but to achieve effective risk reduction at a lower cost.

Risk-Based Priorities

The problem of protecting human health and the environment may best be defined as the management of risk. The failure to manage risk effectively and to establish priorities rationally translates ultimately into a failure to protect health, safety, and the environment. Through the use of *comparative risk assessment*, the government can estimate the relative levels of risk posed by different substances, products, and activities and can establish priorities in determining whether, and how, to regulate. The government, with public input, should use comparative risk assessment to compare the magnitude of various risks and set priorities where we can achieve greater protection of human health, safety and the environment in the most cost-effective manner.

- The Environmental Protection Agency has recognized the urgent need for a risk-based regulatory approach employing comparative risk assessment. In its landmark report, *Reducing Risk*, EPA warned: "There are heavy costs involved if society fails to set environmental priorities based on risk. If finite resources are expended on lower-priority problems at the expense of higher-

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priority risks, then society will face needlessly high risks. If the priorities are established based on the greatest opportunities to reduce risk, total risk will be reduced in a more efficient way, lessening threats to both public health and local and global ecosystems.”⁸

Unfortunately, public fears and political expediency – not scientific analysis – often dictate the priorities set by legislatures and agencies. As a result, government risk-reduction efforts have been unplanned, uncoordinated, and inconsistent. Many risk-reduction programs simply have not been effective:

- Some very costly programs and regulations do not address the more serious risks.
 - Congress originally estimated that the Superfund program would cost \$5 billion when it was enacted in 1980. Independent estimates now project the program will cost between \$106 and \$302 billion for Superfund and between \$372 and \$744 billion for related remedial programs⁹ (in total, up to 25% of the national debt). Notwithstanding these enormous costs, a group of EPA professionals have ranked risks associated with hazardous waste sites well below other problems receiving far less resources.¹⁰
- Regulations based on uncertain or unsound scientific information are not revised when more reliable data is produced.
 - In January 1991, EPA’s Office of Drinking Water eliminated the primary standard for silver because it determined that there were no adverse human health effects of silver in drinking water; yet the Office of Solid Waste continues to maintain silver on RCRA’s toxicity characteristic list, even though the RCRA silver standard was based on the obsolete drinking water standard.¹¹
- Some regulatory actions actually increase risk.
 - Early in the 1980s, government scientists argued that asbestos exposure could cause thousands of deaths. Congress responded by passing a sweeping law that led cities and states to spend between \$15 and \$20 billion to remove asbestos from public buildings. But three years ago, EPA officials acknowledged after further research that ripping out the asbestos had been an expensive mistake; it raised the exposure of the public because asbestos fibers had become airborne during

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removal.¹² It also delayed the opening of many schools and other buildings.

Executive Order 12866 (Sec. 1(b)(4)) states:

In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

The White House, the Office of Information and Regulatory Affairs, Congress, each agency, and the states should vigorously promote this policy. The Executive Branch should develop a current inventory of known risks, rank them, and periodically update the inventory every two to four years in light of new information. It should seek extensive public involvement in the process. EPA started towards this goal by creating and implementing two seminal reports, *Unfinished Business* and *Reducing Risks*. These reports were prepared by environmental experts who assessed, compared, and ranked the various environmental risks regulated by EPA

- *Unfinished Business* (1987) found that EPA and Congress in most instances had directed resources to problems based on misguided public fears, instead of objective scientific evidence.
- *Reducing Risks* (1990), produced by an independent committee of the Science Advisory Board, revised the risk rankings set forth in *Unfinished Business* and encouraged EPA to base its programs on the severity of risks and the availability of cost-effective options that would reduce the risks and not violate the Agency's statutory mandates.

The other health and safety agencies – including FDA, OSHA, USDA, and CPSC – would benefit from similar projects. Agencies should address highest priority risks first, rank new risks as they are identified in the future, and routinely communicate this information to the public. A coordinating group should be used to facilitate communication and long-term planning among agency leaders; Executive Order 12866 (Sec. 4(d)) provides such a mechanism by establishing the Regulatory Working Group.

Many other efforts could further the establishment of risk-based priorities. For example, President Clinton might issue guidance to agencies to require the use of risk analysis as a tool for making pollution prevention decisions. This would complement the President's recent Executive Order 12856, which was designed to make pollution

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prevention central to government operation and procurement. Moreover, a task force composed of scientific experts from the environmental, health, and safety agencies should create a government-wide manual on the regulation of risk. The manual would provide guidance to regulators on how to manage risks.

In the end, the responsibility lies with Congress and state legislatures to promote a risk-based approach to environmental, health, and safety regulation. The most effective legislation for controlling risk will promote risk assessment while providing the agencies with sufficient flexibility to incorporate state-of-the-art scientific knowledge. In the short term, Congress and state legislatures should require the risk-reduction agencies, such as EPA, to conduct comparative risk assessments to set priorities. An Office of Risk Analysis should be created in EPA and other agencies that need increased expertise in analyzing and ranking risks. As statutes are reauthorized, reformed, and created, Congress and state legislatures should require – not inhibit – the consideration of risk, costs, and benefits in designing regulatory policy. Legislatures should set clear goals for regulatory programs, and these goals should be understandable to the regulated community and the public.

Public Education: Improved Risk Communication

Risk communication is critical to establishing risk-based priorities that are acceptable to the public. The government must educate the public about the level of risks proposed for regulation compared with familiar risks, as well as the costs of regulating them. This process should enable the public – who ultimately pay the price of regulation – to participate in the process of deciding how scarce resources should be allocated among competing priorities.

Agencies often fail to regulate in a cost-effective manner because priorities are based on misguided public fears. All too commonly, agencies fail to inform the public adequately about risks proposed for regulation or misinform the public by making biased or exaggerated risk estimates. This distorts the public's perception of risk, which in turn influences the legislature's agenda and leads to irrational and costly regulatory mandates.

Government has the responsibility to accurately inform the public about the level of risks and to minimize distortion and exaggeration of risks. *Risk communication* is an interactive process in which government, the public, business, media, and the environmental and

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scientific communities exchange information and opinions about risk and related concerns. In the past, risk communication has been viewed as a one-way channel from experts to the public, but risk communication should be a two-way street. Effective risk communication should satisfy the public that they are informed about the relevant issues within the limits of available knowledge. It should also generate information on which decision makers base their choices. This framework for effective risk communication should extend to all levels of the regulatory process.

To allow public involvement in the important decisions about whether, and how, to regulate various risks, government must educate the public about the risks to be regulated – in terms nonexperts can understand. This can be achieved through the process of *risk comparison*. Risks proposed for regulation that are unfamiliar to the public should be compared to familiar risks to convey the magnitude of the risk involved.

Risk comparison is critical to permitting the public to engage in the regulatory decision-making process. Moreover, risk comparison techniques are improving. One technique, risk ladders, improves the validity of risk comparisons by providing a range of probabilities for a single class of risk. Risk comparisons are most useful when they involve risks that occur in the same decision context, exhibit similar risk-perception attributes (such as whether they are voluntary or involuntary), and have similar outcomes. Multiple comparisons often will be more helpful than single comparisons. While the nature of different risks often varies in some respects, there should not be inflexible rules for comparing risks. The goal of risk comparison should be to enable the public to make informed choices about the risks they incur and the costs of reducing those risks. Government should inform the public about the relative magnitude of regulated risks, as well as those proposed for regulation, compared to risks commonly encountered and understood by the public. The government must also disclose to the public the potential cost of regulating those risks. Then citizens can communicate to decision makers whether a risk should

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the available alternatives, and uncertainty about risks, costs, and benefits. Agency risk messages should include an estimate of the magnitude of the risk as well as a characterization of the current or potential efforts to reduce it. This includes the cost and adverse consequences of regulating the risk, who must pay the cost, the effectiveness of various regulatory options, and whether regulation of the risk creates additional risks of its own. Agencies should use risk communication to educate the public so they can be involved in formulating policies and establishing priorities – not to generate support for predetermined conclusions.

Effective risk communication also requires that when agencies assess the size of risks and decide how to manage those risks, decision making should be open to the public. To improve the quality of risk communication with the public, agencies should: distinguish policy or judgmental considerations from scientific considerations when estimating the size of risks and deciding how to manage them; instead of using single-value or worst-case risk estimates, identify a range of credible risk estimates and their corresponding probabilities of occurrence; and disclose and explain any uncertainties in data or scientific knowledge. The important value judgments that must be made in deciding how to manage risks should be disclosed.

Risk communication should be based on a written record that is available to the public: A record facilitates understanding and improvement of the agency's decision. It also prevents surprise when information on a particular risk is disseminated and enhances the consistency and accuracy of that information.

Comparative risk assessment and risk communication provide the means for implementing a more effective and efficient approach to environmental, health, and safety regulation. Comparative risk assessment allows agencies to estimate the size of various risks so that rational priorities can be established and risk can be reduced in the most cost-effective manner. Risk communication enables the public to understand the magnitude of a risk proposed for regulation compared to familiar risks, as well as the costs of reducing that risk. This will empower citizens to participate in the political process of allocating scarce resources among competing priorities. If elected officials and regulators fail to implement this risk-based paradigm, we will lose the opportunity to better protect human health and the environment at less cost and to increase public confidence in the regulatory process itself.

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2. Risk Assessment and Risk Management: Risk assessment methodologies should be continuously improved, and agencies should establish a clear distinction between assessing risks and deciding how to manage them. Recent scientific and technical advances have made it possible to improve the core of the regulatory process, risk assessment and risk management.

Risk assessment is the technical process for estimating the level of risk posed by a product or process – that is, the probability that a given harm will occur. Risk assessment, as applied to a substance, proceeds in four major steps: (1) hazard identification, determining what kinds of adverse health effects a substance, product, or activity can cause; (2) dose-response assessment, predicting the degree of adverse effects at a given exposure level; (3) exposure assessment, estimating the amount of exposure; and (4) risk characterization, combining the foregoing into a numerical range of predicted deaths or injuries.¹³

Once risk assessment estimates the risk, *risk management* – the policy-oriented or political determination of what to do about the risk – should be employed. Unfortunately, agencies often merge the primarily scientific process of risk assessment with the primarily political process of risk management. This undermines both the validity and quality of agency decision making.

Separate Risk Assessment and Risk Management

Risk assessment and risk management should be separated as much as possible – both by agencies when conducting risk analyses and by legislatures when designing statutes.

The risk assessment should constitute an agency's best effort to employ the most advanced scientific and technical methods to predict accurately the size of the risk. Because risk assessments often require assumptions to fill information gaps, however, the intrusion of subjectivity into science cannot be totally eliminated. This subjectivity has two components: scientific (or professional) judgment and policy judgment. Nevertheless, most intrusions of scientific and policy judgments can be identified, and these value judgments made in the risk assessment process should be clearly and fully disclosed to the public.¹⁴

Once the agency makes the most accurate and objective estimate of the relevant risks in the risk assessment process, it can then make an open decision on how best to address that risk in the risk management phase.

Improve Risk Assessment and Risk Management Methodologies

A number of steps can be taken to improve the risk assessment and risk management processes. First, risk assessment methodologies and guidelines should be reviewed and updated to reflect the state of the art. In the short-term, agencies should review their risk assessment guidelines and methodologies and make improvements where appropriate.

- The Clean Air Act Amendments of 1990 created a Risk Assessment and Management Commission and directed the National Academy of Sciences to prepare a report on EPA's risk assessment methodology. This helped motivate EPA to reconsider and update its risk assessment guidelines.

The White House and Congress should strengthen the expertise of the Office of Science and Technology Policy in risk analysis. OSTP could be assigned the responsibility to develop detailed guidance for agencies on how best to use science in the evolving risk assessment process and to develop government-wide risk assessment guidelines. Uniform risk assessment guidelines could also be developed by an interagency committee or by experts outside of government. Those guidelines would:

- bolster the credibility of agency risk assessments;
- prevent duplication and foster joint risk assessment efforts among agencies regulating the same substance;
- define the types of data and interpretations relevant to agency testing procedures and help the regulated community to understand agency decisions; and
- promote uniform risk assessment procedures among the states.

Greater efforts are also needed to develop a more complete and current database of relevant scientific data to be used in the risk assessment process. The lack of scientific data and the uncertainty about various risks significantly hinder measuring and comparing risks accurately. The growing volume and reliability of scientific data, however, have greatly improved the risk assessment field. The data decrease the need to rely on inference and informed judgments to bridge gaps in scientific knowledge.

The government should establish a mechanism that would allow new

scientific information to be easily and quickly incorporated into the risk assessment process. This mechanism should allow for information to be provided by the agencies, academia, business, and the general public. Agencies also should establish procedures to reevaluate risk assessments and risk management decisions in light of scientific advances.

In addition to improving risk assessment methodologies, agencies should favor cost-effective approaches in the risk management phase as a matter of policy. Once the risk assessment process identifies the level of risk posed by a substance, product or process, policymakers should consider the full range of options for reducing or eliminating the risk. The principle for choosing among options should be reducing risk in the most cost-effective manner. Regulatory options should be analyzed in light of the full spectrum of costs and benefits (including risks of alternatives and the economic consequences of the regulation).

Risk assessment and risk management are promising tools for helping regulators achieve the ultimate goal of our environmental, health, and safety programs – greater reduction of risk to health and the ecology with our limited resources.

3. Sound Science: Agency decision making should be grounded on the most advanced scientific knowledge currently available.

The difficulty of allocating limited resources for maximizing risk reduction is compounded by the common failure of agencies to base their analyses on the most advanced scientific principles. Without sound science, risks cannot be accurately assessed and effectively compared.

Science and technology are constantly evolving and improving; often they outpace the life cycle of regulations. Indeed, some regulations may become obsolete before they are adopted. This makes it all the more imperative that agencies use the most advanced and precise scientific methods to calculate risk estimates that form the basis for agency decisions. Moreover, agencies should regularly update their regulations and programs to incorporate advances in scientific knowledge.

To establish priorities and make regulatory decisions, agencies often must compare the size of various risks by using risk assessments. Unfortunately, agencies often lack complete data, leading to scientific

uncertainty. To compensate for scientific uncertainty, agencies must rely on default assumptions, which are sometimes codified in inference guidelines. To increase the reliability and credibility of their risk assessments, agencies should strive to structure their default assumptions and inference guidelines so that they will accurately reflect real risks. In characterizing risks, agencies should consider the probability that estimated risk values approximate the true size of the risks.

When faced with gaps in scientific data, agencies all too often have used a series of worst-case default assumptions and upper-bound probability estimates throughout the risk assessment process. The cumulative effect of these highly conservative assumptions may be to produce greatly exaggerated estimates of risk.

Agencies often base their decision on single-point estimates of risk, which assign a single value for a risk estimate. Typically, agencies incorporate policy judgments into single-point risk estimates by basing them upon highly conservative or worst-case estimates. Single-point estimates, however, do not reveal the degree to which risk estimates are both uncertain and highly conservative. Unrealistic risk estimates, however, undermine the credibility of agencies' scientific methods, can cause undue public alarm, prevent cost-effective regulations, and limit the public's ability to understand and respond to regulatory decisions.

Common agency practices contribute to biased risk estimates:

- Agencies often use highly conservative or worst-case assumptions for exposure estimates when more accurate data are available.¹⁵
 - OSHA bases occupational cancer risks on the assumption that a hypothetical worker is exposed at the permissible exposure limit 8 hours per day, 5 days per week, and 50 weeks a year, for 45 years.¹⁶
 - EPA sometimes assumes that an individual is exposed to emissions at a distance of 200 meters from the factory, 24 hours a day, every day, for 70 years.¹⁷
- Regulators often assume that there is a linear relation between the dose of a substance and its response or effect when there is no scientific rationale for the assumption.¹⁸
- Researchers sometimes base their research on reactions of animals that are most sensitive to the substance under review, instead of

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using animals that would best replicate a human reaction to the substance.¹⁹

When regulators lack information for a value or parameter needed for a risk estimate, they should use uncertainty analysis techniques. Uncertainty analysis techniques identify a range of possible values and their probability of occurrence. To promote public accountability, agencies should explain assumptions, inferences, and value judgments made in the risk assessment and characterize their impact on the estimated value of the risk.

Although risk assessments should provide a range of risk values to indicate data limitations and scientific uncertainty, the “best estimate” of risk – the most credible estimate possible from available scientific information – should be provided for policymakers and the general public in the risk management phase.

The use of sound science is only one tool for improving regulation, and it does not relieve political leaders and regulators of the responsibility for making the inevitably difficult decisions required. But it will help prevent misallocating vast resources to reduce inconsequential risks, will promote open decision making, and will increase public confidence in the regulatory process. Ultimately, the public will benefit.

Executive Order 12866 (Sec. 1(b)(7)) emphasizes the importance of sound science:

Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

The White House should work with agencies to promote this goal and should hold them accountable for adhering to it throughout the regulatory review process, and state agencies should apply this same principle.

Moreover, agency scientific and technical expertise can be improved at the federal and state level. As EPA has proved, agencies can effectively use outside experts to analyze internal scientific capabilities and to recommend structural improvements. Federal agencies such as OSHA and state environmental agencies should emulate EPA and FDA and create scientific advisory panels to participate actively their strategic planning and internal reform processes.

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Science should be institutionally represented in agency decisions that depend on scientific evidence. Scientists can validate analytical methods and procedures, even if the ultimate regulatory decision will be based partially on science and partially on policy. Periodic outside review procedures bolster the scientific credibility of agency decision making.

Emphasis on the scientific soundness of the regulatory process will make that process more credible and transparent. It should reduce the tension among the White House, Congress, the agencies, and the states and should increase public confidence in regulatory policy.

4. Benefit-Cost Analysis: Benefit-cost analysis should be utilized by agencies when developing regulations, with preference given the least costly regulatory alternative that accomplishes program objectives. Every regulatory program consumes financial resources – of the government that is regulating, of the regulated community that must comply with the regulations, and, ultimately, of the consumers of the product or activity that is regulated. Since resources are limited, the government should maximize the benefits and minimize the costs of regulation, so that resources are not squandered. To further this goal, agencies should make better use of benefit-cost analysis, in which the benefits are weighed against the costs of a regulatory proposal *before* decisions are made and regulations are implemented.

Benefit-cost analysis generally proceeds in the following four steps: (1) identifying relevant impacts, (2) calculating monetary values for impacts, (3) discounting for time and risk, and (4) choosing among policies. First, all relevant impacts of a proposed action must be identified and classified as either costs or benefits. Second, impacts must be valued. When there is no organized market to value an impact, innovative techniques are required. Third, values should be discounted for time and risk. Costs and benefits accruing in different time periods should be discounted to their present values. When costs and benefits involve uncertainties, analysts should attempt to assign probabilities to various contingencies so that expected net benefits can be calculated. Finally, when efficiency is the primary goal, the combination of policies that maximizes net benefits should be preferred.

Even when values other than efficiency are important, or major impacts cannot readily be estimated in monetary terms, benefit-cost

analysis is still useful since its first step – identifying and categorizing impacts as benefits or costs – can provide a starting point for better decision making.

In the first instance, federal and state agencies should use benefit-cost analysis to decide whether or not a proposal should be a candidate for adoption – whether its benefits exceed its costs. Second, agencies should use cost-effectiveness analysis to select the regulatory option that achieves regulatory objectives in the least costly way. This analysis should be applied both to substantive regulations and to the administrative process established to implement them, including procedures for issuing permits and reviewing compliance. Benefit-cost analysis should be promoted by the Legislative and Executive Branches at the federal and state levels.

The White House and governors can and should play a central role in promoting the use of sophisticated benefit-cost analysis. Without tight constraints imposed by centralized Executive review under a benefit-cost standard, each agency has an incentive to pursue whatever goal has been set for it by the legislature without regard for other, equally important programs outside of its jurisdiction. This leads to inconsistent, duplicative, and burdensome regulatory requirements, as well as the misallocation of government resources.

To counter this tendency, the White House, through OIRA, as well as governors, can emphasize the importance of benefit-cost analysis and encourage all agencies to set priorities based upon this analysis. The potential gains to be realized by strong centralized review of proposed regulations under a benefit-cost standard, coupled with joint planning by an interagency group, are clear: better policy coordination; enhanced political accountability; and, ultimately, more balanced regulatory decisions.

Executive Order 12866 (Sec. 1(b)(6), (5)) directs agencies to use benefit-cost and cost-effectiveness analysis:

Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

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When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective.

Agencies thus are required to conduct a full benefit-cost analysis of significant regulatory actions as part of the decision-making process. Sec. 6(a)(3)(C). The White House and governors should hold agencies accountable for vigorously implementing this basic principle.

Federal and state agencies themselves should promote improved benefit-cost analysis by developing and using standardized guidelines for analyzing the costs and benefits of their regulations. Agencies that already have such guidelines – such as EPA – should periodically review and improve their guidelines in cooperation with other agencies and with the White House or the governor.

Further, when agencies estimate costs, they should attempt to estimate the *full* costs of regulations, not just *compliance* costs. Regulators should carefully consider the potential impact of each regulatory option. Agencies also should consider as a cost the potential benefits foregone by regulation of an activity or substance. If some costs and benefits are nonquantifiable, they should at least be identified.

- Various regulatory options can have different impacts on behavior; behavior induced by some options can actually increase risk.
 - The National Highway Traffic Safety Administration was confronted with data suggesting that a refusal to relax its fuel efficiency standards for automobiles could increase fatalities from auto accidents. All other things being equal, a large car is safer than a smaller car. However, NHTSA failed to consider whether its “corporate average fuel economy” standards, which promoted smaller cars, could increase automobile fatalities. Accordingly, the D.C. Circuit remanded a CAFE rulemaking decision to NHTSA for further consideration of the potential safety costs of its fuel-efficiency regulations.²⁰
- Regulatory costs include foregone benefits.
 - If a pesticide is banned, food may cost more because less could be produced.²¹

Finally, Congress and state legislatures should promote, not inhibit, benefit-cost analysis. In many instances, agencies are constrained by

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restrictive legislative requirements or oversight.

- The Clean Air Act prohibits EPA from considering costs of any kind, much less using benefit-cost analysis, in setting air quality criteria.²²
- The Supreme Court has interpreted the Occupational Safety and Health Act to prohibit OSHA from basing certain regulations on a formal benefit-cost test.²³

Accordingly, there is a pressing need for fundamental legislative reform to incorporate benefit-cost principles in statutes. Congress and state legislatures should design legislation to avoid an “at-any-cost” approach to achieving regulatory goals.

- Since EPA, OSHA, and CPSC were established in the early 1970s, many of the larger, more obvious risks have been reduced. As agencies continue to try to reduce smaller, more intractable risks, the cost and complexity of regulations are sharply rising.²⁴
- Sometimes programs have standards so stringent that they impose unreasonably high costs without achieving significant additional safety benefits.
 - In environmental cleanups, for example, it can be extremely expensive to achieve cleanup levels beyond a certain point. At one Superfund site that was mostly cleaned up, an added \$9.3 million was spent to meet the program’s stringent cleanup standards. The benefits were miniscule: the extra expenditure theoretically meant that the children could safely eat dirt for 245 days per year instead of 70 days annually. But there were no children in the area because it was a swamp. And children were not likely to be there in the future because future development was improbable. Finally, half the volatile organic chemicals probably would have evaporated by the year 2000.²⁵

Congress and state legislatures should encourage agencies to balance costs and benefits when designing regulatory programs. Otherwise, federal and state agency efforts to improve regulation may be frustrated by inflexible legislative mandates.

- The Toxic Substances Control Act is a well-designed risk-reduction law based on sound benefit-cost principles. Section 6 of TSCA authorizes EPA to impose a range of controls on a chemical substance or mixture if it poses an “unreasonable risk of injury

to health or the environment." In applying the concept of "unreasonable risk," EPA must balance the health or environmental risk of a chemical against the economic or social disadvantages of eliminating or restricting the availability of the chemical.

Estimating benefits and costs can be difficult, especially in areas where many benefits are by their nature difficult to quantify. Nonetheless, because limited resources necessitate difficult trade-offs, agencies must make best estimates of benefits and costs – stating clearly and publicly the bases for those estimates – and regulate only where the benefits justify the costs. Once a regulatory goal is established, agencies should select the least costly option for meeting that goal.

5. Market Incentives and Performance Standards: Market-oriented solutions and performance standards should be favored over command-and-control regulation. When properly calibrated and used, market-based approaches and performance standards cost less and accomplish more than government commands and controls. The past three Administrations have advocated that regulators use market mechanisms as much as feasible. Most recently, Executive Order 12866 (Sec. 1(b)(3), (8)) states:

Each agency shall identify and assess available alternatives to regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices may be made by the public.

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Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

Market Incentives

Market-based regulatory schemes attempt to reproduce the efficiency of a free market by internalizing the costs of the regulated activity or substance, such as pollution, into private production or investment decisions. Market incentives allow regulated parties to achieve compliance in the least costly way, reward innovators who meet or exceed regulatory goals, and adapt to changed circumstances more quickly than government commands and controls.

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Typically, regulations apply to a wide variety of activities and firms. Because compliance costs can differ dramatically among activities and firms, uniform standards often impose widely varying incremental costs for achieving a specific benefit. Economic incentives minimize regulatory costs; they allow firms unable to achieve compliance efficiently to buy permits or allowances from low-compliance-cost firms, while encouraging firms that can meet regulatory goals to do so most efficiently. In short, market incentives divert fewer public and private resources and reduce adverse economic consequences to obtain the same – or greater – benefits.

- The acid rain trading allowance program for sulfur dioxide emissions exemplifies the market-incentive approach to regulation. This program provides substantially reduced regulatory costs by providing an economic incentive for least-cost emissions sources to reduce their emissions first. The Clean Air Act Amendments of 1990 set a limit on yearly sulfur dioxide emissions that power plants must meet by the year 2010 (with lesser caps at intermediate deadlines). EPA will allocate annual allowances for emissions sources to meet their individual emissions limits, which are based on reducing their historical average emissions. The allowances can be banked for future use or sold to other emission sources that have higher compliance costs. EPA has estimated that the program could reduce compliance costs by nearly \$1 billion per year – about one-fourth of the total cost of achieving its goal without emissions trading.²⁶

Economic incentives also induce innovators not only to develop less costly means of meeting a regulatory standard, but also to find ways to exceed the minimum standard and to reap rewards for doing so through cost savings or revenues from credits sold to firms who do not meet the minimum requirements. In contrast, command-and-control regulations provide no incentive for regulated parties to exceed a regulatory goal;²⁷ they may actually punish firms that do so.

Finally, market incentives are flexible; they allow firms to adapt as their relative compliance costs change over time. Command-and-control regulations usually cannot adapt to changed circumstances without the burdensome costs and delays of new regulatory action. Accordingly, market incentive approaches should be favored over command-and-control regulation.

Performance Standards

To set a regulatory standard, agencies can choose between basing the standard on design or performance. Design standards specify how a product should be built, what technology should be used, or precisely how to reach a regulatory goal. Performance standards, on the other hand, establish the ultimate regulatory goal. They free regulated parties to achieve that goal in the best way they can find. Performance standards generally are superior to design standards: They allow the regulated community to meet or exceed the regulatory goal in the most cost-effective manner.

Design standards may be more attractive to the government because they sometimes are easier and cheaper for agencies to enforce than performance standards. For example, inspectors can verify compliance simply by determining whether a manufacturer is using mandated equipment. But typically, the "savings" from imposing design standards are illusory. Any administrative savings usually are far outweighed by the large costs imposed on the regulated community by design standards. These costs are passed on to the public through higher prices and diminished wages, productivity, and economic growth.

Design standards freeze technology and impede innovation that can produce better results at less cost. An innovative firm that invents a more cost-effective way to meet or exceed a regulatory goal must overcome the heavy burden of changing the agency's standard before it can implement its better method. Accordingly, performance standards should be used when performance can be measured or reasonably estimated. It simply makes no sense to impose the enormous costs and inefficiencies associated with design standards to reduce enforcement costs by a relatively small margin.

In contrast to design standards, performance standards promote innovation to increase safety and reduce costs. Because agencies must consider the comparative performance of different machines or products to write the regulatory standard in the first place, it can be as easy for the agency to base its standard on performance goals, such as fewer injuries or cleaner air.

In some instances, "performance" and "design" standards tend to converge. A standard should not be characterized as a performance standard if there is only one feasible way to meet it; such a standard

is a design standard. Although agencies sometimes transpose performance and design standards, there is a fundamental tension between allowing innovation to improve safety and reduce costs and setting a rigid, easily identifiable standard merely to make the agency's enforcement job easier.

- Under the Resource Conservation and Recovery Act, firms must treat hazardous wastes under "best demonstrated available technology" standards. Instead of setting a clear standard based on health and environmental risks, the BDAT standard changes with each advance in waste treatment. This design standard imposes enormous costs without regard to the actual threat to human health or the environment.²⁸

To encourage continual improvements in safety at less cost, performance standards should be preferred over design standards.

Both statutes and regulations should favor market mechanisms and performance standards over commands and controls. Instead of trying to mandate what technologies business should use or how to meet a standard, legislatures and agencies should set standards and then allow the market to develop the most efficient ways to attain them. Mandating *ends*, not *means*, usually offers the most effective form of regulation.

6. Productivity, Wages, and Economic Growth: Methodologies should be implemented and continuously improved to assess the impact of major regulations on productivity, wages, and economic growth, as well as the adverse impact on jobs and international competitiveness in industries that bear the burden of regulation. American businesses of all types, large and small, face increasing competition from foreign competitors in a global economy. Today's global competition is heightened by significant world-wide industrial overcapacity – a factor many believe will be the defining characteristic for the 1990s.

- In key industries – steel, coal, chemicals, textiles, pulp and paper, automobiles, shipbuilding, aircraft, computers, home appliances, and defense – global overcapacity is resulting in a major restructuring.
- Those firms that cannot compete on price and quality will be

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driven out of business, which means that jobs will be lost, wages weakened, and tax bases eroded.

- Efficiency and productivity will determine who are the winners and losers; government policies can either advance or retard these objectives.

In response to these economic pressures, successful American corporations are significantly altering the way they conduct their business to become leaner, more flexible, and faster. In this new economic world, the slow-moving, pyramidal corporate structure of the past is facing extinction.

For our economy to grow, regulatory and economic goals must become complementary, not conflicting. Government must make greater efforts to promote productivity, economic growth, and innovation within the regulatory framework and must become more sensitive to the impact of regulation on wages, prices, jobs, and international competitiveness.

Executive Order 12866 (Sec. 6(a)(3)(C)(ii)) requires that benefit-cost analyses of significant regulatory actions include an assessment of their impact on employment, competitiveness, and productivity. The nation would benefit from greater consideration of the industry-wide and economy-wide impacts of regulation.

- A 1993 report by the National Commission for Employment Policy recommended the development of economic models to assess the effects of regulations on jobs and wages.²⁹
- In Section 811 of the Clean Air Act Amendments of 1990, Congress directed the President to report on the economic impact of air pollution controls on the international competitiveness of U.S. manufacturers. The American Automobile Manufacturers Association has compiled a report documenting that their competitors operating in countries with more flexible and less prescriptive rules enjoy a significant cost/production advantage over U.S. automobile manufacturers that face onerous requirements on their manufacturing facilities. The new permit rules under Title V of the Clean Air Act can unnecessarily restrict production and operational flexibility without commensurate environmental benefit; this flexibility is critical to the ability of U.S. manufacturers to respond to dynamic market conditions and international competitive pressures.³⁰

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- A study recently conducted for the U.S. Census Bureau found a strong correlation between regulation and reduced productivity. The study found that significantly regulated plants have substantially lower productivity and slower productivity growth rates than less regulated plants. The magnitude of the impacts were found to be larger than expected: A \$1 increase in pollution abatement costs reduced productivity by about \$3 - \$4.³¹

More information is becoming available on the negative effects of regulation on wages, productivity, and economic growth, as well as the differential economic impact on jobs and international competitiveness in many industries. Because these issues are vitally important to the American people, they should be directly considered when legislatures and agencies make regulatory decisions. The Legislative and Executive Branches at the federal and state levels should promote the use and improvement of state-of-the-art analytical tools to assess the economic impacts of regulations.

7. Coordination Among and Within Agencies: Coordination of regulatory activities among and within agencies should be improved to eliminate inconsistencies, duplication, and unnecessary regulatory burdens. Regulatory agencies have a variety of mandates that overlap – among agencies, including federal and state agencies, and even between different programs of a single agency. Consequently, there is a need for greater coordination of regulatory activities among and within agencies.

Interagency Coordination

To reduce duplication and inconsistency, a strong coordinating committee is needed to identify and address interagency problems. Executive Order 12866 (Sec. 4(d)) provides for the establishment of an interagency committee – the Regulatory Working Group – that can perform this function at the federal level.

Through the Regulatory Working Group or a similar interagency committee, agencies should engage in strategic planning to address problems before regulations are proposed. Where significant environmental, health, or safety problems demand action from multiple agencies, the interagency committee should coordinate common risk-reduction approaches for the agencies involved. The committee should rank the relative risks posed by particular problems in an effort to maximize risk-reduction in a cost-effective way. The relative risk

rankings could be updated periodically. An interagency committee could also promote the exchange of information among agencies and make each agency more sensitive to existing regulations from other agencies. The committee also could identify common research needs and allocate responsibility for fulfilling those needs among agencies. Finally, to address overlap and inconsistency originating in statutory requirements, the interagency committee could develop a forward-looking, comprehensive legislative program.

The strategic planning process should be open, incorporating views from the general public, including business, academia, and public interest groups. This strategic planning process could be used to educate Congress and involve the public in the decision making. Agencies could exchange information, data, and feedback, which would facilitate improvements in regulations and laws. These tenets of rational regulation should guide this process.

Intraagency Coordination

In addition to interagency coordination, there is a need for greater coordination of programs within each agency as well. Individual program offices within an agency often are assigned responsibility for implementing a specific law or part of a law. This narrow approach, and the growing complexity of statutes and regulations, has fragmented many programs, even within the same agency. Different programs often attempt to control different aspects of the same problem. Without coordination of programs, inconsistencies, unproductive duplication, and outright conflicts may result.

- EPA's Office of Solid Waste and Emergency Response at one time designated trace levels of carbon tetrachloride and chloroform found in chlorofluorocarbons as hazardous waste, thus discouraging refrigerator recyclers by threatening them with Superfund liability. Meanwhile, EPA's Office of Air and Radiation was urging that refrigerators be recycled to preserve the ozone layer. At the same time, the FDA allowed CFCs to be used in asthma inhalers.³²

Agency efforts to coordinate regulatory programs should focus on reducing risks in the most cost-effective way. When properly designed and implemented, regulatory programs that address multiple environmental media, such as air, water, and land, have great potential to reduce both risk and costs. Unfortunately, the emphasis on highly prescriptive media-specific regulation in current environmental laws

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often creates obstacles to cost-effective regulation.

- An ambitious joint pollution prevention study recently conducted by EPA and Amoco Corporation illustrates the cost of inflexible, media-specific regulation. The study found that if Amoco's Yorktown, Virginia refinery had been free to pursue a flexible, performance-oriented approach to pollution prevention, 90% of the emissions reductions required under applicable regulations could have been achieved for 20-25% of the cost of meeting the specific regulatory requirements. In particular, if a performance-oriented approach to emissions reduction had been followed, releases at the refinery could have been reduced at an average cost of \$510 per ton, as opposed to the \$2,400 per ton average cost of achieving reductions under EPA's prescriptive command and control regulations.³³

The Executive Branch has the responsibility to ensure that its programs are coordinated and consistent. Fulfilling that responsibility should become a higher priority.

8. Openness: The entire regulatory process, including centralized Executive review and management of agency rulemaking, should be open to public scrutiny to promote the quality, integrity, and responsiveness of agency decisions. Openness is indispensable to the entire regulatory process, including regulatory planning and development, as well as centralized Executive review of agency rulemaking. Openness brings obvious benefits:

- The input of an informed public and the regulated community improves the quality of agency decisions.
- Openness will help ensure that the values and concerns of the public are addressed by regulators.
- A better informed public will have greater confidence in the regulatory process and the validity of decision making.
- With a better understanding of the regulatory requirements, the regulated community can more faithfully comply with them.
- Fewer legal challenges to final regulations are likely to ensue.

Removing Secrecy

The regulatory process should be open to maximum public involvement at the earliest stages. Executive Order 12866 (Sec. 6(b)(4)) recognizes the need for openness. This policy should be nurtured and

expanded. For example, OIRA should disclose written communications from those outside of the government before a rule is published. The White House should also require agencies to publish their Regulatory Plans when they are submitted to OIRA for review. Regulatory analysis documents that detail the costs and benefits of regulations also should be available to Congress and the public, even if they include information or considerations that the agency may not actually use to create a rule. More generally, the public should have access to the identities and positions of participants in the regulatory process.

Regulatory Negotiation

Agencies also could make better use of negotiated rulemaking, or "reg neg." To draft a rule, an agency can bring together representatives of interested parties for face-to-face negotiations, with the goal of achieving consensus on the proposed language. The primary goal of "reg neg" is to produce better rules, but it also avoids protracted litigation and reduces enforcement costs.

President Clinton recognized the benefits of regulatory negotiation in a Directive that accompanied Executive Order 12866. The Directive requires each agency to identify at least one rulemaking to be developed through negotiated rulemaking.³⁴ Although not always feasible, agencies should consider using "reg neg" more often, on a wider basis, and earlier in the regulatory planning process. Typically, the short-term costs of regulatory negotiation are fully justified by its many benefits.

In sum, openness can improve the quality and integrity of agency decisions and increase public confidence in the regulatory process.

9. Periodic Review: Programs and regulations should be periodically reviewed for purposes of determining whether they should be reformed, discontinued, or consolidated.

As circumstances and technology change, regulations can become outmoded, duplicative, or unnecessary. As an indispensable part of good regulatory management, Congress, the White House, agencies, and states should periodically review existing regulatory programs to determine whether they should be reformed, discontinued, or consolidated.

Legislatures ordinarily operate under the assumption that programs should continue unless there is an overwhelming reason to curtail

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them. By conducting periodic review, legislatures can ensure that government resources are allocated to best address the needs of the public. Periodic review should allow for government-wide coordination and priority setting through reforming or eliminating regulations, updating scientific methodologies, reorganizing an agency, or reallocating responsibility among agencies.

In appropriate instances, Congress and states legislatures can ensure a stricter review process by incorporating sunset provisions in regulatory programs. Sunset is a powerful tool for managing the proliferation of government programs: Within set deadlines, the legislature is compelled to evaluate and vote for the continuation of a program, or it will terminate. This forces a review of priorities. Programs that are not rational or justifiable – perhaps because they have simply outlived their usefulness – can more readily be eliminated or incorporated into other programs. Routine periodic review of duplicative or overlapping programs provides an opportunity for Congress to consolidate them, even if it decides the programs should be continued. If similar programs are reviewed at the same time, Congress can more readily compare their effectiveness and streamline and rationalize them.

Regulatory programs would also benefit from periodic review by the Executive Branch. Executive Order 12866 (Sec. 5(a)) requires each federal agency to develop a program for periodically reviewing its existing significant regulations to determine whether they should be modified or eliminated to make the agency's regulatory program more effective, less burdensome, and more consistent with the President's priorities and principles set forth in the Executive Order. However, the White House does not now have in place a formal process for timely oversight and execution of these important reviews; it should develop and implement such a process without delay. The President also should issue a Directive, like the Negotiated Rulemaking Directive, to require each agency to identify and review at least three significant regulations.

Finally, agencies – individually or through an interagency coordinating group – should themselves initiate periodic review of their programs to eliminate outdated, duplicative, and irrational regulations. Where legislative authority is required to terminate or modify unproductive, outdated programs, the Executive Branch should aggressively pursue legislative action.

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10. Federalism: Regulatory authority should be more rationally allocated among the federal, state, and local governments, and federal regulatory programs should avoid unfunded mandates. The expansion of government regulation has raised concerns about the rational allocation of regulatory authority and costs among federal, state, and local governments.

Allocation of Regulatory Authority

The growth of government regulation in recent decades has taken place at both the federal and state levels. In some cases, such as pollution control and waste disposal, new and expanded federal programs have supplanted state and local regulation. In other cases, states have added new and costly regulations of their own – both in areas that were traditionally matters of state policy (such as automobile insurance) and in areas that were traditionally matters of national policy (product labeling). The growth of state regulation has been encouraged by Supreme Court decisions that take a more lenient approach toward state policies affecting and burdening interstate commerce.

The mix of centralized national regulation in some areas and an array of state regulations in other areas has not always been a good one for American consumers and businesses. The traditional virtues of federalism – decentralization and responsiveness to varying local circumstances – remain important today. At the same time, however, markets, production technology, and business organizations have become increasingly national and international in scope. State regulation that made sense at a time of primarily local markets can produce highly costly and wasteful conflicts and duplication where national businesses are affected. This is often the case today. For businesses whose products are sold nationwide and abroad, inconsistent and duplicative state regulation increases prices and chills productivity, wages, economic growth, and innovation.

Modern commercial realities demand a more cost-effective balance of federal and state regulation; achieving this balance is primarily the responsibility of the federal government. In general, three factors should be considered in determining whether the federal government should preempt and regulate a field itself or leave the field to the states:

- Is the problem primarily a national one, with little variation in the

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nature of the problem among states and regions?

- Will state regulation lead to needless duplication of effort, costly conflicts among differing state rules applicable to national markets and national business firms, or opportunities for individual states to pursue local policies at the expense of citizens of other states?
- Does the policy in question present important controversies and uncertainties, so that state policy experimentation may produce new information to resolve the uncertainties?

These guidelines will not resolve every controversy over regulatory jurisdiction, but they do suggest several areas where large improvements could be made. For example, to the extent that regulation of the labeling of foods, beverages, and other products that are distributed nationally is appropriate, these regulations should be national rather than local: The costs of differing labels in different states is very large, while the benefits are small or nonexistent.

On the other hand, many pollution problems are primarily local or vary in severity from locality to locality; federal regulation to address these problems may still be justified (where a single item of commerce is involved, such as automobiles, or where necessary to overcome "NIMBY" – Not In My Backyard – problems), but should be resorted to with care. Transportation regulation presents states with numerous opportunities for imposing price and service controls that are paid for by citizens of other states, and the trend toward greater preemption in this area is appropriate and should be continued.

When Congress appropriately determines to preempt state regulation, it should not adopt a one-way approach that preempts only weaker, but permits more stringent, state regulation. This approach loses the benefits of preemption without gaining offsetting benefits from state experimentation.

Unfunded Mandates

The federal government also regulates state and local governments directly in the course of administering federal expenditures and federal programs. As the federal budget deficit has soared, Congress has increasingly used unfunded mandates. *Unfunded mandates* require state and local governments to administer or comply with federal programs, but do not include funding for the costs of administration or compliance. These unfunded mandates burden state and local governments in the same way that regulations burden business.

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Unfunded mandates force state and local governments to raise taxes, cut services, or potentially to face bankruptcy. Likewise, regulations require businesses to raise prices, eliminate jobs or product lines, cut research and development, or even go out of business entirely.

Congress has imposed numerous obligations on the states to fund programs designed to achieve federal objectives. While this pattern has been familiar for some time, it has become even more significant in the 1990s. Unfunded programs do not appear in the federal budget deficit, yet they impose very real costs at the state and local levels. These programs threaten to overwhelm state and local governments who fear that raising taxes for businesses and consumers will stifle economic growth and jobs and hence erode the tax base.

- The City of Columbus, Ohio has had to comply with 67 new environmental mandates since 1988. Columbus is expected to spend \$1.3 billion to \$1.6 billion on environmental compliance from 1991 to 2001. In 1991, the average Columbus household paid \$160 for environmental protection; by 2001 this cost is projected to rise to \$856 per household, or more than the per-household cost of fire or police protection.³⁵

The federal government should not burden state and local governments with unfunded mandates, especially where the benefits of a program do not fully accrue at the state or local level. Clearly, duplicative and inconsistent regulation must be prevented. Nonetheless, programs should be sufficiently flexible to facilitate innovation at the state and local level. In some instances, the federal government could define a program's objective (comparable to performance standards), but allow state and local governments to achieve those outcomes by the means they think best. When practical, agency leaders should grant waivers to allow state and local governments to experiment with innovative programs that may more efficiently achieve regulatory goals.

Executive Order 12866 (Sec. 1(b)(9)) recognizes the need to reduce unfunded mandates and to provide greater flexibility to state, local, and tribal governments:

Whenever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental

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interests. Each agency shall assess the effects of federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

This policy is supplemented by Executive Order 12875, which calls for reducing unfunded mandates; increasing waivers from federal requirements for state, local, and tribal governments; streamlining the process for applying for waivers; and providing greater consultation with those governments on federal matters that uniquely affect their interests. These concepts should be vigorously implemented and should be applied to regulated businesses as well.

11. Paperwork Burdens: Paperwork burdens caused by regulatory programs should be expressly assessed and substantially reduced. In our vast regulatory system, paperwork burdens impose huge costs. Federal paperwork burdens alone have been conservatively estimated to consume over 6.4 billion person-hours per year in the private sector – at a cost of at least \$128 billion – merely to collect, report, and maintain information.³⁶ This does not include the massive person-hours federal employees spend on processing and evaluating the information.³⁶ Furthermore, paperwork burdens are a symptom of unreasonable administrative process requirements – complex, bureaucratic, and adversarial procedures for obtaining permits, reviewing compliance, and the like. These administrative processes impose massive and unnecessary costs by causing delay, frustrating innovation, and impeding process and facility changes that U.S. business must make to meet world competition.

Congress recognized the need to reduce the paperwork burden by passing the Paperwork Reduction Act of 1980, but this statute has not been effectively implemented.

- The Paperwork Reduction Act of 1980 was designed to minimize the federal paperwork burden for individuals, small businesses, state and local governments, and other persons; to minimize the cost of information collection to the federal government; and to maximize the usefulness of the information to the federal govern-

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ment. The Act established OIRA and delegated it responsibility for coordinating government information policies, including reviewing and controlling agency collections of information.

Despite the many benefits promised by the 1980 Act, it requires much stronger implementation, and further initiatives to reduce paperwork are imperative. Stringent goals for reducing paperwork requirements are needed at all levels of government. The anticipated paperwork requirements of future legislation should be thoroughly assessed prior to enactment, and these assessments should be disclosed to the public. Alternative information technologies that can reduce the paperwork burden should be adopted.

The Administration should strengthen OIRA's paperwork control responsibilities. Moreover, the Administration and Congress should strengthen and amend the Paperwork Reduction Act. Sound legislative proposals include a government-wide goal of at least a 5% annual reduction in paperwork. In the absence of a legislative mandate, the Executive Branch should nonetheless commit itself to this goal and should annually report its progress in achieving it.

The new legislation should also address the problem of "third party" disclosures of information. The Paperwork Reduction Act was intended to limit the ability of federal agencies to impose paperwork requirements on the public. However, in *Dole v. United Steelworkers of America*, the Supreme Court held that the protections of the Act do not apply where an agency requires that information be provided to a third party (and not the government).³⁸ An agency can circumvent OIRA's paperwork review simply by not requiring that the information be submitted to the federal government. In that event, OIRA cannot review the agency's information requirement and has no authority to stop it. To remedy this problem, Congress should legislatively overrule *Dole* when it amends the Paperwork Reduction Act.

Excessive paperwork burdens often are caused by unreasonable administrative process requirements. These administrative process costs – the inflexibility, unresponsiveness, and delay that characterize many regulatory programs – are an increasing threat to the competitiveness of U.S. businesses in global markets.

Many major EPA programs, for example, are based on a multi-layered administrative process for permitting, compliance review, and

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the like. Facilities otherwise ready, willing, and able to comply with the environmental controls can be rendered noncompetitive by the rigidity and delay of the administrative process. Many of the industries that hold the greatest promise for jobs and economic growth in the nation's manufacturing sector must be able to respond quickly to technological change at a pace dictated by international competition, not the regulatory process. Among these vital industries are electronics, advanced materials, aerospace, custom and specialty chemicals, pharmaceuticals, and automobile manufacturing. In these highly competitive industries, time is precious. They cannot wait for regulatory processes that take years when their products go through entire life cycles in less time. Despite the massive costs imposed by these complex administrative processes, the agencies do not have procedures for considering the costs and benefits of these administrative processes themselves or their potential for being streamlined.

Congress and the agencies should continually examine administrative processes. They should look beyond the direct costs of regulatory controls and take into account the incremental costs and benefits of each layer in the administrative process.

More generally, the adversarial, legalistic nature of the regulatory system must be reassessed. All too often, conflict – not consensus and compromise – characterizes decision making, enforcement, and the relationship among government, business, interest groups, and the public. And increasingly, legislatures and agencies are criminalizing regulatory violations that traditionally were addressed by civil and administrative remedies. In the environmental area, for example, errors in reporting, sampling, record keeping, and the like now are potentially subject to criminal sanctions. At the same time, the growing complexity of environmental regulation increases the likelihood that these errors will occur.

The antagonistic nature of the American regulatory system imposes enormous and unnecessary costs; these include exacerbating litigation and other transaction costs, prolonging delay, and chilling innovation. These costs, like paperwork and administrative process costs, ultimately are borne by customers, employees and stockholders of the regulated community.

The government should strive to achieve absolute paperwork reductions, streamline administrative processes, and reduce the adversarial

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nature of our regulatory system. Only where their benefits clearly exceed their costs should mandatory paperwork or administrative process requirements be imposed.

12. Regulatory Budget: A framework should be developed to account for expenditures required by regulations and to promote greater fiscal restraint on regulatory programs.

The costs of regulation affect us all. They are, in effect, "hidden taxes." American workers see their tax burden on their Form 1040 and state tax reporting forms, but they are told nothing about their regulatory burden. To compound the problem, the decisions to create and impose regulations, especially at the agency level, are remote from public view. Although the public may see that increased government spending will require that they or their children eventually pay the price in higher taxes, they plainly do not realize that collectively they also must pay for regulations - as customers, employees, and stockholders.

Regulatory programs create an illusion that business absorbs their costs. In contrast to taxing and spending programs, regulatory programs impose costs that do not appear in government budget figures, and therefore seem "free." In the end, however, the public pays the price just the same - through higher prices, fewer products, and diminished wages, productivity, and economic growth.

Despite the enormous cumulative burden of regulations, there is no process for setting priorities and forcing trade-offs among different programs or goals. Government spending programs face some discipline through the budgetary process because current spending limits create an incentive to establish rational priorities and to spend money in a more cost-effective way. However, there is no formal budgeting process for the statutory and regulatory programs that direct non-federal resources to achieve public purposes. Regulations are created as their need is perceived, without budgetary constraints or forced trade-offs with other important regulations. Government must become more sensitive to the cumulative costs of regulations.

An accounting system for regulatory costs could measure the cumulative effect of regulations and promote a more efficient regulatory system. Under a regulatory budget, agencies would have a powerful incentive to regulate in a more cost-effective manner; each agency could be limited in the amount of regulatory costs imposed on the

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economy each year. If the budget limit had been reached, an agency wishing to add a new regulation would be required to repeal or modify an existing regulation to offset the cost increase from the new regulation. If the agency were unable to offset the cost of the new regulation from other regulations for which it is responsible, the government would have to produce an offsetting reduction from another agency.

In light of the similarities between fiscal and regulatory expenditures, the fiscal budgetary process has been proposed as a model for a similar budgetary process to discipline regulatory expenditures. There have been bipartisan efforts in the Executive Branch and Congress to develop an accounting framework to monitor expenditures directly required by regulation. This work should be encouraged.

The goal of regulatory accounting is worthwhile. Nonetheless, it should be recognized that measuring the private expenditures required by federal regulation raises its own set of problems. The regulated community should not be unduly burdened with extensive and costly record-keeping requirements to validate projected budget estimates. It is also difficult to distinguish expenditures due to regulation from those that would have occurred regardless of regulation. And special challenges arise in estimating the indirect costs of regulation, including lost opportunities for consumers to purchase goods due to higher prices, less desirable products, or complete bans of products or substances. Regulatory accounting must consider these indirect costs, but they can only be estimated with complicated statistical models. Moreover, combining estimates of indirect costs with direct cost estimates could be difficult. Yet, because bans primarily cause indirect costs, measuring only direct costs could encourage agencies to institute bans rather than regulatory controls.

These challenges make regulatory accounting more complex than fiscal accounting, but there are good reasons to persevere in the development of a regulatory budget:

- Although regulatory budgets would require forecasts of private spending on regulations, the forecasts need not be exact to constrain spending (like spending forecasts for fiscal budgets).
- The measurement problem concerning the proper baseline for direct regulatory costs diminishes if an incremental budget approach is used.
- The potential for agencies to use bans to avoid regulatory budget

constraints is outweighed by their tendency to impose costs on the public absent a regulatory budget; rules for estimating indirect costs can be developed.³⁹

While a regulatory budget has not yet been perfected, it holds promise for measuring and disciplining the cumulative burden of regulations and allocating resources more effectively. The starting point for a regulatory budget is to develop an accounting system that would use information available from both the fiscal budgetary process and the information-collection budget established by the Paperwork Reduction Act. The important work to develop a regulatory budget should continue.

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III. Conclusion

Government regulation can and must be improved. Although some regulations have been beneficial, there is great need – and much room – for a smarter, more cost-effective approach to regulation. To ask how much regulation we should have or how we should best regulate in specific situations is not to put dollars before people. To the contrary: it is to make dollars work more effectively for people.

Regulations exact a heavy toll on wages, productivity, economic growth, prices, and innovation. They burden federal, state, and local governments. We do not see the factories never built, the products never made, the services never provided, or the entrepreneurial ideas drowned in the sea of regulatory process. But, in the end, all of these costs of regulation are borne by the public – as employees, consumers, stockholders, and taxpayers.

Regulatory reform must be a national priority. Because our nation has limited resources and many competing expectations, the soaring costs of regulation make it imperative to reform regulation and to reduce its burdens on the economy. There is growing consensus not only on the need for regulatory reform, but also on how to achieve it: Government must assess the seriousness of risks proposed for regulation, compare these risks to risks familiar to the public, disclose the costs of regulation, regulate only if the benefits outweigh the costs, and select the most cost-effective, market-driven method possible. This is smarter regulation. And smarter regulation is better regulation, for consumers, governments, and businesses alike.

The White House, Congress, agencies, and the states must all commit themselves to smarter regulation. The Business Roundtable recommends that governments at all levels vigorously implement these twelve tenets of rational regulation. Many promising ideas have been proposed to “reinvent” regulations and the regulatory system; President Clinton’s Executive Order on Regulatory Planning and Review takes an important first step. However, the hard work necessary to achieve meaningful reform remains to be done.

It will take strong leadership to reform the culture of regulation that permeates government at all levels. Government leaders must remove incentives for regulators to impose burdensome new regulations and red tape, and reward innovators who reform or eliminate irrational regulations or who obviate the need for new ones. Government employees, like private-sector employees, must put the “customer”

first and be more accountable for achieving results, not for developing or following Byzantine rules.

If we fail to regulate smarter, and if we fail to change the culture of regulation, then the American public – not just governments and businesses – will suffer. Regulating smarter is a challenge our nation cannot afford to ignore.

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Endnotes

1. Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) Table 1 (Aug. 1992) (estimates in 1991 dollars).
2. See, Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) Table 1 (Aug. 1992).
3. Environmental Protection Agency, *Environmental Investments: The Cost of a Clean Environment* (Nov. 1990); General Accounting Office, *Environmental Protection: Meeting Public Expectations With Limited Resources* 9 (June 1991).
4. Thomas D. Hopkins, "Cost of Federal Regulation" 4, *reprinted in Reg. Poly in Canada and the United States* (Rochester Inst. Tech. 1992).
5. Thomas D. Hopkins, "Costs of Regulations: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) Table 2 (Aug. 1992) (estimate for 1993, in 1991 dollars).
6. National Performance Review, *Creating a Government that Works Better and Costs Less* 1 (Sept. 7, 1993).
7. National Performance Review, *Creating a Government that Works Better and Costs Less* 32 (Sept. 7, 1993).
8. Environmental Protection Agency, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection* 2 (Sept. 1990).
9. Milton Russell, et. al., Waste Management Research and Education Institute, *Hazardous Waste Remediation: The Task Ahead* 16 (U. Tenn. Dec. 1991).
10. Environmental Protection Agency, *Unfinished Business: A Comparative Assessment of Environmental Problems* 73-74 (Feb. 1987).
11. Compare 56 Fed. Reg. 3526, 3573 (Jan. 30, 1991) with 40 C.F.R. § 261.24, Table 1 (1992).
12. Keith Schneider, "New Views Call Environmental Policy Misguided," N.Y. Times, Mar. 21, 1993, at 30.
13. National Research Council, *Risk Assessment in the Federal Government: Managing the Process* 18-20 (1983).

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14. National Research Council, *Risk Assessment in the Federal Government: Managing the Process* 48-49 (1983).

27
15. See Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* 46-47 (1993).

28
16. Richard B. Belzer, "The Peril and Promise of Risk Assessment," 14(4) *Regulation* 40, 45 (Fall 1991).

29
17. John D. Graham, "Improving Chemical Risk Assessment," 14(4) *Regulation* 14, 16-17 (Fall 1991).

30
18. See Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* 44-46 (1993).

31
19. See Bruce N. Ames, et. al. "Ranking Possible Carcinogenic Hazards," 236 *Science* 271, 273, Table 1 (Apr. 7, 1987);
Joel Brinkley, "Animal Tests as Risk Clues: The Best Data May Fall Short," *N.Y. Times*, Mar. 23, 1993, at A1.

32
20. *Competitive Enterprise Institute v. NHTSA*, 956 F.2d 321 (D.C. Cir. 1992).

33
21. See Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* 47-48 (1993).

34
22. Clean Air Act §§ 108(a)(2), 109, as amended, 42 U.S.C. §§ 7408(a)(2), 7409 (1983); see *NRDC v. EPA*, 902 F.2d 962, 973 (D.C. Cir. 1990) (§ 109 does not allow EPA to consider the costs of unemployment in promulating National Ambient Air Quality Standards).

35
23. Occupational Safety and Health Act § 6(b)(5), 29 U.S.C. § 655(b)(5) (1985); see *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 510-513 (1981).

36
24. See Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making* 15-16 (June 1993); Louis S. Richman, "Bringing Reason to Regulation," *Fortune*, Oct. 19, 1992, at 94.

37
25. Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* 11-12 (1993).

38
26. Office of Management and Budget, *Regulatory Program of the United States Government* 15 (Apr. 1, 1992 - Mar. 31, 1993).

39

27. Office of Management and Budget, *Regulatory Program of the United States Government* 11-15 (Apr. 1, 1992 - Mar. 31, 1993).
28. James C. Miller, III and Phillip Mink, "The Ink of the Octopus," *Policy Review* 4 (Summer 1992).
29. National Commission for Employment Policy, *Measuring Employment Effects in the Regulatory Process: Recommendations and Background Study* (Jan. 1993).
30. American Automobile Manufacturers Association, "The Effect of Air Pollution Control Laws on the International Competitiveness of U.S. Automobile Manufacturers" (Jan. 5, 1993).
31. Wayne B. Gray and Ronald J. Shadbegian, "Environmental Regulation and Manufacturing Productivity at the Plant Level," CES 93-6 (Center Econ. Stud., Mar. 1993).
32. Richard B. Belzer, "The Peril and Promise of Risk Assessment," 14(4) *Regulation* 40, 48 (Fall 1991).
33. H. Klee, Jr. and M. Podar, "Amoco - U.S. EPA Pollution Prevention Project, Yorktown, Virginia: Project Summary" v (Rev. May 1992); David Stamps, "Making a Case for Facility-Wide Compliance," *Envtl. Info. Dig.* 6-9 (Oct. 1992).
34. Presidential Memorandum, "Negotiated Rulemaking," 58 Fed. Reg. 52,391 (Oct. 7, 1993).
35. Environmental Law Review Committee, *Environmental Legislation: The Increasing Cost of Regulatory Compliance to the City of Columbus* (Rep. to Mayor and City Council of Columbus) (May 13, 1991).
36. Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) 29 (Aug. 1992); Thomas D. Hopkins, "The Costs of Federal Regulation," 2 *J. Reg. and Soc. Costs* 5, 21-23 (March 1992).
37. Office of Management Budget, *Information Resources Management Plan of the Federal Government* II-3 (Nov. 1992).
38. *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990).
39. Office of Management and Budget, *Regulatory Program of the United States Government* 6 (Apr. 1, 1991 - Mar. 31, 1992).

COPY

Selected References

Introduction

- National Performance Review, *Creating a Government That Works Better and Costs Less* (Sept. 7, 1993).
- Environmental Protection Agency, *Environmental Investments: The Cost of a Clean Environment* (Nov. 1990).
- General Accounting Office, *Environmental Protection: Meeting Public Expectations with Limited Resources* (June 1991).
- The Business Roundtable, *Cost of Government Regulation Study* (Mar. 1979).
- Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) Table 1 (Aug. 1992).
- W. Kip Viscusi, "Pricing Environmental Risk," Policy Study No. 112 (Center for the Study of Am. Bus. June 1992).
- W. Kip Viscusi, *Fatal Tradeoffs* (1992).
- Dale Jorgensen and Peter J. Wilcoxon, "Environmental Regulation and U.S. Economic Growth," 21 RAND J. Econ. 314 (Summer 1990).
- Dale Jorgensen and Peter J. Wilcoxon, "The Economic Impact of the Clean Air Act Amendments of 1990," 14 Energy J. 159 (Jan. 1993).
- Clyde Wayne Crews, Jr., "Ten Thousand Commandments: Regulatory Trends 1981-92 and The Prospects for Reform," 2 J. Reg. and Soc. Costs 105 (Mar. 1993).

1. Risk-Based Priorities and Public Education:

- Environmental Protection Agency, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection* (Sept. 1990).
- Environmental Protection Agency, *Unfinished Business: A Comparative Assessment of Environmental Problems* (Feb. 1987).
- General Accounting Office, *Environmental Protection Issues* (Dec. 1992).
- General Accounting Office, *Environmental Protection: Meeting Public Expectations With Limited Resources* (June 1991).
- Office of Management and Budget, *Regulatory Program of the United States Government* (Apr. 1, 1991 - Mar. 31, 1992).
- National Performance Review, *Improving Regulatory Systems* (Sept. 1993).
- W. Kip Viscusi, "Pricing Environmental Risks," Policy Study No. 112 (Center for the Study of Am. Bus. June 1992).

- Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* (1993).
- Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making* (June 1993).
- National Research Council, *Improving Risk Communication* (1989).
- *Readings in Risk* (Theodore S. Glickman, Michael Gough eds., 1993).
- Keith Schneider, "New Views Call Environmental Policy Misguided," N.Y. Times, Mar. 21, 1993, at 1.

2. Risk Assessment and Risk Management:

- National Research Council, *Risk Assessment in the Federal Government: Managing the Process* (1983).
- Office of Management and Budget, *Regulatory Program of the United States Government 13-26* (Apr. 1, 1990 - Mar. 31, 1991).
- Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making* (June 1993).

3. Sound Science:

- National Performance Review, *Improving Regulatory Systems* (Sept. 1993).
- Office of Management and Budget, *Regulatory Program of the United States Government 13-26* (Apr. 1, 1990 - Mar. 31, 1991).
- Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* (1993).
- National Research Council, *Issues in Risk Assessment* (1993).
- Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making* (June 1993).
- *Harnessing Science for Environmental Regulation* (John D. Graham ed., 1991).
- Joel Brinkley, "Animal Tests as Risk Clues: The Best Data May Fall Short," N.Y. Times, Mar. 23, 1993, at A1.

4. Benefit-Cost Analysis:

- Office of Management and Budget, *Regulatory Program of the United States Government 8-13* (Apr. 1, 1991 - Mar. 31, 1992).
- Office of Management and Budget, *Regulatory Program of the*

COPY

- *United States Government* 33-37 (Apr. 1, 1990 - Mar. 31, 1991).
- Office of Management and Budget, *Regulatory Program of the United States Government* 35-41 (Apr. 1, 1988 - Mar. 31, 1989).
- National Research Council, *Valuing Health Risks, Costs, and Benefits for Environmental Decision Making* (1990).
- W. Kip Viscusi, "Pricing Environmental Risks," Policy Study No. 112 (Center for the Study of Am. Bus. June 1992).
- W. Kip Viscusi, *Fatal Tradeoffs* (1992).
- David L. Weimer and Aidan R. Vining, *Policy Analysis: Concepts and Practice* (1989).

5. Market Incentives and Performance Standards:

- Office of Management and Budget, *Regulatory Program of the United States Government* 10-28 (Apr. 1, 1992 - Mar. 31, 1993).
- *Budget Baselines, Historical Data, and Alternatives for the Future* 114 (U.S. Govt. Printing Off. Jan. 1993).
- National Performance Review, *Improving Regulatory Systems* (Sept. 1993).
- Stephen Breyer, *Regulation and Its Reform* (1982).

6. Productivity, Wages, and Economic Growth:

- National Commission for Employment Policy, *Measuring Employment Effects in the Regulatory Process: Recommendations and Background Study* (Jan. 1993).
- Dale W. Jorgenson and Peter J. Wilcoxon, "Environmental Regulation and U.S. Economic Growth," 21 *RAND J. Econ.* 314 (Summer 1990).
- Michael Hazilla and Raymond J. Kopp, "Social Cost of Environmental Quality Regulations: A General Equilibrium Analysis," 98 *J. Pol. Econ.* 853 (1990).
- Anthony J. Barbera and Virginia D. McConnell, "The Impact of Environmental Regulations on Industrial Productivity: Direct and Indirect Effects," 18(1) *J. Env'tl. Econ. & Mgmt.* 50 (Jan. 1990).
- Robert W. Hahn and John A. Hird, "The Costs and Benefits of Regulation: Review and Synthesis," 8 *Yale J. Reg.* 233 (Winter 1991).

7. Coordination Among and Within Agencies:

- Environmental Protection Agency, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection* (Sept. 1990).

- National Performance Review, *Improving Regulatory Systems* (Sept. 1993).
- Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making* (June 1993).
- Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* (1993).

8. Openness:

- National Performance Review, *Improving Regulatory Systems* (Sept. 1993).
- Presidential Memorandum, "Negotiated Rulemaking," 58 Fed. Reg. 52,391 (Oct. 7, 1993).
- Administrative Conference of the United States, *Negotiated Rulemaking Sourcebook* (David M. Pritzker, Deborah S. Dalton eds., Jan. 1990).

9. Periodic Review:

- National Performance Review, *Improving Regulatory Systems* (Sept. 1993).
- Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making* (June 1993).
- *Reforming Regulation* (Timothy B. Clark, et al. eds., 1980).
- The Business Roundtable, *Cost of Government Regulation Study* (Mar. 1979).

10. Federalism:

- Executive Order 12875, 58 Fed. Reg. 58,093 (Oct. 28, 1993).
- Environmental Law Review Committee, *Environmental Legislation: The Increasing Cost of Regulatory Compliance to the City of Columbus* (Rep. to Mayor and City Council of Columbus) (May 13, 1991).
- Municipality of Anchorage, *Paying For Federal Environmental Mandates: A Looming Crisis For Cities and Counties* (Sept. 1992).
- Alice M. Rivlin, *Reviving the American Dream* (1992).
- David Osborne and Ted Gaebler, *Reinventing Government* (1992).

11. Paperwork Burdens:

- Office of Management Budget, *Information Resources*

COPY

Management Plan of the Federal Government II-3 (Nov. 1992).

- Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) (Aug. 1992).

12. Regulatory Budget:

- Office of Management and Budget, *Regulatory Program of the United States Government* 3-7 (Apr. 1, 1991 - Mar. 31, 1992).
- *Reforming Regulation* (Timothy B. Clark, et al. eds., 1980).
- Robert E. Litan and William D. Nordhaus, *Reforming Federal Regulation* (1983).
- Christopher C. DeMuth, "The Regulatory Budget," *Regulation*, Mar./Apr. 1980, at 29.
- The Business Roundtable, *Cost of Government Regulation Study* (Mar. 1979).

Summary of Recommendations

1. Risk-Based Priorities and Public Education:

Risk-Based Priorities

- The government should use comparative risk assessment to compare the magnitude of various risks and set priorities for achieving greater protection of human health, safety and the environment in the most cost-effective manner.
- Using comparative risk assessment, the Executive Branch should develop a current inventory of known risks, rank them, and periodically update the inventory every two to four years in light of new information.
- Federal and state health and safety agencies should utilize experts to assess, compare, and rank the risks regulated by each agency.
- An interagency coordinating group should be used to facilitate communication and long-term planning among agency leaders.
- The President should issue guidance to encourage the use of risk analysis as a tool for making pollution prevention decisions.
- In the short term, Congress and state legislatures should require the risk-reduction agencies, such as EPA, to conduct comparative risk assessments to set priorities.
- In the long term, as environmental, health, and safety statutes are reauthorized, reformed, and created, Congress and state legislatures should require – not inhibit – the consideration of risk, costs, and benefits in designing regulatory policy.
- Legislation for controlling risk should promote risk assessment while providing agencies with sufficient flexibility to incorporate state-of-the-art scientific knowledge.
- An Office of Risk Analysis should be created in EPA and other agencies that need increased expertise in analyzing and ranking risks.
- A task force composed of scientific experts from the environmental, health, and safety agencies should create a government-wide manual on the regulation of risks. The manual would instruct regulators on how to manage risks.
- Legislatures should set clear goals for regulatory programs, and these goals should be understandable to the regulated community and the public.

Public Education: Improved Risk Communication

- Agencies should improve the risk communication process, which

includes educating the public on the nature of risks potentially subject to regulation; the costs and benefits of regulation; available alternatives; and uncertainty about risks, benefits, and costs.

- The government should educate the public about the level of risks proposed for regulation; risks unfamiliar to the public should be compared to familiar risks.
- Environmental, health, and safety agencies should create public risk communication programs to inform and respond to the public on relevant risks and the costs of managing those risks.
- Risk communication should be based on a written record that is available to the public.

2. Risk Assessment and Risk Management:

- The risk assessment and risk management phases of the regulatory process should be separated as much as possible – both by agencies in conducting risk analyses and by legislatures in designing statutes.
- Risk assessment methodologies and guidelines should be improved; they should be routinely reviewed and updated to reflect the state of the art.
- Professional and policy judgments made in the risk assessment process should be identified and disclosed to the public.
- The White House should issue an Executive Order on risk assessment and risk management policy.
- Congress and the White House should strengthen the expertise of the Office of Science and Technology Policy in risk analysis.
- Uniform risk assessment guidelines for the agencies should be developed by OSTP, an interagency committee, or by experts outside of government.
- Agencies should review their risk assessment guidelines and methodologies and make improvements where appropriate.
- A more complete and current government database of relevant scientific data should be developed for use in the risk assessment process.
- The government should establish a mechanism that would allow new scientific information to be easily and quickly incorporated into the risk assessment process.
- Procedures should be established to reevaluate risk assessments and risk management decisions in light of scientific advances.
- Agencies should favor cost-effective regulatory options in the risk management phase.

3. Sound Science:

- Agencies should use the most advanced and precise scientific methods when making decisions.
- Agencies should regularly update their regulations and programs to incorporate advances in scientific knowledge.
- Agencies that depend on scientific information and judgments but lack scientific advisory boards, such as OSHA, should emulate EPA and FDA and create scientific advisory boards to participate actively in their decision making.
- Periodic outside review procedures should be used to bolster the scientific credibility of agency decision making.
- To increase the reliability and credibility of their risk assessments, agencies should strive to make their default assumptions and inference guidelines accurately reflect real risks.
- When regulators lack information for a value or parameter needed for a risk estimate, they should use uncertainty analysis techniques to identify a range of possible values and their probability of occurrence.
- To promote public accountability, agencies should explain assumptions, inferences, and value judgments made in each risk assessment and should characterize their impact on the estimated value of the risk.
- Although risk assessments should provide a range of risk values to indicate data limitations and scientific uncertainty, the “best estimate” of risk should be provided for policymakers and the general public in the risk management phase.

4. Benefit-Cost Analysis:

- Federal and state agencies should use benefit-cost analysis to decide whether or not to adopt a regulation and should regulate only where the benefits justify the costs.
- Once a regulatory goal is established, agencies should use cost-effectiveness analysis to select the least costly option for meeting that goal.
- Congress and state legislatures should incorporate benefit-cost principles in statutes and avoid an “at-any-cost” approach to achieving regulatory goals.
- The White House and governors should hold agencies accountable for conducting a full benefit-cost analysis of significant regulatory actions.

- Agencies should apply benefit-cost and cost-effectiveness analysis not only to substantive regulations, but also to administrative process, including procedures for issuing permits and reviewing compliance.
- Agencies themselves should develop and use standardized guidelines for analyzing the costs and benefits of their regulations.
- Agencies that already have benefit-cost guidelines, such as EPA, should periodically review and improve their guidelines in cooperation with other agencies and the White House or the governor.
- When agencies estimate costs, they should attempt to estimate the *full* costs of regulations, not just *compliance* costs.
- Agencies also should consider the potential benefits of the activity or substance to be regulated.
- If some costs or benefits are nonquantifiable, they should at least be identified by the regulator.

5. Market Incentives and Performance Standards:

- Both statutes and regulations should favor market mechanisms over command-and-control regulation.
- Performance standards should be favored over design standards in federal and state regulations.

6. Productivity, Wages, and Economic Growth:

- Agencies should directly consider the impact of regulatory options on productivity, wages, economic growth, innovation, jobs, and the international competitiveness of American businesses.
- The Legislative and the Executive Branches at the federal and state levels should promote the improvement of state-of-the-art analytical tools to assess the industry-wide and economy-wide impact of regulations.

7. Coordination Among and Within Agencies:

- To address problems concerning multiple agencies, a strong interagency committee should engage in strategic planning and develop a coordinated response before regulations are proposed.
- Each agency should coordinate individual programs that address different aspect of the same problem.
- Cross-cutting, cost-effective regulatory approaches, such as multi-media environmental regulations, should be favored over piecemeal approaches.

8. Openness:

Removing Secrecy

- The regulatory process should be open to maximum public involvement at all stages.
- OIRA should disclose written communications from those outside of government before a rule is published.
- The White House should require agencies to publish their Regulatory Plans when they are submitted to OIRA for review.
- Regulatory analysis documents that detail the costs and benefits of regulations should be available to Congress and the public, even if they include information or considerations that the agency may not actually use to create a rule.
- The public should have access to the identities and positions of participants in the regulatory process.

Regulatory Negotiation

- Agencies should make better use of negotiated rulemaking.

9. Periodic Review:

- Programs and regulations should be periodically reviewed for purposes of determining whether they should be reformed, discontinued, or consolidated.
- The President should issue a Directive requiring each agency to identify and review at least three significant regulations.
- The White House should establish a formal process for reviewing existing regulations and programs.
- Legislatures should incorporate sunset provisions into regulatory programs to ensure a stricter review process, compelled by termination of the program absent a vote for continuation.

10. Federalism:

- When creating regulatory programs in a field implicating both federal and state interests, Congress should carefully consider whether to preempt and regulate the field itself or leave it to the states; the goal should be to achieve a more cost-effective balance of state and federal regulation.
- The federal government should refrain from burdening state and local governments with unfunded mandates – programs without funding – especially where the benefits do not accrue at the state or local level.
- When practical, agencies should grant waivers to allow state and

local governments to experiment with innovative programs that may more efficiently achieve regulatory goals.

11. Paperwork Burdens:

- Paperwork burdens imposed by all regulatory programs should be assessed and reduced.
- Administrative process costs – the inflexibility, unresponsiveness, and delay that characterize many regulatory programs – should be assessed and reduced.
- The adversarial, legalistic nature of the regulatory process should be reduced where possible.
- The Paperwork Reduction Act should be strengthened; clear and stringent goals for reducing paperwork burdens should be established by Congress and the White House.
- When it amends the Paperwork Reduction Act, Congress should legislatively overrule *Dole v. United Steelworkers of America* to address the problem of “third party” disclosures of information.
- The anticipated paperwork requirements of future legislation should be thoroughly assessed prior to enactment, and these assessments should be disclosed to the public.
- Alternative information technologies should be employed to reduce the paperwork burden.

12. Regulatory Budget:

- A framework should be developed to account for expenditures required by regulations and to promote greater fiscal restraint on regulatory programs.
- Congress should impose a cap on the costs imposed on the economy by regulations each year. If the regulatory budget limit is reached, the government should be required to repeal or modify existing regulations to offset the cost increase from any new regulation.

THE FIRST YEAR OF EXECUTIVE ORDER NO. 12866

I. INTRODUCTION AND SUMMARY

Just over one year ago, on September 30, 1993, President Clinton issued Executive Order No. 12866, "Regulatory Planning and Review." The Order was designed to restore integrity and accountability to centralized regulatory review, qualities notably absent during the previous administration. The Order also articulated this Administration's philosophy and principles regarding regulation. These are best summarized in the Order's opening lines:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

The President directed the OIRA Administrator to report on the implementation of the Executive Order after its first six months. A written report covering the period October 1, 1993, through March 31, 1994, was delivered to the President and Vice President on May 1, 1994, as requested, and was published in the Federal Register on May 10, 1994.

In the Report, we described in some detail the progress we have made, including improved coordination both between OMB and the agencies and among agencies themselves; more timely OMB review of significant rules; more openness and early

participation by the public in rulemaking; and extensive outreach to State, local, and tribal governments and to small businesses. We also noted that the startup time had been longer than we had anticipated, and that to some extent it was simply too early to judge the success of the Order. In particular, while we had extensive information on the process, we had little information on the substantive compliance with the Order.

We now have data on the period April 1 through September 30, 1994, giving us an opportunity to evaluate the full first year of implementation. Overall, we continue to be pleased with the progress that has been made in achieving the objectives of the Executive Order, but at the same time we are acutely conscious of the work that remains to be done to realize the full benefits that we had hoped to achieve.

As will be discussed below, the processes established by the Order are now for the most part in place, and in general they are operating well. We also have more experience with, and a better feel for, the implementation of the philosophy and principles set out in the Order, particularly as they are reflected in the rules that OIRA reviews. While insufficient time and/or data have resulted in some regulations that may not be the most cost-effective means of achieving their objectives, there are many examples where agencies, by adhering to the philosophy and principles of the Order, have in fact produced "smarter" regulations. In these cases -- whether through increased outreach to the public, greater inter-agency cooperation, improved analysis, or all of the above -- agencies have been better able to balance the complex variety of factors that make up regulatory benefits and costs.

It is important to keep in mind the constraints under which the agencies are operating. The regulatory pipeline is a long one, and it is not uncommon for rules to be issued years after

the authorizing statute or the regulatory initiative first began; indeed, many of the rules promulgated by the agencies this past year were conceived and to a large extent developed before this Administration took office, and thus before the Executive Order was signed. More importantly, some of the rules that have been issued were required by statutes that contain highly prescriptive regulatory requirements, complete with time lines that drive much of the rulemaking process, particularly in the areas of health, safety, and the environment. In addition, rulemaking is often driven by other factors beyond the direct control of the Executive Branch, such as court decisions and dramatic public events that require immediate action.

Moreover, agencies today face unusual pressures to regulate. With budgetary constraints so tight, and with the difficulty of enacting new legislation in the highly partisan atmosphere that characterized the last Congress, the only means left for the agencies to implement their initiatives is through regulation. This puts inordinate pressure on any attempt to hold steady or reduce the amount of regulation in which they are engaged.

Measuring the success of the Order is complicated by other factors as well. While some of its processes can be measured with precision (for example, the number of rules reviewed by OIRA), it is not so easy to judge the success of the philosophy and principles of the Order in producing "smarter" regulations. It is tempting to argue that if all the affected stakeholders are equally irritated, then the correct balance has been struck. Whatever the truth in this, it is a uniquely gloomy definition of success to which we do not subscribe. We believe it is possible for parties to be satisfied, if not jubilant, with the outcome of a rulemaking, recognizing it for what it is, or should be -- a good faith effort in an imperfect world to further the public good.

One of the reasons it is difficult to easily measure the success of the Order is that neither the philosophy nor any of the basic principles -- development of alternatives, setting regulatory priorities, obtaining the best reasonably available information, assessing benefits and costs, considering Federal, State, local, and tribal needs, coordinating with other agencies -- lends itself to facile, mechanical application. Stated another way, the principles of the Order are not a simple check list of tasks. Instead, they are a complex and interactive body of standards that require reasoned judgment, difficult decisions, and balances of competing priorities.

Moreover, though the principles appear simple and straightforward, they are not always easy to apply in particular situations, and the agencies are often faced with imperfect information and limited personnel and financial resources to devote to analysis. And they ultimately face what must be acknowledged as a daunting task: In a society composed of complex and changing webs of institutional and individual behavior, they must predict the future, attempting to control behavior harmful to the common good, without impeding or unwittingly restraining acceptable and beneficial activities.

Finally, under the Executive Order, OIRA reviews only "significant" rules, less than half the rules formerly reviewed by OIRA and an even smaller percentage of the rulemaking documents that are published in the Federal Register. Accordingly, we neither track nor evaluate the extent to which the more routine but numerous regulations that are being issued by the agencies meet the principles of the Order.

For all of these reasons, we cannot assert that the philosophy and principles espoused in the Order either have or have not always been met by the agencies in their regulatory programs. We can, however, provide information that clearly

indicates that agencies are applying the principles in many and diverse rulemakings. We urge those who wish to rush to judgement to remember that even modest changes take enormous effort and much time to accomplish. Based on our experiences this past year that are described below, we believe that the Executive Order sets in place the means to make those changes, and that we are moving in the right direction.

The May 1st Report on Executive Order No. 12866 contained both a short history of regulatory programs of the U.S. Government and a detailed description of the Order and its objectives. These will not be repeated here. Instead, we update the data about the various processes established in the Order, followed by descriptions of some of the substantive changes we are seeing.

II. IMPLEMENTATION OF THE PROCESSES SET FORTH IN THE ORDER

Regulatory Planning

In the May 1st Report, we noted that the regulatory planning process set forth in Section 4 of the Executive Order had just begun. On April 5, 1994, the Vice President convened the Agencies' Policy Meeting. Guidance to the agencies was issued by the OIRA Administrator at this meeting, with additional guidance provided on May 12, 1994.

Draft Regulatory Plans were due to OIRA on June 1st. We asked for Regulatory Plan submissions from over 30 agencies -- all Cabinet agencies except the Department of State; major non-Cabinet agencies, including the Environmental Protection Agency (EPA); and several independent agencies. Some of the agencies, including the Departments of Defense (DOD) and Housing and Urban Development (HUD), as well as the Consumer Product Safety Commission (CPSC), Equal Employment Opportunity Commission (EEOC), the National Archives and Records Administration (NARA), and the Nuclear Regulatory Commission (NRC), submitted Plans on June 1st. Most of the Plans were submitted within the first two weeks of June. However, it took longer than expected to receive Plans from all the major regulatory agencies; in fact, several were not submitted until the end of June and the last was not submitted until late July.

As required by the Order (Section 4(c)(3)), the draft Regulatory Plans were circulated by OIRA to other affected agencies, the regulatory Advisors, and the Vice President within 10 days of receipt. Agencies were reminded to comment to the OIRA Administrator on any planned regulatory action of another agency that might conflict with its own policies (Section 4(c)(5)). Very few substantive comments were received by OIRA.

OIRA and OVP staff reviewed the Plans for conformance to Section 4. In general, the draft Plans, though a good start, were uneven. Several were serious, thoughtful efforts; several others were perfunctory. The better efforts were those of the Departments of Commerce (DOC), Labor (DOL), and Transportation (DOT), and EPA. In several of these cases, agency overviews were well-written descriptions of departmental objectives and their relationship to Presidential priorities.

After consultations with the Vice President's Office (Section 4(c)(6)), many agencies reviewed their draft Plans and improved them. These were submitted to OIRA during late August and September. At present the task of preparing the Regulatory Plans for publication in the Federal Register with the Unified Regulatory Agenda (as required by Section (4)(c)(7)) is proceeding on schedule. The Plans and Agenda are to be published on or about October 31, 1994.

The draft Regulatory Plans alerted us to areas where more than one agency was engaged in regulation, and they helped raise these issues to agencies' upper level managers. However, the Plans did not provide very many common themes, and, taken as a whole, they did not produce a consistent or coherent statement of the regulatory priorities of this Administration. While this is disappointing, it is not surprising given the different statutory mandates and missions of the agencies.

Cooperation and Coordination

OIRA and the Agencies: The improved relationships between OIRA and among the agencies that were noted in the May 1st Report have continued, grown, and generally become the norm. There remain differences of view, which can be quite sharp. But for the most part, the differences are healthy, leading to better rules, rather than sources of friction that are unproductive and detract from joint efforts.

Staffs of both OIRA and the regulatory agencies are now quite familiar with what at the turn of the year was a new and untried review process. The procedures by which agencies and OIRA select rulemakings as "significant," and thus subject to OMB review, has matured -- conforming to the requirements of Section 6(a)(3)(a) of the Order, yet retaining a necessary flexibility. While a monthly or bi-monthly list remains a common norm, many variations have developed. Moreover, agencies and OIRA staff have worked out an arrangement to designate informally, often over the phone, non-significant rules that must be published quickly. Even the most orderly regulatory planning and tracking systems must be able to accommodate unexpected events.

Some of the agencies have developed the practice of consulting OIRA staff on whether particular rules are significant even before putting them on a monthly list. Some agencies voluntarily submit advanced drafts so that OIRA staff can make a more informed judgement regarding significance. Also, in some cases, agencies exempted from the centralized review requirements of the Order have voluntarily submitted rules for review. For example, the Advisory Council on Historic Preservation (ACHP), which is formally exempted from the Order, submitted a draft proposal for review, knowing that it needed further interagency coordination. Thus, though the Order formally requires agencies to provide OIRA with a list "indicating those [rules] which the agency believes are significant regulatory actions" (Section 6(a)(3(A))), and specifically states that "OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3(A))" (Section 6(b)(1)), a flexibility built on trust and collegiality has developed with many of the agencies that permits the system to work smoothly and efficiently. This was unheard of a short time ago. We hope the pattern that is developing will ultimately spread to the agencies where historically there has been the greatest resistance to such a cooperative relationship.

Another specific manifestation of the improved relationship between OIRA and the agencies, which is a very constructive development, is the practice of early briefings by agencies on the content of significant rules. For example, early in the process of developing its rules for drug and alcohol testing for various transportation officials and workers, DOT consulted with the OIRA Administrator and staff on the major issues on which it would have to decide in the rulemaking. It then held subsequent briefings to update OIRA on the decisions being made at DOT and to continue to search for feedback. By the time the rules were submitted for OIRA review, there had been sufficient discussion of the important provisions that the review was promptly concluded.

In another instance, HUD was developing rules related to public housing policy regarding the elderly and the disabled. HUD officials provided information to OIRA and to other OMB staff even as decisions were being presented to HUD officials. This enabled the issues of concern to be addressed on a real time basis, and resulted in review being completed much more quickly than would otherwise have occurred.

As a final example, in March 1994, the Department of Education (ED) identified seven final regulations pertaining to student financial assistance programs that had to be published by a May 1, 1994, statutory deadline. OIRA worked with the Department's teams, discussing issues and reviewing early drafts as they were developed. As a result of this cooperative effort, a thorough review under the Executive Order took place, while, at the same time, the formal time period for review averaged only one day and the statutory deadline was met.

Lastly in the area of improved relationships between the agencies and OIRA, the Regulatory Training and Exchange Program has grown and developed. As mentioned in the May 1st Report, the

program, which implements a recommendation of the National Performance Review, brings agency career staff to OIRA on training details, so that they can learn how regulatory review is conducted and to work on Regulatory Working Group (RWG) matters. The objective of the program is to provide expertise to agency career staff regarding regulatory review that can be incorporated into the working practices of the agency.

OIRA has now hosted seven detailees, from the Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and DOT. Two trainees are currently at OIRA. In addition, an OIRA analyst has undertaken a training detail at HHS. All of these details have been extremely successful and well received, both by the trainees and by OIRA. The agency detailees have been fully engaged in substantive regulatory review, and we understand they have gained a new appreciation for the perspective of the central reviewer. They have all been senior career officials, highly motivated and knowledgeable, and have not only fit in well at OIRA, but have offered valuable insights to OIRA staff regarding agency points of view. As the good news about the program travels, we hope that more agencies will take advantage of this excellent opportunity.

Interagency Coordination: Just as important as improved relationships between OIRA and the agencies are better working relationships among the agencies themselves and the consequent heightened awareness of the need for interagency coordination and cooperation in complex rulemaking endeavors. The Executive Branch is an extensive enterprise, and its programs are dispersed among hundreds of different agencies, subagencies, and offices. We obviously cannot claim that there are no glitches, but we believe agencies are making strong efforts to engage in much more extensive interagency coordination.

For example, in the ACHP example noted above, the agency met at length with the Department of Interior (DOI), DOT, USDA, HUD, and EPA in developing its proposed rule. Not all these agencies were satisfied with the proposal that was eventually drafted, but all agreed that they had been fully consulted. This process is not over, and will continue during and subsequent to the public comment period, as ACHP develops its final rule.

In another instance, DOC, DOI, and the Council of Economic Advisors (CEA) worked closely together on DOC and DOI rulemakings that seek, through a survey methodology called "contingent valuation," to quantify the non-use value of damages to natural resources. After substantial consultation among the primary participants, as well as with EPA and the Department of Energy (DOE), DOI and DOC issued coordinated proposed rules whose comment periods only recently closed. It is expected that there will be even more extensive interagency coordination before the final rules are issued.

It is worth noting that interagency coordination is often quite time- and resource-consuming and not without its frustrations. Agencies do after all have different perspectives on their overlapping jurisdictions and mandates, and the process of working out an accommodation is not necessarily a trivial task. In such instances, however, OIRA can often serve as a facilitator of debate, leading to resolution of issues.

For example, a USDA final rule on farmland protection was drafted to implement a statutory requirement that Federal agencies measure the adverse effects of their programs on the conversion of farmland to nonagricultural uses. During its review at OIRA, the draft rule was the subject of extensive coordination among USDA, DOT, HUD, the Department of Justice (DOJ), and Treasury. Although the 90-day review period had to be extended, eventually the agencies reached understandings and

resolved their disagreements. All agreed that the result was a rule that met the intent of the statute without unduly burdening or restricting other Federal programs.

Similarly, coordination among agencies was essential to the issuance of EPA's rule on General Conformity. The Clean Air Act Amendments of 1990 (CAA) require that Federal agencies insure that any actions they undertake or support are consistent with State air quality planning under the Clean Air Act -- i.e., Federal actions must be shown to be in "conformity" with State implementation plans and must not cause or contribute to air quality problems.

Through its rulemaking, EPA sought to delineate the steps Federal agencies were to take and when they were to take them. EPA had initially chosen to interpret the statutory language to require the complex conformity determinations and mitigation/offsetting measures for a vast range of Federal actions -- even those where the Federal agency might exert no continuing control, such as the sale of DOD property or the granting of a Corps of Engineers wetlands modification permit. Because other Federal agencies' activities were clearly affected by this rulemaking, there were a series of multi-lateral and bi-lateral discussions organized by OIRA. As a result of those discussions, certain definitions were refined and certain proposed procedures simplified -- again producing a rule that met the intent of the statute without unduly burdening or restricting other Federal programs.

An example involving HHS and the National Science Foundation (NSF) illustrates the importance of interagency coordination in resolving difficulties with stakeholders and developing a consistent Federal policy. In September 1989, HHS's Public Health Service (PHS) proposed guidelines to prevent financial conflicts of interest by federally funded scientists. The

proposal was severely criticized by the research community as being unreasonably harsh and burdensome, and it was soon withdrawn. NSF then began its own efforts to address this issue, publishing a proposed policy for comment. Over the past year, OIRA and the Office of Science and Technology Policy (OSTP) worked with NSF and HHS to develop a coordinated policy regarding how agencies should regulate financial holdings of scientists who receive Federal grants. After several interagency meetings and extensive discussions, NSF and HHS agreed to develop a common approach. Moreover, the rules are designed to provide maximum flexibility to universities in implementing policies on how to address potential conflicts of interest.

The success of this effort is shown in an article published in Science Magazine describing the rules as "being roundly applauded for their reasonableness." (Science, Vol 265, July 8, 1994, p. 179-80). Whereas the original proposals were considered prescriptive and would have required institutions to turn over researchers' financial disclosures to the government, the final NSF rule states general aims leaving implementation to the universities. The article quotes the associate vice chancellor for research at the University of Illinois as viewing the rule as "a positive example of the process working for both sides. Institutions made comments [on the 1989 proposal], and the agency responded in a thoughtful way."

The coordination and cooperation described above is the result of strong support by the President and Vice President and of trust and cooperation among agency regulatory policy officials. The mechanisms established by the Executive Order to stimulate and encourage such coordination are working well. The Regulatory Working Group (RWG) has continued its role of keeping high level agency regulatory policy officials in touch with each other and with the White House regulatory policy advisors.

The RWG followed up its initial meetings in November, January, and March, with meetings in April, May, June, and August. Implementation of the Executive Order was a frequent agenda item for these meetings, along with discussions of the Regulatory Plans, centralized review and the process by which rules are determined to be significant, public involvement and outreach in rulemaking, and the Section 5 review of existing regulations. Important legislative issues related to regulatory affairs were also discussed, including unfunded mandates, risk analysis, regulatory flexibility analysis, and takings. In addition, the RWG heard periodic reports by the four subgroups on cost-benefit analysis, risk analysis, streamlining, and the use of information technology in rulemaking. Finally, small business issues and issues related to the Paperwork Reduction Act were often subjects of discussion among the RWG members.

The Federal Partnership - Intergovernmental Cooperation:
Executive Order No. 12866 places particular emphasis on improving the Federal Government's relationship with State, local, and tribal governments. (See Sections 1(b)(9), Section 4(e), Section 6(a)(1), and Section 6(a)(3)(B)(ii).) Executive Order No. 12875, "Enhancing the Intergovernmental Partnership," further addresses this issue, focusing on reduction of nonstatutory unfunded mandates largely through a process of formal consultation and coordination.

OIRA has continued its outreach to State, local, and tribal governments (Section 4(e)). In the May 1st Report, we noted that OIRA had held two conferences with representatives of these entities. We sponsored a third forum in July, at which representatives from the National Governors' Association, the League of Cities, the Conference of State Legislatures, the National Association of Counties, and the Advisory Commission on Intergovernmental Relations spoke about their regulatory concerns.

While we have no standard of measurement to gauge improvements, our sense is that agencies are generally taking seriously their obligations to work together with other governmental entities. For example, HHS Secretary Shalala writes to the governors on occasion summarizing major Departmental initiatives of interest to the States. This is part of an HHS effort to "strengthen the federal-state partnership that is crucial to the successful operation of so many of our Department's programs." It is our understanding that this effort to inform the States has been much appreciated.

Another example from HHS involves PHS. Over the next year, the agency has committed to extensive consultation with the States in developing guidelines for state mental health services planning. Such guidelines will assist States in establishing useful goals and objectives for monitoring the management of, and investments in, State mental health services.

EPA recently issued a proposal that would limit toxic air emissions from municipal waste combustors, many of which are either owned or operated by local governmental entities. In preparing its proposal, EPA consulted extensively with a wide variety of stakeholders, including the Conference of Mayors, the National League of Cities, the National Association of Counties, the Municipal Waste Management Association, and the Solid Waste Association of North America. In drafting its proposal, EPA considered the concerns expressed by these groups, and discussion with them will continue following the proposal.

A recent rulemaking by the Architectural and Transportation Barriers Compliance Board (ATBCB) concerning Americans with Disabilities Act (ADA) rules is another illustration of consultation with State and local officials, as well as of interagency coordination. ATBCB's rules set standards for State and local government implementation of the ADA through technical

specifications for the design of buildings, parks, roads, and the like to make them accessible to people with disabilities. (The ATBCB standards will ultimately be implemented through rules issued by DOJ and DOT.) In the course of Executive Order review, the ATBCB: requested comment about the scope of State and local accommodations in order to develop a better cost estimate to accompany the final rule; summarized prior consultations with States and localities, consistent with the provisions of Executive Order No. 12875; and, after meeting with DOJ, DOT, and OMB, developed a list of State and local organizations to receive copies of the rulemaking documents for comment.

ED also engaged in an extensive process of consultation with State and local entities during development of a regulatory proposal that would have required States to provide supplementary services, in excess of Federal funds for these services, to certain disadvantaged students receiving vocational education. ED held two public meetings with State and local education officials and student representatives, solicited written public comment on the issue, and worked with States to obtain additional information on the costs that the rule would impose on them. Unfortunately, this process did not result in agreement on certain issues, leading Congress to intervene to prevent the Notice of Proposed Rulemaking (NPRM) from being published. This highlights the fact that while consultation is essential to effective rulemaking, it may not be sufficient -- for all the consultation may not change the different participants' perspectives and does not necessarily ensure agreement.

It is also worth noting that some agencies are not only consulting with States, but actively seeking to enhance State flexibility and eliminate unnecessarily burdensome regulatory barriers. For example, HHS's Health Care Financing Agency (HCFA) is developing a Medicaid final rule which will simplify the process of obtaining Medicaid home and community-based services

waivers, thereby enabling States to offer a wide variety of cost-effective alternatives to institutional care. The rule will simplify the cost effectiveness test by eliminating the "bed capacity test," which had become burdensome and unproductive to maintain; it will also give States increased flexibility to assess their programs. Also in HHS, the Administration for Children and Families modified its Adoption and Foster Care Analysis and Reporting System to reduce burdens on States. Rather than require the submission of all reporting data, the agency allowed States to submit a sample of the data associated with the management and reporting of foster care and adoption cases.

Two final examples illustrate efforts by agencies to include tribal governments as partners. HUD consulted with tribal representatives in developing amendments to the Indian Housing Consolidated Program to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal and Indian housing authority officials. HUD held a session with the National American Indian Housing Council, regional Indian Housing Authority (IHA) associations, and tribal leaders. While HUD was fashioning the proposed rule, comments were solicited from the Native American housing community, and after publication of the proposed rule, the program offices continued to consult with the IHAs and tribes on the proposed changes.

The second example is the rulemaking on Indian Self-Determination, where DOI and HHS worked with tribal representatives to break a four-year logjam which had delayed publication of a proposed rule. The purpose of the rule is to implement a system whereby Indian programs currently administered by the Federal government may be contracted to, and administered by, American Indian tribes. There were extensive consultations with tribes, including three regional meetings and one national

meeting, to discuss their concerns with the proposed rule, which was published in January 1994. The Department is pursuing other ways to increase tribal participation in the development of the final rule, including forming a tribal committee under the Federal Advisory Committee Act.

Openness: Public Involvement

The trend toward increased public involvement in the rulemaking process has continued since the spring, and we believe it has become a common feature of rulemaking in the Clinton/Gore Administration. Although we have no statistics to measure increased public involvement, it is our sense that agencies increasingly are seeking ways to involve those affected by rulemaking, not only through formal means -- such as regulatory negotiations and longer comment periods after publication of proposed rules -- but also through more informal means earlier in the rulemaking process.

For example, HUD wanted to amend its existing regulations to simplify and expedite the Comprehensive Grant Program planning and funding process for certain housing agencies. In developing its proposal, the Department held a series of working sessions with various interest groups, housing authorities, and residents, soliciting their ideas and suggestions. HUD then published its proposed rule which incorporated many of their recommendations.

Agencies are also using electronic means to obtain early and more extensive public input. For example, last winter ED began developing a proposal to amend existing regulations governing the independent living programs. The Department sent out more than 400 letters inviting comments, along with computer diskettes that contained a draft of the proposed regulations, to State vocational rehabilitation agencies, statewide independent living councils, centers for independent living, constituent organizations, and other interested parties. The draft of the

proposed rules was also made available on the "DIMENET" AND "RSA BBS" electronic bulletin boards. A series of public meetings and teleconferences enabled a cross-section of individuals representing a wide variety of organizations and viewpoints to contribute their thoughts during the developmental process.

When the NPRM was published in the Federal Register, the Department made it available through these electronic bulletin boards, and a "CompareRite" copy of the proposal was provided that showed changes that were made as a result of the earlier public involvement. The public was also invited to submit comments on the NPRM electronically via the bulletin boards. This is an outstanding example of how outreach and technology can help the government to solicit the views of those most knowledgeable about a rulemaking. It also serves to increase the sense of partnership between the government and the public by making the rulemaking a joint enterprise rather than the imposition of commands by Federal authority.

Regulatory Negotiation: Another way this Administration has encouraged communication between the regulators and regulatory stakeholders beyond the barebones of the Administrative Procedure Act (APA) notice and comment procedures has been its encouragement of negotiated rulemaking or "reg neg."

A reg neg brings together the stakeholders in a potential regulatory situation to negotiate a proposed document that then goes through APA procedures. By involving interested parties directly in the drafting of the rule, and by having them negotiate out at least some areas of disagreement, it is expected that the rule will be more intelligently drafted and less contentious when it is proposed, and it will be more readily accepted and less likely to be litigated when it becomes final.

The Executive Order (Section 6(a)(1)) directed agencies to explore and use -- where appropriate -- regulatory negotiation as a consensual mechanism for developing rules. In addition, implementing a recommendation of the National Performance Review, the President by separate memorandum issued the same day as the Executive Order, directed each agency to identify to OIRA at least one rulemaking that it would develop through the use of reg neg during the upcoming year, or explain why the use of negotiated rulemaking would not be feasible.

The May 1st Report noted that agencies had provided reg neg candidates to OIRA by December 31, 1993, as the President had directed. Since then, many agencies have continued the substantial planning that is necessary for a successful reg neg, or have begun (or in some cases, concluded) reg negs.

DOT, which was the first agency to use reg neg over a decade ago and has much experience with this technique, has recently identified over a half-dozen possible candidates for negotiation during the next year; the Federal Railroad Administration (FRA) has already published a notice seeking public comment on its proposal to use reg neg for one of these -- a rulemaking addressing the hazards railroad workers face along rights-of-way from moving equipment. EPA is actively engaged in reg negs for disinfectant byproducts, enhanced surface water treatment, and small nonroad engines. DOI has formed a committee under the Federal Advisory Committee Act to deal with a Federal gas valuation rulemaking. OSHA has established a reg neg committee to examine its steel erection standard. And reg neg committees have also been approved for Federal Communications Commission (FCC) and Interstate Commerce Commission (ICC) projects.

Reg negs do not always work, though the experience so far with the technique is generally favorable. ED has been required by statute to use regulatory negotiation in many of its

rulemakings. One recent reg neg involving direct loans was a very prominent but not entirely successful negotiation. Although consensus was reached on a majority of the provisions in this rule, the negotiators did not agree on certain key provisions, including the mechanism by which borrowers would repay their loans. Nonetheless, a trade publication wrote that certain interests "who might otherwise have been the first to pounce on the proposed regulations said they were intimately familiar with -- and generally happy with -- the rules after spending the first half of this year negotiating with ED."

Another ED reg neg, involving guarantee agency reserves was less publicized but more successful in reaching agreement. The rule involved how to handle funds held in reserve by the agencies that "guarantee," or reinsure, student loans under the bank-based loan program. The negotiations took place two days a month from January to July 1994 and involved the Department, guarantee agency representatives, student representative, school associations, and State higher education officials. OMB observed the negotiations and concurred with the consensus NPRM that emerged, reviewing the formal submission from ED in one day. ED expects to publish the final rule by December of this year, with little or no problem in the process.

Small Business: Regulations often create a disproportionate burden on small businesses, since, for example, the same recordkeeping or reporting requirement may consume a much greater percentage of the managerial or administrative resources of a small business than of a large business. As a result, OIRA and the Small Business Administration (SBA) have taken steps to improve the participation of the small business community in the rulemaking process. We noted in our May 1st Report that OIRA and SBA sponsored a Small Business Forum in March 1994 for this purpose. This Forum brought together representatives of small business and six of the Federal agencies who most regulate them -

- the Internal Revenue Service (IRS), the Food and Drug Administration (FDA), DOT, EPA, DOL, and DOJ.

This Forum was followed by work sessions, which took place over a three-month period, that developed findings and recommendations centered around five industry sectors -- chemicals and metals; food processing; transportation and trucking; restaurants; and the environment, recycling, and waste disposal. These sessions were capped with a town-meeting-style forum held at the Chamber of Commerce in Washington and chaired by the Administrators of OIRA and SBA. An audience of about 75 small business owners, who had come to Washington to participate in SBA's Small Business Week and many of whom were winners of SBA small business awards, directed questions and comments to a panel of agency officials representing the six regulatory agencies listed above.

A second Small Business Forum was held on July 27, 1994, in which the recommendations and findings of these work groups were presented. The concerns expressed by small businesses and the recommendations drafted by agency staff to help alleviate these concerns parallel to a remarkable degree principal provisions of the Executive Order. These include:

- o the need for better coordination among Federal agencies;
- o the need for more small business involvement in the regulatory development process;
- o the inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant;
- o the burdens caused by cumulative, overlapping, and/or inconsistent Federal, State, and local regulatory and recordkeeping requirements;

- o the need for tangible evidence of paperwork reduction; and,
- o the perceived existence of an adversarial relationship between small business owners and federal agencies.

Officials from the participating agencies pledged to move ahead with various activities responsive to some of the recommendations and to examine ways to respond to the remaining recommendations. In addition, pilot projects with the governors' offices of New York and North Carolina were announced. These States will work with SBA and the regulatory agencies on means of improving Federal-State coordination regarding burdens on small businesses and State projects to improve their own ability to communicate better with, and involve small businesses in, State regulatory decisionmaking.

As a general matter, however, it is our experience that regulatory agencies still tend to draft one-size-fits-all rules, rather than tailoring them to particular regulated communities, including small businesses. It appears that it will take further effort before such tailoring becomes commonplace. We believe that more extensive early involvement by SBA in the rulemaking process could help move this process forward. Accordingly, we are currently developing with SBA a process to assure that SBA's Chief Counsel for Advocacy has full opportunity to review significant agency rulemakings where such tailoring would be most appropriate and to have agencies implement the Regulatory Flexibility Act more effectively and completely.

Integrity of OIRA Review

Prior to this Administration, the regulatory review process had been severely criticized for delay, uncertainty, favoritism, and secrecy. Restoring the integrity of centralized review was one of the primary tasks facing this Administration as it drafted Executive Order No. 12866.

Disclosure: Section 6(b)(4) of the Executive Order sets forth certain disclosure procedures "to ensure greater openness, accessibility, and accountability in the regulatory review process." OIRA's practices regarding these procedures were described in detail in our May 1st Report. It is a telling measure of the almost complete success of these procedures that there is little additional to say about them and, as far as we know, little interest in them anymore. OIRA adheres to these procedures, and they have long become routine.

We continue to make available a daily list of draft agency regulations under review. Starting in August 1994, this list was made available electronically as well on the Internet. Monthly statistics and data on rules for which review has been completed are also made public. Meetings and telephone calls with persons outside the Executive Branch on regulations under review continue to be logged, and an agency representative invited to such meetings. As of March 31st this log had 36 entries. It now contains an additional 35 entries for meetings that occurred between April 1st and September 30th. In all but 6 instances, these meetings were chaired by the OIRA Administrator; in these 6, the meetings were chaired by other OMB officials. An agency representative was invited to all meetings and attended in all but 5 instances. Materials sent to OIRA on pending regulations from anyone outside the Executive Branch are kept in a public file and a copy is forwarded to the appropriate agency. After a regulatory action that has undergone review is published, documents exchanged between OIRA and the agency during the review, including the draft rule submitted for review, are made available to anyone requesting them. As far as we know, this aspect of the Order is working as it was envisioned.

Regulatory Review Statistics: Executive Order No. 12866 changed the scope of centralized regulatory review by having OIRA review only "significant" rules. This was designed to return

responsibility for routine rulemaking to the agencies, to reduce delay, and to focus OIRA's limited resources on the most important rules. In the May 1st Report, we described in detail how this process was working. We noted that establishing the process for determining whether rules were "significant" or "not significant" had taken longer than anticipated to set up, but that after the first three months, the process of limiting the rules reviewed by OIRA seemed to be working. Based on another six months of experience, we can say that there continue to be some disagreements about whether or not a particular rule is significant, and not infrequently reaching a final decision can take longer than we would like. However, the significant problems we described in the May 1st Report that characterized the process during its first three months have for all practical purposes been resolved.

OIRA's regulatory review statistics show that in other respects as well, what was intended by the Executive Order has, in fact, taken place. Between April 1 and September 30, 1994, OIRA reviewed 388 rules (Table 1). By way of comparison, during the first six months of the Order, OIRA reviewed 755 rules (Table 2) [Note: see Tables 1 and 2 in the May 1 Report; the 755 figure includes rules submitted for review prior to Executive Order No. 12866.] Even though the first six months of the Order included review of rules received before the signing of the Executive Order and the continued submission of some non-significant rules, the total for the first year of the Order is 1143 reviews. This is half of the average reviews per year for the previous 10 years, slightly over 2,200. Between January 1 and September 30, 1994, when for the most part only significant rules were submitted to OIRA for review, OIRA reviewed 661 rules. At this rate, OIRA will review fewer than 900 rules in 1994, a 60% reduction from the annual average of the previous decade. Thus, the number of rules OIRA reviews has been reduced substantially.

The agencies with the greatest number of rules submitted for OIRA review between April 1 and September 30th were HHS 82, USDA 65, EPA 47, ED 35, HUD 34, and DOT 31. These six agencies account for 76% of the rules reviewed by OIRA. Table 1 also shows that of the 388 rules reviewed during the second six months of the Order, 66 (17%) were "economically significant," while 322 (83%) were significant for other reasons (Section 3(f)(2,3, and 4)). USDA and EPA had by far the most economically significant rules, 21 and 16, respectively.

Of the total of 388 rules, 149 or 38% were proposed rules; 179 or 46% were final rules; and the remaining 60 or 15% were notices (such as HHS, HUD, or ED funding notices, notices of selection criteria, or notices of procedures). OIRA concluded review without any changes being made on 58% of the rules reviewed; it concluded review with changes on 35%. The remaining 7% were withdrawn by the agency, were returned because they were sent improperly (5 USDA rules), or were cleared in order for an agency to meet a court or statutory deadline (8 of 9 were EPA rules). The percentage of rules cleared with changes varied widely by agency -- 18% for USDA, 26% for HHS, 26% for DOT, 47% for HUD, 60% for EPA, and 69% for ED.

The average review time for all rules reviewed was 30 days, compared to 38 days for those reviewed during the first six months of the Order. Reviews of economically significant rules were on average slightly longer (31 days) than those of other significant rules. Average review times for all rules varied by agency -- from below mean for USDA (22 days) and DOT (22 days); to about mean for HHS (29 days) and ED (30 days); to above the mean for HUD (37 days) and EPA (48 days).

In our May 1st Report, we indicated that once the review process was fully implemented and agencies submitted only significant rules to OIRA, the total number of rules reviewed was

likely to decrease. As noted above, this has certainly proven to be the case. We also predicted that the percentage of rules cleared with changes would increase. This has occurred to some degree; the average percentage of rules cleared with changes over the past decade averaged about 22% compared to 35% for the rules reviewed between April and September 1994.

We also predicted that average review time was likely to increase, particularly for economically significant rules. This has not proven to be the case. In fact, average review time is about what it has been over the past decade. More specifically, the review time for economically significant rules is only marginally greater than review time for other significant rules. There are several factors that may explain, in part, this phenomenon. We note, for example, that USDA had the greatest number of economically significant rules (21) and a very short average review time (14 days). This is because most of USDA's economically significant rules are crop price supports, regulations that essentially codify decisions already made through the appropriations process. It may also be that the average review time for economically significant rules is relatively low because agencies are consulting with OIRA earlier in the process, thereby obviating the need for lengthy reviews when the rule is formally submitted. Regarding the review time for significant rules in general, it appears that the Order's limitation of 90 days for review, as well as the OIRA Administrator's practice of having all rules under review longer than 60 days raised for her consideration, has resulted in an expedited review process.

OIRA's review is limited to 90 days except that extensions may be granted by the Director or requested by an agency head (Section 6(b)(2)(B and C)). Such extensions have been needed infrequently; for example, of the 388 rules reviewed between April and September, only 11 or 3% were extended beyond the 90-

day period. All of these extensions were made at the request of the agency.

The 90-day review period has generally proven adequate, and as has been noted, we are able to complete most reviews within that time period. However, in some instances 90 days is simply not enough to conduct an adequate review. Where interagency coordination is needed (such as USDA's Farmland Protection rule or EPA's General Conformity rule), issues may take more time to resolve, if only because of the logistics of getting all of the interested agencies together. In some other instances, we are rushed at the end of the review period, or rules must be extended beyond that period, because agencies are slow in responding to OMB questions or requests for analysis. Some of these may be the result of limited resources or otherwise beyond the control of the agency, but in some cases it may reflect a conscious decision by the agency that this rulemaking is of lesser importance than other pressing matters. We understand, and indeed sympathize, but it remains a concern for us because the agency's delay is on our clock and it is Executive Order review that is ultimately curtailed.

III. APPLICATION OF THE PHILOSOPHY AND PRINCIPLES SET FORTH IN THE EXECUTIVE ORDER

The processes described above -- regulatory planning, interagency and intergovernmental coordination, openness and encouraged public participation, restoring integrity to centralized review -- were all designed to lead to better, more focused, more effective, less burdensome -- i.e., smarter-- regulation. The many examples cited above demonstrate that the regulatory process has been improved. The question remains, are the philosophy and principles of the Order being applied to the fullest extent? Are we really getting smarter regulation? This is difficult to answer because, as noted in the Introduction, there is no direct measure of performance that we can use. We do have anecdotes, however, suggesting that the Administration is producing smarter regulations, as we now discuss.

One of the more important features of the Executive Order is its emphasis on good data and good analysis to inform (and not just justify) decisionmaking. One example of the application of this principle is DOT's National Highway Traffic Safety Administration (NHTSA) rulemaking on side-impact protection for light trucks. In the spring of 1994, NHTSA submitted to OIRA for review a proposed rule that would extend to light trucks many of the same side-impact protection requirements now applicable to passenger cars. The proposal was accompanied by a first-rate regulatory analysis prepared by NHTSA staff. The analysis revealed that while the added requirements were cost-effective when applied to the protection of front seat passengers, they were not cost-effective for protecting rear seat passengers. For this reason, NHTSA decided to delete the language proposing to prescribe requirements affecting rear seat passengers, instead seeking comment on the issue.

Another example is HUD's rulemaking on mobile home wind requirements. In the wake of Hurricane Andrew, HUD moved to upgrade the safety of mobile homes. However, increased safety standards means increased costs. The Wall Street Journal quotes HUD's Assistant Secretary for Housing as remarking that the issue requires "the classic balancing act. We could make these homes completely safe and solid - so much so that they'd be out of reach for lower-income consumers." To inform its policy choices and to stimulate discussion among the various stakeholders, HUD's draft regulatory impact analysis set forth the tradeoffs, and the data they are based on, for public scrutiny. Both the data and the analysis have been criticized, but this rulemaking demonstrates the value of analysis, even if it is flawed, in engaging stakeholders in the debate that leads to reasonable balances, as suggested by HUD's Assistant Secretary.

Another feature of the Executive Order is its preference for focused (or tailored) requirements and for performance-based (or flexible) provisions rather than across-the-board, mechanically applied, command-and-control approaches. An example of the application of these principles is the EPA proceeding on lead abatement. Congress directed EPA to create model inspection, worker training, and cleanup regulations for lead abatement of housing, commercial buildings, and various industrial structures. EPA plans to issue these regulations in phases throughout 1994. The first phase included primarily administrative matters, -- e.g., worker training, certification, and State program administration regulations. Initially, the proposal was heavily prescriptive (e.g., detailed diagrams for soil sampling), included extensive paperwork requirements (e.g., detailed documentation of each, identical sampling effort), and did not distinguish between potentially high-risk and low-risk lead hazards. EPA and OIRA staff, working together, substantially revised the draft proposal to reduce the prescriptive character of the rule, adopt more of a performance standard approach, and

re-focus the requirements on the more important sources of health risk (e.g., spending less resources on testing and studies, leaving more for cleanup itself). This revised proposal should also provide States and local governments with greater flexibility in establishing lead abatement programs than had originally been contemplated.

Also relevant here is the EPA combined sewer overflow policy. EPA developed a policy for controlling combined sewer overflows (CSOs) -- i.e., instances when, as a result of heavy rains, sewage and other waste overflow normal channels, bypassing treatment plants. The new policy ensures that an extensive planning effort is undertaken, so that cost-effective CSO controls can be developed that meet appropriate health and environmental objectives. It establishes clear control targets, but provides sufficient flexibility to municipalities so that they can tailor programs to their specific circumstances.

The DOT alcohol and drug testing rules were mentioned above as an example of improved agency/OIRA relations. They are also illustrative of a rulemaking where the Department approached a complex issue analytically and made significant improvements to its rule, reducing burden without reducing safety, by applying the principles of the Executive Order. For example, in its final rule, DOT adopted a performance-based approach for determining the rate of random drug and alcohol testing. Thus, based on already existing performance-based data, the random drug testing rate was reduced from 50% to 25% for the airline and rail industries; for alcohol testing, the testing rate will be 25% if the industry violation rate in any year is less than 1%, and it may decrease to 10% if the industry violation rate is less than 0.5% for two consecutive years. DOT also simplified and streamlined its requirements for reporting drug testing data, introducing sampling techniques and otherwise reducing the burden

and complexity of the information collection requirements from employers.

Another example from DOT involves the Coast Guard's rulemaking involving overfill devices. The Coast Guard was required by statute to promulgate rules involving the installation of signalling (overfill) devices to alert crew about the likelihood of a unanticipated spill. In its proposal, the Coast Guard added material concerning the use of lower cost signalling devices (i.e., stick gauges) rather than more costly and sophisticated alarm devices. The final rule, which will be published soon, will allow the lower cost devices on certain vessels (i.e., tank barges) thus significantly reducing the cost of the rule from about \$90 million to about \$40 million (npv) over 15 years. The Coast Guard does not believe that the use of the less costly signalling devices on these vessels will significantly increase the risk of small unanticipated spills.

An example from DOL's Occupational Safety and Health Administration (OSHA) is that agency's rulemaking on asbestos. In preparing its final rule governing asbestos in the workplace, OSHA made substantial changes to its proposal to improve the clarity of the regulation and ensure that as much flexibility as possible was retained in process-specific standards. Thus, for example, while the proposal could be read to require extensive controls (e.g., glove bags, mini-enclosure, and respirators) for any maintenance work conducted around asbestos-containing materials, even if exposure was negligible (e.g., pulling wires above suspended ceilings), OSHA's final rule required such controls only when there is a physical disturbance of the materials. In addition, the final rule avoided inconsistencies with existing EPA standards by eliminating the use of terms to classify asbestos that differed from those used by EPA. Finally, OSHA raised in the preamble of the final rule the possibility of its adopting an action level to serve as a clear regulatory

threshold below which fewer protective measures would be needed if practical sampling devices become available.

HHS also has been attentive to the principles of the Order. For example, the Mammography Quality Standards Act of 1992 required FDA to establish Federal certification and inspection programs for mammography facilities; regulations for accrediting bodies for mammography facilities; and standards for mammography equipment, personnel, and practices. In designing these rules, FDA made the standards less burdensome on mammography facilities, which are nearly all small businesses, by incorporating existing standards to the maximum extent possible. It also provided for the issuance of Federal certificates to facilities already accredited by the American College of Radiology; required facilities to submit certification information only to an accrediting body and not to FDA; and permitted flexibility in meeting certain other standards.

As noted above, HHS has also been sensitive to minimizing the burden of Federal regulations on State, local, and tribal governments. For example, this past year, the Maternal and Child Health Bureau developed a streamlined, block grant application and annual report. The revisions resulted from an impressive consultation effort with State maternal and child health groups and the National Governor's Association. The burden imposed by the requirements has been cut in half, while the materials are easier to understand and will be more useful in local, State, and Federal planning.

HHS has also taken steps to streamline the burden on the private sector as well. In March 1994, HCFA published a rule that replaced the annual requirement for physicians to provide hospitals with a signed acknowledgement concerning penalties for misrepresenting certain information with a one-time signing requirement, fulfilled at the time a physician is initially

granted hospital admitting privileges. One major medical association characterized this change as one that will alleviate the "hassle factor" for physicians and one that is an important step toward restoring mutual trust between the Federal government and the medical profession.

Another example of burden reduction comes from DOT. The Federal Aviation Administration (FAA) realized that not all regulatory modifications are dramatic, but incremental efforts to reduce burden and unnecessary provisions can add up to significant improvements. Recently, in a broader rule that made other changes to the medical certification standards, FAA responded to an American Medical Association report suggesting that the burdens of the medical certification process for pilots could be significantly reduced by extending the two-year certification to a three-year duration for younger pilots. This simple change will cut the overall paperwork associated with the certification process by about 15% in total, and over 30% for those pilots under age 40.

In the same vein is a recent SBA action that eliminated a longstanding regulatory prohibition on making financial assistance available to businesses engaged in media-oriented activity. The so-called opinion molder rule had been based on a concern about Federal agency involvement in potential prior restraint of free speech; the result was a ban on SBA assistance to businesses involved in media activities. After first considering modest revisions to the rule, SBA concluded that the concern was no longer a valid one, and that the demand for assistance from small businesses in the media field far outweighed the need for caution in this area.

Several of the latter examples involve rethinking or redesigning existing regulation. Focusing on existing regulations has been an important feature of the Executive Order,

and, as we now discuss, we are beginning to see real progress in this area.

IV. IMPLEMENTATION OF THE LOOKBACK PROVISIONS OF THE EXECUTIVE ORDER

Individuals who must comply with Federal rules frequently comment, often with great frustration and anger, that it is the accumulated burden of rules in effect -- many of which appear unnecessary, redundant, outdated, or downright stupid -- that is so exasperating to them. In response to these concerns, the Executive Order provides that agencies are to review existing regulations to ensure that their rules are still timely, compatible, effective, and do not impose unnecessary burdens (Section 5).

In the May 1st Report we noted that this review of existing regulation, a "lookback" process, had begun, although it had proven more difficult to institute than we had anticipated. We observed that, understandably, agencies are focused on meeting obligations for new rules, often under statutory or court deadlines, at a time when staff and budgets are being reduced; under these circumstances, it is hard to muster resources for the generally thankless task of rethinking and rewriting current regulatory programs. Six months later, we are somewhat further along, although we continue to believe that any real progress will depend on the extent to which senior policy officials recognize and attend to this effort.

It is important to emphasize what the lookback effort is and is not. It is not directed at a simple elimination or expunging of specific regulations from the Code of Federal Regulations. Nor does it envision tinkering with regulatory provisions to consolidate or update provisions. Most of this type of change has already been accomplished, and the additional dividends to be realized are unlikely to be significant. Rather, the lookback provided for in the Executive Order speaks to a fundamental re-engineering of entire regulatory systems, many of which have

remained fundamentally unchanged for 30 to 50 years. To do this successfully requires a dedicated team in an agency with broad understanding of the program's objectives, expertise in the intricacies of the regulatory program, an intimate knowledge of the stakeholders, and resourcefulness, tenacity, resolve, and support.

Probably the best example of such a re-engineering of a regulatory system is the work currently being done by the DOC's Bureau of Export Administration (BXA) to rewrite the Export Administration Regulations (EAR). This comprehensive review is intended to simplify and clarify this lengthy and complex body of regulations that establishes licensing regimes for dual-use products -- i.e., those that may have both commercial and military applications -- and to make the regulations more user-friendly, which they currently are not. The rules were first promulgated in 1949 to implement the Export Control Act of 1949. There has not been a complete overhaul of the EAR since that time. This effort is important enough that DOC has chosen it as one of its four entries for the Regulatory Plan.

In its re-engineering of the EAR, BXA is following the recommendations of the Trade Promotion Coordinating Committee (TPCC), a Presidential committee mandated by the Export Enhancement Act of 1992. BXA has already published a notice in the Federal Register requesting comment on a simplification of the program. Meanwhile, a task force within the agency has been working on a complete overhaul and restructuring of the rules. In particular, the rules are being fundamentally redirected from the current negative presumption that all exports subject to the Act are prohibited unless authorized, to a positive approach that all exports are permitted unless a license is specifically required. The agency tentatively plans to have an NPRM published by the end of this year.

A good example of an institutionalized lookback program is the continual review of selected regulations by DOT's National Highway Traffic Safety Administration (NHTSA). NHTSA has been conducting these safety standard evaluations for over 15 years, and to our knowledge, it is the only program of its kind in the Executive Branch. NHTSA rules deal primarily with automobile and light truck safety. On a regular basis, the agency selects rules from its current programs to review, evaluating not only the effectiveness of the rule and whether there are any provisions that are unnecessary, unduly burdensome, or in need of change for other reasons, but also reviewing the initial analysis itself -- whether the predicted costs and benefits have been realized, and, if not, why not. This approach not only enables the agency to modify its current rules based on analysis, but also helps the staff continually improve the analytic techniques used in assessing the costs and benefits of new rules. Indeed, its recent standards for side-impact protection resulted directly from a review of its previous standard, which revealed that the rule was not providing benefits in multi-vehicle accidents. More recently, the agency completed reviews of front seat protection in passenger cars and its glass-plastic windshield standard No. 205. NHTSA also recently published a Federal Register notice describing its future evaluation plans and soliciting public comment on which additional assessments it should pursue.

DOT's Federal Highway Administration (FHWA), like BXA, has initiated a major, "zero-based" review of its Federal Motor Carrier Safety Regulations. These are the primary body of regulations that are designed to ensure the safety of commercial trucks and drivers. The regulations have not been extensively revised since the early 1970's. The goals and objectives of the zero-base review are (1) to focus on those areas of enforcement and compliance that are most effective in reducing motor carrier accidents; (2) to reduce compliance costs; (3) to encourage innovation; and (4) to clearly and succinctly describe what is

required by the regulations. Through the zero-base review, FHWA intends to develop a unified, performance-based regulatory system that will enhance safety on the nation's highways while minimizing the burdens placed on the motor carrier industry.

Other DOT lookback efforts include FRA's revision of its power brake regulations to reduce the frequency with which railroads must inspect their brake systems. Recently, the FRA proposed performance-based rules that would reduce inspection frequencies, as long as brake systems, when inspected, meet certain brake defect ratios. Also, FAA is reviewing its regulations to identify those rules that are inconsistent with state-of-the-art technology or current industry practice. To enhance its ability to perform its statutory role without undue economic burden on the aviation industry, FAA announced a comprehensive review in January of this year, asking interested parties to identify those regulations that are believed to be unwarranted or inappropriate. The comments provided in response to this notice are assisting the agency in establishing its priorities for future regulatory changes.

USDA is also conducting several lookbacks. The Food and Nutrition Service (FNS) has proposed to revise its school meal nutrition standards, the first major modification to these standards in nearly 50 years. To ensure that children have access to healthy meals at school, USDA has updated nutrition standards to meet the Dietary Guidelines for Americans and, at the same time, USDA has streamlined the administration of the rule so that local school food service staffs may concentrate on providing healthful food for their students rather than on bureaucratic red tape.

This effort was the result of extensive outreach and substantial analysis by USDA. Although commenters on the rule

have raised concerns, the initial press reaction to the proposal was overwhelmingly positive. The New York Times concluded:

The Agriculture Department recognizes that these ironclad rules (current meal patterns) are irrelevant in a nation where most children get not only too much protein but too much fat, saturated fat, cholesterol and sodium School meals might finally catch up with late-20th-century nutrition science.

USDA and HHS are also working to re-engineer their food safety and inspection regulatory programs. Building upon their generally successful efforts to coordinate the nutrition labeling of foods, USDA and HHS are moving forward with ambitious plans to modernize the system of food safety regulation in the United States. Both Departments took steps in 1993 and 1994 to require Hazard Analysis Critical Control Point systems (HACCP) in the production of food.

The Food Safety and Inspection Service (FSIS) at the USDA has initiated a comprehensive review of the regulations that ensure the safety of all meat and poultry. The meat and poultry regulations are based upon the Federal Meat Inspection Act first passed in 1907. Although the meat and poultry statutes and regulations have been amended a number of times over the last 85 years, USDA has never undertaken a top-to-bottom review of the inspection system.

FSIS' review is intended to move the meat and poultry inspection system -- currently based upon "organoleptic" inspection, whereby an inspector uses the senses of touch, sight and smell to test the safety of the product -- towards more science-based procedures that address microbial contamination. For example, under a HACCP system, plants would identify the points along their processing line that are vulnerable to the

greatest hazards (risk of contamination), and devise plans to mitigate those hazards.

FDA, which has jurisdiction over all foods not regulated by FSIS, such as fish, fruits, and vegetables, has announced plans to greatly expand its use of HACCP systems. FDA sees HACCP as a revolutionary way to ensure that proper production processes and controls are being maintained, even when an inspector is not present. In January 1994, FDA issued a proposed rule that would require HACCP analysis and recordkeeping by all firms that process seafood in the United States. Also, after consultation with USDA, FDA published an Advance Notice of Proposed Rulemaking in August 1994 exploring the possibility of extending HACCP systems beyond the seafood industry to other food production within the next ten years.

Other agencies are also conducting lookbacks. In HHS, HCFA is looking at Medicare regulations that govern conditions of participation for home health agencies and hospitals, and conditions of coverage for the payment of end stage renal disease. HCFA believes that the existing rules are unnecessarily burdensome, outdated, and process oriented, and should be replaced with more universally applicable provisions that are patient/outcome oriented and driven by meaningful data to better ensure healthy outcomes for aged patients and those with disabilities. In redesigning these regulations, HCFA has met, and is continuing to meet, with a variety of provider and consumer representatives.

HUD has planned a review of its public housing development program rules. The current rules are outdated and contain unnecessary restrictions on the flexibility of public housing authorities (PHAs). HUD expects to revise the regulations to provide more flexibility for all participants, with even greater flexibility for the best performers. "High performer" PHAs will

have maximum latitude to develop public housing within very broad parameters, and with minimal HUD oversight; remaining PHAs will be given broadened responsibility commensurate with their abilities and areas of expertise. Streamlining the program will help to reduce a substantial pre-construction pipeline and expedite the provision of replacement housing for developments that should be fully or partially replaced.

The Office of the Comptroller of the Currency (OCC) has started a review of existing regulations on national bank lending limits to modernize, simplify, clarify, and eliminate unnecessary regulatory burden. In developing this review project, OCC designed a more efficient internal review process that involved senior agency officials earlier in the project to provide policy guidance. OCC published an NPRM in February 1994.

DOL's Pension and Welfare Benefit Administration (PWBA) has initiated a review of its rule concerning disclosure of plan information to participants. Since enactment of the Employee Retirement Income Security Act (ERISA) in 1974, there have been few modifications either to the law's reporting and disclosure provisions or to the underlying regulations. PWBA issued a Request for Information last December to solicit comments from the public concerning the adequacy and timeliness of the information provided pursuant to these rules. The agency is currently reviewing the many comments to assess the need for regulatory and/or statutory changes. Also at DOL, OSHA has started a review of its outdated walking and working surfaces standards with an eye to replacing them with performance-oriented standards to permit more flexibility in compliance.

Several Departments have used the Federal Register to gather information on those regulations that might be candidates for elimination, modification, or other improvement. DOE published a notice of inquiry in the Federal Register and has solicited

recommendations from over 200 stakeholder organizations and DOE field offices. Based on this input, DOE prepared a second notice of inquiry targeting particular areas of its regulations for review. Similarly, DOI published a notice in the Federal Register announcing its intent to review its significant existing regulations and requesting public comment on which regulations should be reviewed. After a 60-day comment period, DOI published a second notice, announcing which regulations will be reviewed, and requesting specific comments on how those regulations should be revised.

These examples of lookbacks vary from major projects well underway to initial, in some cases tentative and not fully formed, efforts. They are indicative of a serious effort by this Administration to look not only at rules that are being developed, but at the accumulation of regulatory programs that are already on the books. There is no apparent reason why every Department and agency cannot initiate at least one such project. We expect that lookbacks will become more prevalent and more productive over the coming months.

CONCLUSION

In our May 1st Report, we concluded that while it was too early to arrive at a final judgment regarding the success of the new system, the early indications were that there had been substantial improvement in the rulemaking process. With six months more experience and data, we are more confident that the Executive Order is making a difference, that the Administration is moving in the right direction, and that there is much to be proud of. As before, however, our optimism is guarded; we know full well that there is much to be done to obtain the benefits we are seeking to realize.

EXECUTIVE ORDER REVIEWS BY CODE
APRIL 1, 1994 - SEPTEMBER 30, 1994

TABLE 1

| AGENCY | NUMBER OF REVIEWS | | | ACTIONS TAKEN | | | | | | | | AVERAGE REVIEW TIME | | |
|----------|-------------------|------------------------------|--------|-------------------|----------------|------------------------|--------------------|----------|-----------|-----------|----------------------|---------------------|------------------------------|-----|
| | ECON SIG | OTHER THAN ECON SIG | TOTAL | WITHOUT CHANGE | WITH CHANGE | WITHDRAWN BY AGENCY | SENT IMPROPERLY | RETURNED | SUSPENDED | EMERGENCY | STAT/JUD DEADLINE | ECON SIG | OTHER THAN ECON SIG | ALL |
| USDA | 21 | 44 | 65 | 46 | 12 | 1 | 5 | 0 | 0 | 0 | 1 | 14 | 25 | 22 |
| DOC | 2 | 5 | 7 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 14 | 4 | 7 |
| DOD | 1 | 4 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 48 | 38 | 40 |
| ED | 1 | 34 | 35 | 9 | 24 | 2 | 0 | 0 | 0 | 0 | 0 | 68 | 29 | 30 |
| DOE | 1 | 1 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 37 | 73 | 55 |
| HHS | 5 | 77 | 82 | 60 | 21 | 0 | 1 | 0 | 0 | 0 | 0 | 20 | 29 | 29 |
| HUD | 0 | 34 | 34 | 14 | 16 | 4 | 0 | 0 | 0 | 0 | 0 | NA | 37 | 37 |
| DOI | 2 | 6 | 8 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 12 | 40 | 31 |
| DOJ | 1 | 5 | 6 | 5 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 2 | 8 | 7 |
| DOL | 2 | 2 | 4 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 47 | 61 | 54 |
| STATE | 0 | 5 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 12 | 12 |
| DOT | 5 | 26 | 31 | 21 | 8 | 1 | 1 | 0 | 0 | 0 | 0 | 50 | 16 | 22 |
| TREAS | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 2 | 2 |
| VA | 0 | 9 | 9 | 5 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 25 | 25 |
| EPA | 16 | 31 | 47 | 9 | 28 | 2 | 0 | 0 | 0 | 0 | 8 | 48 | 49 | 48 |
| ACHP | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 39 | 39 |
| ACTION | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 55 | 55 |
| AID | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 15 | 15 |
| ATBCB | 2 | 0 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 47 | NA | 47 |
| CNCS | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27 | NA | 27 |
| FAR | 4 | 3 | 7 | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 40 | 39 | 40 |
| FEMA | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 14 | 14 |
| GSA | 0 | 5 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 43 | 43 |
| INS | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 47 | 47 |
| JMMFF | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 30 | 30 |
| NASA | 0 | 4 | 4 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 18 | 18 |
| NSF | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 6 | 6 |
| DGE | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 71 | 71 |
| OPM | 0 | 12 | 12 | 7 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | NA | 42 | 42 |
| OTHINDAG | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 14 | 14 |
| SBA | 2 | 4 | 6 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 13 | 7 | 9 |
| USIA | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | NA | NA |
| TOTALS: | 66 | 322 | 388 | 224 | 134 | 13 | 7 | 0 | 0 | 1 | 9 | 31 | 30 | 30 |
| % TOTAL: | 17.0% | 83.0% | 100.0% | 57.7% | 34.5% | 3.4% | 1.8% | 0.0% | 0.0% | 0.3% | 2.3% | | | |

TABLE 2

EXECUTIVE ORDER REVIEWS BY CODE
OCTOBER 1, 1993 - MARCH 31, 1994

| AGENCY | NUMBER OF REVIEWS | | | ACTIONS TAKEN | | | | | | | | AVERAGE REVIEW TIME | | |
|----------|-------------------|---------------------|--------|----------------|-------------|---------------------|-----------------|----------|-----------|-----------|-------------------|---------------------|---------------------|-----|
| | ECON SIG | OTHER THAN ECON SIG | TOTAL | WITHOUT CHANGE | WITH CHANGE | WITHDRAWN BY AGENCY | SENT IMPROPERLY | RETURNED | SUSPENDED | EMERGENCY | STAT/JUD DEADLINE | ECON SIG | OTHER THAN ECON SIG | ALL |
| USDA | 13 | 109 | 122 | 85 | 26 | 7 | 2 | 0 | 0 | 0 | 2 | 37 | 28 | 29 |
| DOC | 1 | 55 | 56 | 38 | 15 | 3 | 0 | 0 | 0 | 0 | 0 | 128 | 23 | 25 |
| DOD | 0 | 10 | 10 | 1 | 5 | 4 | 0 | 0 | 0 | 0 | 0 | NA | 55 | 55 |
| ED | 2 | 33 | 35 | 3 | 26 | 6 | 0 | 0 | 0 | 0 | 0 | 7 | 46 | 44 |
| DOE | 1 | 9 | 10 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 78 | 82 | 82 |
| HHS | 8 | 158 | 166 | 118 | 30 | 11 | 5 | 2 | 0 | 0 | 0 | 46 | 38 | 39 |
| HUD | 4 | 31 | 35 | 19 | 12 | 4 | 0 | 0 | 0 | 0 | 0 | 52 | 45 | 46 |
| DOI | 1 | 40 | 41 | 29 | 11 | 1 | 0 | 0 | 0 | 0 | 0 | 4 | 33 | 33 |
| DOJ | 0 | 15 | 15 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 17 | 17 |
| DOL | 1 | 1 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 20 | 15 |
| STATE | 0 | 6 | 6 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 17 | 17 |
| DOT | 15 | 36 | 51 | 22 | 27 | 2 | 0 | 0 | 0 | 0 | 0 | 16 | 48 | 37 |
| TREAS | 2 | 4 | 6 | 2 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 70 | 47 |
| VA | 0 | 29 | 29 | 21 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | NA | 62 | 62 |
| EPA | 16 | 53 | 69 | 15 | 38 | 0 | 0 | 0 | 0 | 0 | 16 | 40 | 53 | 50 |
| AID | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 36 | 36 |
| CNCS | 1 | 3 | 4 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 22 | 23 | 23 |
| EEOC | 0 | 2 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | NA | 116 | 116 |
| FAR | 3 | 3 | 6 | 3 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 39 | 23 | 31 |
| FEMA | 0 | 4 | 4 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 38 | 38 |
| FFIEC | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 70 | 70 |
| GSA | 0 | 18 | 18 | 11 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 36 | 36 |
| IMS | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 10 | 10 |
| NARA | 0 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 116 | 116 |
| NASA | 0 | 8 | 8 | 6 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | NA | 31 | 31 |
| NSF | 0 | 5 | 5 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | NA | 73 | 73 |
| OGE | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 2 | 2 |
| OMB | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 108 | 108 |
| OPM | 0 | 23 | 23 | 17 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | NA | 22 | 22 |
| OTHINDAG | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 74 | 74 |
| RRB | 0 | 5 | 5 | 0 | 0 | 0 | 5 | 0 | 0 | 0 | 0 | NA | 39 | 39 |
| SBA | 3 | 13 | 16 | 9 | 6 | 1 | 0 | 0 | 0 | 0 | 0 | 15 | 42 | 36 |
| USIA | 0 | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | NA | 6 | 6 |
| TOTALS: | 71 | 684 | 755 | 434 | 238 | 51 | 12 | 2 | 0 | 0 | 18 | 33 | 38 | 38 |
| % TOTAL: | 9.4% | 90.6% | 100.0% | 57.5% | 31.5% | 6.8% | 1.6% | 0.3% | 0.0% | 0.0% | 2.4% | | | |