Proposed rewrite of Section 7.

Section 7. *Resolution [Consideration] of disagreements.*

A. Any disagreement over a regulatory action may be submitted to the President for resolution [consideration]. A request for such resolution [consideration] may be made only by the Director of the OMB [see other options next page] and must be made prior to the expiration of the applicable time period under sec. 6(B)(2).

B. When any such request is made, the Vice President, in consultation with such Advisors or other Executive Branch officials [or personnel][1] as he deems appropriate, shall provide recommendations to the President.

C. Except in emergency situations, an agency may not publicly announce a regulatory action which is subject to a request under this section until --

1. the President notifies the agency of his resolution [that he has completed his consideration] of the action;

2. ten [thirty] calendar days elapse after the request for presidential resolution [consideration]; or

3. an applicable statutory or judicial deadline expires;

whichever occurs first.

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[1] Is there a meaningful distinction between "officials" and "personnel"?

Issue: Who should be able to request Presidential review?

The draft says the OMB Director or the head of any "interested agency". The NEC wants to include the Regulatory Advisors also. We should consider this question with a full set of options in mind.

Options:

(1) the OMB Director;
(2) the OMB Director and the VP;
(3) the OMB Director, the VP, and the Regulatory Advisors;
(4) (3) plus the head of any "interested agency"[1]

Discussion:

Allowing a broad group to request Presidential review would invite repetition of the chaos characteristic of reg-review under Bush. Under Bush, several White House entities (VP Quayle's staff, CEA, the White House counsel, the domestic policy advisor) ran informal, "off the books" reg-review processes with power equal to or greater than OIRA's. Each such office was frequently lobbied for favorable treatment by outsiders. These informal processes were not subject even to the limited procedural safeguards then applicable to OIRA.

In our administration, any official with the authority to request Presidential review will acquire, de facto, informal reg-review authority like that which existed under Bush. The agency-proponent of a rule will have to respond to these officials, in addition to OIRA. Each such office will become the target of lobbying, and the new procedural safeguards we are building into OIRA's process will not apply to their informal actions.

The risks of repeating this scenario would be minimized under options (1) or (2), and magnified under options (3) or (4).

The cost of narrowing access to Presidential review is that most officials would lack the authority, on their own, to press a regulatory policy disagreement above the OMB Director (or the VP). It is worth noting, however that such officials could still

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[1] Several questions or inconsistencies about the original draft's "OMB Director or head of an interested agency":

(1) Is "interested agency" a limitation? What gives an agency an "interest"? Who will decide whether an agency has such an "interest"?

(2) It would be inconsistent to let the head of an "interested agency" seek review but not the Regulatory Advisors.

(3) Depending on the definition of "agency," some of the Regulatory Advisors (but not others) may be included in the term "interested agency."

These considerations may argue for limiting the request to the OMB director only.

obtain Presidential review under options (1) or (2) if they could persuade the OMB Director (or the VP) of the need.

Four abuses we must find language to proscribe:

1. Suspension of review

The order must bar suspension of review, under which OIRA has "stopped the clock" on rules it did not agree with and returned them to the agency for an indefinite period.

2. Informal, Pre-submission review

The order should bar OIRA from informally insisting on pre-submission review. Such informal reviews have been used to evade the current executive order's nominal time limits and the limited disclosure provisions now in effect.

3. Use of oral communications to evade documentation of disagreements

The order states that OIRA shall explain its reasons in writing to an agency, in cases where it does not agree with a regulatory action [sec. 6(B)(5)(d)]. The order should affirmatively require OIRA to make any requests for changes in a regulatory action in writing. It should also contain language affirmatively barring OIRA from communicating its disagreement or requested changes orally in place of doing so in writing.

4. Evading disclosure by communicating **below the agency head; assuring disclosure of communications from other agencies**

The order also requires OIRA to disclose, after publication, "documents exchanged between OIRA and agency heads" [sec. 6(B)(5)(e)].

This should be extended to "all documents exchanged between OIRA and any agency" regarding a regulatory action. Disclosure should not be limited only to those to and from the agency head, nor should it exclude communications from other agencies.

12:00 - 2:00
Rm 324

REGULATORY REVIEW WORKING GROUP:
AGENDA FOR MAY 17, 1993 MEETING

I. EXECUTIVE ORDER: PENDING ISSUES

We will address those substantive issues that were not discussed or resolved during Friday's meeting (see attached list).

II. COURSE OF ACTION

A. Next Draft: Timing/Further Discussion?

B. Circulation to other White House advisors?

C. Circulation to agencies?

D. How/When to get Hill comments?

E. Public Comment?

REGULATORY REVIEW WORKING GROUP
DRAFT EXECUTIVE ORDER: PENDING ISSUES

I. GENERAL COMMENTS

- Kumiki, Paul, and Bruce will revise Preamble & Section 1
- Include "priorities and principles"?
- How to deal with State/local concerns? Congress?
- Bob K.: Focus on timeliness & innovation as objectives
  Omit "restoring"

II. SECTION 2: ORGANIZATION

Subsection C: Vice President shall be assisted by "such Advisors" or "the Advisors (Ellen, Andy (and others?))

III. SECTION 3: DEFINITIONS

"Regulatory action" = A formal action by the agency relating to the eventual promulgation of a ~~regulation or~~ rule, including a notice of inquiry, an advanced notice of proposed rulemaking, a notice of rulemaking, and a final rule. (Sally & Jeff)

Define "completed," "review," "publicly announce," and other such words? (David)

Revise/Clarify the definition of "significant regulatory action"? To include $100 million dollar criterion? "Important Effect" clear enough? (Bob K.) "Be of particular interest to the Administration, in the opinion of the proposing agency." (Bob K.)

IV. SECTION 4: PLANNING MECHANISM

Subsection A(5): Asking for too much at the planning stage. For example, "various possible means"? (Bob K.'s)

Subsection E: Do we expose OVP to constant inquiries from press/public? (Greg)

V. SECTION 5: EXISTING REGULATIONS

Subsection A: "Review very open-ended" (Bob K.)

Subsection A: Ellen proposes the following:

Each agency shall have a program under which the agency will periodically selectively 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, less burdensome and in greater alignment with the Administration's [priorities]. Each program shall include criteria under which regulations will be chosen for review, which shall include consideration of:

(i) the continued need, suitability, or effectiveness of the regulation in light of changed circumstances or improved knowledge of the nature of the problem being addressed or the effects of the regulation as implemented;

(ii) the number of people or portion of the economy affected;

(iii) the level of continuing costs imposed and benefits achieved by the regulation in comparison with continuing costs and benefits that could result from a modified regulation or adoption of non-regulatory alternatives;

(iv) the extent to which the regulation overlaps or is inconsistent with other significant regulations of the agency or another agency; and

(v) the breadth and persistence of apparently valid public concern about the regulation expressed to the agency.

Any significant regulation chosen for review shall be so designated in the agency's Annual Regulatory Plan. If the agency determines after review that modification or elimination is warranted, the agency shall initiate an appropriate rule-making process. Each agency's program for review of existing regulations shall be submitted to OIRA and published with the first [Semi-Annual Regulatory Agenda] published by the agency after the date of this order.

Subsection B: Do we expose OVP to constant inquiries from the press/public? (Greg)

VI. SECTION 6: CENTRALIZED REVIEW

Overall: how does process fit together? Consider defining/clarifying words such as "complete" and "return." (David)

Subsection A(1): "promulgate" vs. "publicly announce" (David)

Subsection A(3)(b): Reconsider constitutional and takings issues. Address together? (John P.) Address takings at all?

Subsection B(1): Too many reviews? (David)

Subsection B(1)(e): "OIRA has retained a very general review authority over anything that 'raises important policy or legal issues.' If the 60 day list does not include regulations that raise important policy issues, however, how is OIRA to find them?" (Bob K.)

Subsection B(2): What happens at the end of OIRA review period if OIRA doesn't act? Can agency act? (David) Create a right of action for time violations? (Jeff)

Subsection B(4): Periodic Calendar doesn't offer much. (Bob K.)

Subsection B(5)(a): Why only Administrator and her deputy? (John P.)

VII. SECTION 7: RESOLUTION OF CONFLICTS & INCONSISTENCIES

"Such Advisors" vs. "The Advisors"

Presidential vs. Federal records (John P.)

Advisors have a right to appeal? (Ellen)

Include a time period for review? If so, how much?

VIII. SECTION 8: JUDICIAL REVIEW: Create a right of action for violations? (Jeff)

IX. SECTION 9: REVOCATIONS

Alter FACA Executive Order so to exclude reg neg? "Executive Order 12838 shall not apply to any advisory committee established in accordance with the Negotiated Rulemaking Act of 1990 (5 U.S.C. § 565)." (Jeff)

REGULATORY REVIEW WORKING GROUP:
AGENDA FOR MAY 14, 1993 MEETING

I. EXECUTIVE ORDER IN CONTEXT

A. Timing

B. Personnel Components

1. Regulatory Coordinator — not reflected in draft. Better in directive to agencies.

2. "RegCorp"

C. Bridge to REGO — significant regulatory component work w/ Bob/Jeff to coordinate.

II. OVERVIEW OF EXECUTIVE ORDER

General Comments -- Tone, Length, Degree of Specificity –

III. SPECIFIC SUBSTANTIVE COMMENTS

Let's try to discuss only substantive issues during the meeting; you should provide minor editorial or grammatical suggestions directly to Kumiki after the group meeting.

IV. COURSE OF ACTION

A. Next Draft: Timing/Further Discussion?

B. Circulation to other White House advisors?

C. Circulation to agencies?

D. How/When to get Hill comments?

E. Public Comment?

Date: May 14, 1993

From: Bob Knisely

To: Jack Quinn
Sally Katzen

Subj: Review of Draft Executive Order, Regulatory Planning and Review

As I have noted elsewhere, from the National Performance Review perspective I have only two major comments on this draft Executive Order: (a) the potential impact of information technology upon the regulatory planning and review process and (b) the desirability of sharing the new planning and review process with our internal customers, the Departmental associate general counsels for regulation (or equivalent).

On several occasions now I have heard the Vice President discuss his vision of a reinvented Federal government, which prominently features such new entities as a "virtual Department of Entitlements," and a "virtual Department of Training" -- among others. I am sure he would espouse a "virtual Department of Regulations" as well. By this he would include, at a minimum, the electronic exchange of all rules and plans, and comments on rules and plans, among all interested governmental actors. He might include as well the establishment of electronic bulletin board systems that would aggregate comments on regulations -- and comments on comments -- from every source within the government.

I am leaving aside considerations of including the regulated community and the public within this "virtual Department."

The advantages of time- and place-independent communication throughout the regulatory community, and the synergy generated through rapid exchange of views would certainly outweigh the added costs of creating such a system. As I have noted, a similar system is now used by the legislative review community for vetting pending legislation. Costing out the new system should not be difficult.

Given the expense and given the difficulties involved in getting such a "virtual Department" up and running, I believe the design, funding, and operation of such a system needs to be considered at the same time we are considering the regulatory planning and review process itself. Needless to say, however, I am not advocating including any reference to the system in the Executive Order.

I have arranged a meeting next week at which representatives of OMB, DOL, HHS, DoED, and DVA will begin discussing projects that are a part of the "virtual Department of Training." This is not just a futures issue.

On the second point, I cannot urge too strongly sharing the draft Executive Order -- perhaps in its next incarnation -- with a select few of its internal customers. I would start with Neil Eisner of DOT, in whose discretion I have the utmost confidence. I cannot imagine his not providing us with salient comments about the workability of the proposed system, as well as views on how it will be received by other members of the community.

I would also urge that the government revisit the costs and benefits of each significant regulation after perhaps three to five years of implementation experience. Once the affected community has adjusted to the new constraints, we should be trying to ascertain whether our initial estimates were correct, or if indeed the adjustments so made have increased or decreased costs or benefits. As it is, the cost/benefit calculations are made only once, although we all admit that the community's adjustment to regulations determines the efficacy of the government's action. A time for cost/benefit review could be established at the initial issuance, or could be initiated by petitions filed after a time certain. The initial burden of approximating "steady state" costs and benefits could be shifted to the petitioners; other implementation alternatives exist.

I also believe that alternative methods of regulation, and alternatives to regulation, need to be demonstrated -- not just referenced -- if we expect them to become widely known and practiced (cf. Communication of Innovations, 3rd Ed., Everett Rogers). Whether the Stiglitz principles or a product of the National Performance Review Regulatory Systems team, we must find a way to make these alternatives more than concepts to the regulatory community. As I said at one of our meetings, "seeing things as they might be and asking 'why not?'" is difficult at best. My preference is to find a home for an accumulating body of knowledge about regulation and its alternatives, and establish as well a consultative role to guarantee its dissemination. This home could be OIRA, ACUS, or somewhere else.

Given that much of the Executive Order is explanatory -- indeed hortatory -- I would like to ask Bob Lehrman, the Vice President's new speech writer, to take a pass through the next draft. We need to view this Executive Order as a political statement as well as a legal document, and Bob's perspective is a valuable one.

More specific comments follow:

1. Within the introductory material I would like to see an increase in timeliness touted as an objective of the new system; it now takes forever, adding to the lack of certainty within the regulated community.

2. Similarly, I would like to see more of a focus on innovative approaches to regulation and its alternatives.

3. ¶2: We need objectives that go beyond restoring integrity and legitimacy and professionalism. "Restoring" is status quo ante. We need a focus on a better way: faster and more innovative government action, for example.

4. §1: I like the second version. The first version commits us to "only such regulations as are required by law or made necessary by failures of the free market." This is quite restricting, especially since several of the later examples are not market-related, e.g.. child labor/sale of hazardous substances and goals reflected in national values.

5. The lack of conceptual separation between economic regulation and safety/national values regulation has produced, in this draft, a lack of clarity in some areas. For example, under B. The Disadvantages of Regulation, we find the following: "Even when accomplished efficiently, the costs of regulation are paid for by firms and individuals, showing up in the form of higher prices, lower wages, and reduced output." The proponents of the Americans with Disabilities Act (ADA) would suggest that making workplaces accessible to the disabled will result in increased wages and output. A quick review of the draft should distinguish between economic and other regulation, and assure that comments addressed to one are not inappropriately applied to the other.

6. Many policy instruments are off-budget, whether tax credits or civil penalties or whatever. Much of the cost of regulation could be captured in a "regulatory budget," but the true costs of some other policy instruments are even more difficult to capture. Try the costs of cabotage, the requirement that goods in waterborne commerce within the United States must be carried in American ships. Some say that this requirement raises the cost of food in Hawaii by about 20%.

7. §3 Definitions (E) (1): I don't like "important effect on the economy" but I haven't been able to come with an alternative I like better.

8. §4 Planning Mechanism (A): I am not at all convinced that actual practice in the agencies is to consider "the various possible means of achieving the agency's objectives" with respect to a particular rule as much as 17 months in advance of submitting the rule to OMB. This was certainly not the case at DOT with respect to the Hollings/Danforth alcohol testing rule: we had a statutory requirement to publish draft regulations within a year of passage of the act.

I believe that the Annual Regulatory Plan cannot contain the information we are asking for, given the constraints of the development process. I would argue for a one or two page regulatory design document that explains how an agency proposes to implement a regulatory mandate. This involves a level of specificity beyond "choice of regulatory alternatives;" for alcohol testing such a document would identify the need for a breath test just prior to reporting for work, using a breath testing device producing a written record, etc. The circulation of such a design document would occur at a natural point in the development of the regulation, not up to 17 months in advance. The design document would be sent by E-mail to OIRA and affected agencies for comment, and to the rest of the community for information.

While a design document would be my choice, the pros and cons of an annual plan vs. a design document would be best addressed by a discussion of the draft process with experienced regulators in the agencies, as noted above.

9. §5 Existing Regulations (A) I am glad we're not insisting on a rigid timetable for the review of current regulations, but this formulation leaves the review very open-ended. A general counsel could ignore the requirement on one hand, or insist that it be done on a crash basis on the other. I assume someone will tell them what we are looking for in some other forum.

10. §6 Centralized Review of Individual Regulations (A). The bracketed sentence about consulting with elected State or local officials gives me pause. I don't know whether it means consulting with the League of Cities or the National Governors Association on the one hand, or polling a statistically valid, stratified sample of potentially affected mayors and governors on the other. Or just asking some friends. Since they would all have an opportunity to comment at the proposal stage anyway, I think we should leave the agencies the discretion to make informal contacts prior to submission to OMB.

The phrase "any regulatory action that may affect State or local entities" is a bit broad, too. Leave out the sentence.

11. §6 Centralized Review of Individual Regulations (A) (1). The 60 day list includes, but is not limited to, items from the Plan. The 60 day list is, however, limited to the "regulatory actions" as defined in §3 Definitions. As written, a legalistic approach by an agency to the 60 day list would allow exclusion of a regulation that the agency knew was "a hot one" that was not excluded by clauses 1 - 4, but was not otherwise defined as significant.

I would shift the burden of political sensitivity to the agencies by adding to the definition of "Significant regulatory action," perhaps as follows:

E. "Significant regulatory action" means any regulatory action that is likely to result in a rule that may --

(4) Be of particular interest to the Administration, in the opinion of the proposing agency.

Note that under §6 Centralized Review of Individual Regulations (B) OIRA Responsibilities (1)(e), OIRA has retained a very general review authority over anything that "raises important policy or legal issues." If the 60 day list does not include regulations that raise important policy issues, however, how is OIRA to find them?

12. Under OIRA Responsibilities (4), the periodic Calendar, at its minimum, doesn't offer much; we are requiring the titles of all proposed rules in the published Plan.

13. ¶7 Resolution of Conflicts and Inconsistencies. I would NEVER require that the Vice President or the President to resolve all disagreements within ANY time certain. Sometimes there are reasons to hold a decision close for a time that have little to do with the efficacy of the decision-making process. Health care reform financing comes to mind.

14. Other comments appear as edits within the body of the attached text. I would be pleased to answer any questions about any of them, or about comments in this memo.

Each agency shall have a program under which the agency will periodically selectively 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, less burdensome and in greater alignment with the Administration's [priorities]. Each program shall include criteria under which regulations will be chosen for review, which shall include consideration of:

(i) the continued need, suitability, or effectiveness of the regulation in light of changed circumstances or improved knowledge of the nature of the problem being addressed or the effects of the regulation as implemented;

(ii) the number of people or portion of the economy affected;

(iii) the level of continuing costs imposed and benefits achieved by the regulation in comparison with continuing costs and benefits that could result from a modified regulation or adoption of non-regulatory alternatives;

(iv) the extent to which the regulation overlaps or is inconsistent with other significant regulations of the agency or another agency; and

(v) the breadth and persistence of apparently valid public concern about the regulation expressed to the agency.

Any significant regulation chosen for review shall be so designated in the agency's Annual Regulatory Plan. If the agency determines after review that modification or elimination is warranted, the agency shall initiate an appropriate rule-making process. Each agency's program for review of existing regulations shall be submitted to OIRA and published with the first Semi-Annual Regulatory Agenda published by the agency after the date of this order.

Kennicke –
any (our) suggested ~~for~~
Substitute for "A"
under existing reg.
It's on the disk
as "EXISTREG"
lets talk.

Ellen

2802

file
reg review

REGULATORY REVIEW WORKING GROUP:
AGENDA FOR JUNE 17, 1993 MEETING

I. COURSE OF ACTION

A. Circulation to other White House advisors?

B. Circulation to agencies?

C. How/When to get Hill comments?

D. Public Comment?

II. COMMENTS ON EXECUTIVE ORDER

Discussion of substantive issues. (Please provide editorial/grammatical comments to Kumiki.)

(JUNE 11, 1993 DRAFT)

EXECUTIVE ORDER NO. _____

REGULATORY PLANNING AND REVIEW

The American people deserve a regulatory system that works for them, not against them: a regulatory system that advances their health, safety, 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; and regulations that are sensible, understandable, consistent, and effective. 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 objective of this Order is to restore the integrity and legitimacy of coordinated regulatory review and oversight, for both new and existing regulations, by providing guidance to the federal agencies as to the principles applicable in the review process and by making the process more open and accessible to the public. The regulatory process, including the coordinated review function, shall be conducted so as to best serve the American people, and with due regard for applicable law and the discretion that has been entrusted to federal agency expertise.

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

Section 1. *Statement of Regulatory Philosophy and Principles.*

A. *The Regulatory Philosophy.*

Federal agencies shall promulgate only such regulations as are required by law or made necessary by compelling public need, including material failures of the private markets. In deciding whether and how to regulate, agencies shall assess the advantages and disadvantages of proposed regulatory alternatives, including the alternative of not regulating. The advantages of a regulation shall include its benefits, such as, but not only, quantifiable benefits that can be objectively measured. The disadvantages of a regulation shall include its costs, such as, but not only, quantifiable costs that can be objectively measured. In choosing among alternative regulatory approaches, agencies shall select those approaches that maximize the net potential economic, environmental, public health and safety, or other advantages to the American people without imposing unjustifiable costs, burdens, or other disadvantages on the American people, American industry, or labor.

B. *The Principles of Regulation.*

1. The decision to regulate shall, to the extent permitted by law, be based on the following principles:

- The agency shall assess the significance of the problem the regulation is intended to correct.

- The 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) can be modified to achieve the intended regulatory goal more effectively.

- The agency shall assess both the advahtages and disadvantages of the intended regulation and, based on the best reasonably obtainable information and recognizing that some advantages and disadvantages are not as easily quantifiable as others, make a judgment as to whether any disadvantages of the regulation are justified by its advantages.

- The agency shall choose the regulatory approaches that maximize the net advantages to society.

- The agency shall assess the effects of federal regulations on and, as appropriate, harmonize such actions with related state and local regulations.

2. The design of each regulation shall, to the extent permitted by law, be based on the following principles:

- Each agency shall identify and assess alternatives to direct regulation, such as encouraging those who are regulated to internalize the costs of their actions; using marketable permits; or providing information upon which choices can be made by the public.

- When feasible, each agency shall chose regulatory approaches that reshape market incentives to encourage the desired behavior.

- In considering a new regulation, the agency shall assess its impact in the context of all existing regulations -- not only its own, but all relevant federal, state, and local

regulations -- on individuals, families, small businesses, firms, industries, governments, and the economy as a whole, and seek to enhance the effectiveness of each new regulatory action within that context.

- Each agency shall avoid, to the extent possible, inconsistent, incompatible, or duplicative regulations.

- Each agency shall tailor its regulatory actions to impose the least burden on individuals, small entities (including small businesses), and governmental entities.

- Regulations shall be simple and easy to understand, with the goal of reducing the costs of compliance and minimizing the potential for uncertainty and litigation.

- [Regulations should be designed to minimize enforcement and compliance costs, and the assessment of the advantages and disadvantages of alternative regulations should take into account not only the enforcement and compliance costs, but also the possible consequences of noncompliance.] Each agency shall assess enforcement costs and the possible consequences of non-compliance.

- When there are reasonably reliable, enforceable measures of the end result desired by a regulation, the agency shall prefer performance standards to regulations that specify the manner of compliance.

- In achieving regulatory goals, the agency shall seek to maximize the net advantages to society and use the most cost-effective approach, including considerations of administrability,

enforceability, consistency, predictability, flexibility, equity, and fairness.

Section 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the Federal government produces the best regulations for the American people.

A. *The Agencies.* Agencies are the repositories of substantive expertise and experience. They are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the Administration's priorities, and the principles set forth in this Executive Order.

B. *Office of Management and Budget.* Coordinated review is appropriate and necessary to ensure that regulations are within applicable law and consistent with the Administration's priorities and the principles set forth in this Executive Order and that decisions made by one agency do not conflict with the policy or action taken or planned by another agency. The Office of Management and Budget ("OMB") is best suited to carry out that function and, thus, shall, to the extent permitted by law, provide guidance to agencies and assist the President in regulatory planning and in reviewing individual regulations, as provided by this Executive Order.

C. *The Vice President.* Policy guidance and the resolution of inter-agency disputes that cannot be resolved by OMB are essential. The Vice President is best able to assist the President in carrying out those functions and, therefore, shall, to the extent permitted

by law, oversee the development and presentation of regulatory policy recommendations to the President and otherwise ensure that the objectives of this Executive Order are realized. In fulfilling his responsibilities under this Executive Order, the Vice President shall be assisted by such regulatory policy advisors within the Executive Office of the President and agency officials and personnel as he may, from time to time, consult.

D. *Regulatory Working Group.* The Administrator of the Office of Regulatory Information and Regulatory Affairs ("OIRA") shall, within thirty days of the date of this Executive Order, convene a Regulatory Working Group, which shall consist of the heads of each agency (or their appropriate designees) that the Administrator determines to have significant domestic regulatory responsibility; representatives of the Advisors; and a representative of the Vice President. The Administrator of OIRA shall chair the Working Group. The Regulatory Working Group shall serve as a forum to assist agencies in identifying and discussing regulatory issues (including methodologies and procedures) that affect more than one agency. The Working Group shall meet at least quarterly and may meet as a whole or in sub-groups of agencies with 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 agency.

Section 3. *Definitions.* For purposes of this Executive Order:

A. "Advisors" refers to the regulatory policy advisors to the President, who include: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President on Economic Policy; (4) the Deputy Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President on Science and Technology; (7) the Deputy Assistant to the President and Director of the Office on Environmental Policy; (8) the Chief of Staff; (9) the Administrator of OIRA, who shall coordinate communications relating to this Executive Order among the agencies, OMB, the other Advisors, and the Office of the Vice President; and (10) the Vice President's counsel, who shall serve as counsellor to the Advisors in connection with the activities relating to this Executive Order.

B. "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. § 3502(1).

C. "Director" means the Director of OMB.

D. "Regulation" or "rule" means an agency statement of general applicability and future effect 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 issued in accordance with the formal rulemaking provisions of 5 U.S.C. §§ 556, 557;

2. Regulations 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 goods;

3. Regulations that are limited to agency organization, management, or personnel matters; or

4. Any other category of regulations exempted by OIRA.

E. "Regulatory action" means any action by an agency related to the development of a regulation or rule that ordinarily (under the agency's own rules and procedures or the Administrative Procedure Act) would be published in the Federal Register or otherwise promulgated to the public.

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 dollars or more or any other important effect on the economy, a sector of the economy, or state, local, or tribal governments;

2. Have an important effect on a large number of individuals or entities, the natural environment, within or without the United States, or the depletion of natural resources;

3. Create a serious inconsistency or interfere with another action taken or planned by another agency;

4. Substantially alter the budgetary impact of entitlements or the rights and obligations of recipients thereof; or

5. Raise important legal or policy issues arising out of legal mandates, the Administration's priorities, or the principles set forth in this Executive Order.

Section 4. *Planning Mechanism.* In order to have a coherent regulatory program; to provide for coordination of regulations among agencies and the Administration; to maximize consultation and the resolution of potential conflicts at an early stage; to involve the public in regulatory planning; and to ensure that new or revised regulations promote the Administration's priorities and the principles set forth in this Executive Order; these procedures shall be followed, to the extent permitted by law:

A. Early in each year's planning cycle, the Vice President will sponsor a meeting of the Advisors and the heads of agencies or their designees to develop a common understanding of priorities and coordinate regulatory efforts to accomplish them in the upcoming year. It is intended that the meeting lead to the development of well-considered priorities. The meeting also should enhance the ability of each agency to prepare plans that align with the established priorities and work efficiently with the plans of other agencies.

B. By April 1st of each year, each agency shall create a Regulatory Plan ("Plan") of significant regulatory actions that the agency expects to issue in proposed or final form in the next fiscal year, including any review of existing significant

regulations. The Plan shall be approved personally by the agency head and shall contain at a minimum:

1. A statement of the agency's regulatory objectives and priorities;

2. A summary of each planned significant regulatory action and the anticipated effects that it would have;

3. A summary of the legal basis for each such action, including whether any aspect of the action is mandatory;

4. A statement of the need for each such action and how it relates to the Administration's priorities and to the principles set forth in this Executive Order;

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

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

C. The agency shall forward its Plan to OIRA by April 1st of each year.

D. OIRA shall, by April 10th of each year, circulate all agency Plans to other affected agencies, the Advisors, and the Vice President.

E. An agency head who determines that a planned regulatory action of another agency will impede that agency's ability to fulfill its own statutory mission shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice

President.

F. The Vice President (with the assistance of such of the Advisors whose responsibilities to the President include the subject matter at issue) may consult with the heads of agencies with respect to their Plans and, in appropriate instances, render recommendations as to the need for further consideration or inter-agency coordination.

G. OIRA shall cause to be published all submitted Plans, as may be modified by the head of the submitting agency, by June 30th of each year. In this publication, OIRA shall invite the public to comment 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. The public shall be asked to send all such comments to the issuing agency, with a copy to OIRA.

H. Each agency may supplement its Plan by submitting to OIRA the information in paragraph B of this Section for any significant regulatory action (including any review of existing significant regulations) that the agency expects to issue in proposed or final form in that fiscal year that was not included in the most current Plan, along with a statement as to why the planned regulatory action was not included in an earlier submission to OIRA. Within ten days of its receipt, OIRA shall circulate the supplement to other affected agencies, the Advisors, and the Vice President for consideration as set forth in paragraphs E and F of this Section.

I. An agency shall not take any action with respect to any significant regulation that was not included in its Plan or its supplement to its Plan, except in emergency situations or when an agency is obligated by law to act more quickly than normal planning procedures allow, in which case the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with the procedures of paragraph B of this Section.

Section 5. *Existing Regulations.* In order to reduce the regulatory burden on the American people, their families, their communities, and industries; to verify that regulations promulgated by the Executive Branch are compatible with one another; and to ensure that all regulations are consistent with the Administration's priorities and the principles set forth in this Executive Order, within applicable law:

A. Within ninety days of the date of this Executive Order, each agency shall submit to OIRA a program (which shall include its schedule for further action) under which the head of the agency will periodically and selectively 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, less burdensome, and in greater alignment with the Administration's priorities and the principles set forth in this Executive Order. The public should direct any comments regarding the review of existing regulations to the appropriate agencies.

B. Any significant regulation selected for review shall be designated in the agency's annual Regulatory Plan. If the agency determines after review that modification or elimination is warranted, the agency shall initiate appropriate procedures to achieve such modification or elimination.

C. The Vice President, in consultation with such Advisors whose responsibilities to the President include the subject matter at issue, may identify other existing regulations, or groups of regulations, that are appropriate for review and reconsideration under this Executive Order. The relevant agency or agencies shall review any regulation, or group of regulations, so identified and (1) undertake the appropriate procedures to modify or eliminate the regulation, or group of regulations, or (2) explain the decision not to do so.

Section 6. *Centralized Review of Regulations.* The following guidelines shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(10), and those agencies specifically exempted by OIRA:

A. *Agency Responsibilities.* Each agency shall, consistent with its own rules and regulations, provide the public with meaningful participation in the regulatory process. To the extent feasible, each agency shall seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation, including, where appropriate, state and local elected

officials, before issuing a Notice of Proposed Rulemaking. Each agency shall also 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 sixty days. Each agency is also directed to explore and, where appropriate, utilize consensual mechanisms for developing regulations, including negotiated rulemaking. Finally, in addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act and other applicable law, each agency shall adhere to the following procedures:

1. On the first day of each month, each agency shall send OIRA a brief description of --

a. each significant regulatory action that the agency intends within the next sixty days to submit to OIRA for review as provided for in paragraphs 3 and 4 of this Section; and

b. each other regulatory action that the agency intends to publish in the Federal Register or otherwise promulgate to the public within the next sixty days.

2. OIRA may waive review of any action identified under paragraph 1(a) of this Section. In addition, OIRA may determine that an action under paragraph 1(b) of this Section may be a significant regulatory action. If within ten days of an agency's submission, OIRA does not notify the agency of the need to submit for review, an action identified in paragraph 1(b) of this Section, the agency need not submit this action to OIRA for review under this Order.

3. For each matter identified as, or determined by OIRA to be, a significant regulatory action, the issuing agency shall --

a. Provide to OIRA 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

b. Provide to OIRA an assessment of the potential impact of the regulatory action, including an explanation of whether and, if so, how --

(i) The regulatory action is consistent with a statutory mandate or otherwise promotes the Administration's priorities and the principles set forth in this Executive Order;

(ii) The regulatory action does not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions;

(iii) The regulatory action does not violate any constitutional rights, including, but not limited to, the freedoms of expression and the right to privacy; and

(iv) The regulatory action will not effect an unintended taking of private property.

4. For those matters identified as, or determined by OIRA to be, an economically significant regulatory action, as set forth in Section 3(F)(1), the agency shall also provide the following additional information to OIRA:

a. An assessment, including the underlying analysis, of advantages anticipated from the regulatory action

(such as benefits related to the promotion of the efficient functioning of the economy and private markets, the enhancement of general health and safety, the preservation of the natural environment, and the elimination or reduction of discrimination or bias) together with, wherever feasible, a quantification and valuation of those benefits and other advantages;

b. An assessment, including the underlying analysis, of disadvantages of the regulatory action (including the cost of the regulatory action, any effects on the efficient functioning of the economy and private markets, and any adverse effects on general health and safety or on the natural environment) together with, where feasible, a quantification and valuation of those costs and other disadvantages; and

c. An assessment, including the underlying analysis, of potentially effective alternatives to the planned regulation, including reasonably viable non-regulatory action, and an explanation as to why the particular alternative was selected.

5. For those regulatory actions that are governed by a statutory or court imposed deadline, the agency shall schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as outlined in paragraphs B(2) through (4) of this Section. 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 paragraphs A(3) and (4) of this Section.

6. The agency shall identify and make available to the public the substantive changes between the draft submitted for review and the action subsequently announced in a clear and simple manner, by, for example, underscoring or italicizing the changes prompted by the review process.

7. All information provided to the public by the agency shall be in plain, understandable English.

B. *OIRA Responsibilities.* OIRA shall provide meaningful guidance and oversight so as to ensure that each agency's actions are consistent with the applicable law, the Administration's priorities, and the principles set forth in this Executive Order. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

1. OIRA may review actions identified by the agency or by OIRA as significant regulatory actions under paragraph A(2) of this Section.

2. OIRA shall complete its review, or seek Presidential consideration under Section 7, within the following time periods:

a. For Notices of Inquiry, Advanced Notices of Proposed Rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within ten working days after the date of submission of the draft action to OIRA;

b. For regulatory actions that do not include complex technical, scientific, or economic issues, within sixty calendar days after the date of submission of the information set forth in paragraphs A(3) and A(4) of this Section; or

government, and the dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between the authorized OIRA personnel and any such persons; and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in paragraph B(5)(c) of this Section.

c. OIRA shall maintain a publicly available log which 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) Presidential review was requested;

(ii) A notation of all written communications forwarded to an issuing agency under paragraph B(5)(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 the authorized OIRA personnel and any person not employed by the Executive branch of the Federal government, and the topics discussed during such communications.

d. For each regulatory action that OIRA returns to an agency for reconsideration of some or all of its provisions, the OIRA Administrator shall provide the issuing agency a written explanation for such return. The agency head shall respond to OIRA in writing within ten working days of receipt of OIRA's written explanation. OIRA shall, within five working days thereafter,

conclude its review or seek Vice Presidential and Presidential consideration.

e. OIRA shall make the following available to the public after the regulatory action has been published in the Federal Register or otherwise promulgated to the public:

[(i) Copies of draft Plans, Advanced Notices of Proposed Rulemaking, Notices of Proposed Rulemaking, and final Rules;] and

(ii) Documents exchanged between OIRA and agency heads concerning each draft regulation submitted for review.

6. All information provided to the public by OIRA shall be in plain, understandable English.

Section 7. Resolution of Conflicts and Inconsistencies. Disagreements or conflicts among agency heads or between OMB or OIRA and any agency that may arise during the regulatory process may be resolved by the President. Such resolution shall be based on recommendations provided by the Vice President, after consultation with such Advisors or other Executive branch officials or personnel whose responsibilities to the President include the subject matter at issue. Vice Presidential and Presidential consideration of such disagreements may be initiated by the Director or his designee, the head of an agency that has a significant interest in the regulatory action at issue, the Vice President, or the President. After Vice Presidential and Presidential consideration has been sought, the time period set

forth in Section 6(B)(2), as may be extended under Section 6(B)(3) or Section 6(B)(4), shall be extended, automatically, by thirty days. At the expiration of that extension, all regulations for which Vice Presidential and Presidential consideration has been sought may be published unless the Vice President has instructed the agency and OMB otherwise.

Section 8. *Publication.* An agency shall not publish in the Federal Register or otherwise promulgate to the public any regulatory action that is subject to review under Section 6 of this Executive Order until (1) OIRA notifies the agency that it has completed its review of the action or waives its review or (2) the applicable time period in Section 6(B)(2), as may be extended under Section 6(B)(3) or Section 6(B)(4)(d), expires, whichever occurs first. Where OIRA notifies an agency that a regulatory action has been referred for Vice Presidential and Presidential consideration, the time limits set forth in Section 7 shall apply to the regulatory action under consideration.

Section 9. *Judicial Review.* This Executive Order is intended only to improve the internal management of the Federal government and is not intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or any person.

Section 10. *Revocations.* Executive Orders 12291, 12498, 12606, 12612, 12630, and 12778; all amendments to those Orders; and any exemptions from those Orders heretofore granted for any category of rule are revoked.

The Business Roundtable

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reg review

"GOVERNMENT REGULATION AT ITS WORST"

THE BUSINESS ROUNDTABLE SURVEY OF THE 10 WORST REGULATIONS

June 18, 1993

The Business Roundtable Government Regulation Task Force, chaired by Edgar S. Woolard of DuPont, surveyed the chief executive officers of Roundtable members in late May 1993 to identify the most onerous regulations and regulatory programs of the United States Government. In his letter to members of The Business Roundtable, Mr. Woolard stated:

> As you know, the Government Regulation Task Force has established an on-going dialogue with the Administration regarding the management of the regulatory process. One phase of this discussion has focused on the management of new regulations, while a second has addressed issues associated with onerous regulations that have been in place for some time. The most recent request of us is part of this second area of concern.
>
> So that we can respond in the most effective and complete way, I ask that you identify the one or two regulations that most seriously affect your company and define as best you can their impact on one or more of the following -- competitiveness, costs, product prices, jobs or duplication with other regulations.

The response by Roundtable members was overwhelming, even though the request was made on a short time frame. The extensive, detailed, and sophisticated nature of the responses attests that U.S. businesses are alarmed over wasteful regulations.

Burdens of Regulation

State and local governments, Congress, businesses of all types and sizes, nonprofit organizations and institutions, think tanks and advocacy groups, and federal officials have all expressed a common concern -- the overall cost of government regulation. They have likewise generally agreed upon the need to allocate more intelligently both public and private resources expended in the name of government regulation.

One thing is clear: Regulatory burdens have an enormous potential to chill economic growth and impair the competitiveness of American industry. Unnecessary, misdirected, or inefficient regulations imposed upon businesses are as harmful to the public and to our economy as are wasteful programs and practices of the federal establishment itself. Wasteful regulation is bad regulation: it costs jobs, diverts resources, and raises the prices of products and services to consumers.

To say that wasteful federal spending is bad is not to say that all federal spending is bad. Likewise, to say that wasteful federal regulation is bad is not to condemn all regulation. Plainly intelligent, rational regulation -- even if costly -- may bring benefits to businesses, consumers, and the nation's economy. Equally clearly, unwise and irrational regulation -- no matter how trivial -- unnecessarily burdens businesses and raises costs to

consumers. And it undermines confidence in government and in the ability of government agencies to achieve their most important goals.

Roundtable Survey

The literature of regulation is vast. For decades students of government regulation in both the public and private sectors have analyzed regulatory statutes, rules, and enforcement practices and have assessed their consequences. Academics, research institutions, congressional committees, associations, agencies, the General Accounting Office, journalists, and others have sought to identify -- and have debated -- the advantages and disadvantages, costs and benefits, burdens and accomplishments of regulation. This work continues.

The Business Roundtable Survey is not comprehensive; it does not purport to be. It is no more, nor less, than a catalogue of examples of federal regulations (or regulatory programs) that are perceived by America's leading businesses as undesirable because they

- are overly burdensome and duplicative;
- impose excessive costs;
- impede competitiveness of U.S. companies; or
- have a negative impact on jobs, products, prices, or the economy.

The comments and recommendations contained in this Summary are those of Roundtable members and do not necessarily represent policy positions of The Business Roundtable.

"10 Worst" Regulations

From the Survey responses, The Business Roundtable Government Regulation Task Force has summarized 10 leading categories of "Government Regulation at its Worst." Criteria used to distill this list include, among other factors, the size of the harmful impact, the breadth of impact across business sectors, and the number of responses.

Six of the 10 Worst are in the environmental, health, and safety fields, suggesting that any reform-oriented review of existing regulations begin in this area. The number of respondents citing Superfund and RCRA dwarfed all other regulations with negative impacts in basic manufacturing, transportation, and other business sectors. These two programs command the Administration's highest priority; they are listed first below, and others follow in alphabetical order.

The categories presented below are not cleanly divided: There are obvious overlaps and relationships among items. Nor is the focus solely on agency regulations: the failings of some regulatory schemes are clearly traceable to faulty or inflexible statutory mandates -- as with Superfund and the Delaney Amendment -- requiring that effective reform focus on the Legislative Branch rather than on an agency itself.

The 10 Worst regulations can be briefly summarized as follows:

(1) Superfund

The Superfund (CERCLA) program must be revised to provide more cost-effective and efficacious cleanups of hazardous substance sites. The statutory problems, such as the costly and wasteful joint and several liability scheme and excessive cleanup standards, can be addressed during Superfund's reauthorization. In the interim, several Superfund regulations should be scrutinized, including the National Contingency Plan (the regulatory "blueprint" for cleanups); the proposed rule on EPA cost-recovery; and the proposed rule on natural resource damages assessment.

(2) RCRA

The Resource Conservation and Recovery Act ("RCRA") regulates the management and disposal of hazardous waste. The burdensome and arcane dragnet of RCRA regulations has imposed huge costs on industry without corresponding benefits to human health or the environment. The RCRA statutory framework should be overhauled. RCRA regulations needing immediate scrutiny include the Land Ban Rules, the Hazardous Waste Identification Rule, and the Mixture and Derived-From Rules and Contained-In Policy.

(3) CAFE Standards

The Corporate Average Fuel Economy Program, established by the Energy Policy and Conservation Act, requires automobile manufacturers to meet fuel economy standards based on the average fuel efficiency of all vehicles sold by the manufacturer in the United States. Instead of meeting its fundamental goal of reducing U.S. dependence on foreign oil, CAFE has increased U.S. unemployment by forcing manufacturers to produce unwanted vehicles and by favoring Asian competitors.

(4) Clean Air Act -- BACT, Permits, Fuels

The Clean Air Act, as amended by the Clean Air Act Amendments of 1990 ("CAAA"), attempts to attain air quality standards by regulating sources of hazardous air pollutants, setting emissions standards for fuels and vehicles, protecting stratospheric ozone, and limiting acid rain emissions. While the CAAA incorporated some innovative market-based incentives, the Act still heavily relies on a cumbersome command-and-control system. The regulations are highly complex and burdensome, particularly those regarding new source review; onboard vehicle emission diagnostic systems; the permit process; reformulated gasoline regulations; Best Available Control Technology standards for major sources; and the National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for benzene waste operations.

(5) Clean Water Effluent Guidelines

The Clean Water Act requires EPA to issue regulations establishing effluent quality standards for numerous industries. These effluent guidelines are costly and place domestic industry at a disadvantage to foreign competitors. Moreover, EPA has begun to invade industry decision making by trying to dictate what production technology U.S. businesses should use.

(6) Delaney Amendment/FDA Approval Process

Section 512(d)(1)(H) of the Federal Food, Drug and Cosmetic Act, known as the Delaney Amendment, uses a "zero-tolerance" approach to protect against carcinogens. While well-intentioned, this zero-tolerance approach is based on antiquated and unsound science which fails to consider real risks and consequently prevents the registration of many beneficial products and advanced medications. Moreover, the FDA approval process for new drugs is plagued by delay. Huge costs accrue not only from the FDA review process itself, but also from the significantly reduced value of delayed drug patents, as well as the social costs of being denied access to advanced medications.

(7) Export Controls

In the international trade arena, U.S. export regulations have harmed American businesses by failing to keep pace with the introduction of new technology. Every product exported must have an export license, and outdated control procedures have increasingly drawn more consumer-oriented products into a control system originally intended to address only very sophisticated products.

Enhanced Proliferation Control Initiatives put the burden on U.S. businesses to anticipate potential proliferation activities of foreign customers, and the compliance costs and resulting delays are severe. Foreign policy export controls, which prevent U.S. firms from dealing with certain foreign countries based on moral/political grounds, cost billions of dollars in lost business opportunities.

(8) Labor/Employment Regulations

Labor and employment regulation is plagued by cumbersome regulatory programs that too frequently impose duplicative and costly requirements on business without fulfilling their intended purposes. OSHA worker safety regulations and Fair Labor Standards Act overtime regulations offer a sample of such problems.

(9) Procurement/Government Contracting Regulations

The government's expressed policy is to foster technological innovation and lower costs by following commercial practices to purchase commercial items to the maximum extent possible, by using commercial prices rather than cost as a basis for government prices, and by protecting intellectual property rights to the maximum extent possible. Government procurement regulations have exactly the opposite effects. They stifle innovation by inhibiting government purchases of new technologies and by extracting proprietary rights from innovators as a condition of government funding. They impose costly data collection and disclosure requirements as a basis for government prices instead of relying on commercial prices. They impose on contractors costly, confusing and sometimes redundant regimes for enforcement of social objectives, such as equal employment opportunity.

(10) Tax- and Benefits-related Regulations

The enormous compliance costs of the Internal Revenue Code and its underlying regulations are a constant drag on the productivity and competitiveness of American companies. Excessive regulatory authority delegated to the IRS plus poorly

drafted statutes combine to produce many inefficient tax/benefits regulations, such as in the areas of employee benefit plans; estimated tax payments for large corporations; foreign transaction taxation; intercompany transfer pricing; tax treatment of environmental remediation costs; allocation of related party interest expenses; hedging transactions, and alternative minimum tax.

A more detailed summary of the problems identified appears as Exhibit 1.

What is the Cure?

The Government Regulation Task Force Survey has highlighted a number of problems presented by these 10 Worst regulations, but we have not proposed solutions. That is principally because, just as we reject simplistic approaches by agencies or Congress toward regulating, so also do we reject simplistic approaches to reforming regulation sometimes characterized by such words as "deregulate" or "repeal."

In the end, solutions will best be found through a cooperative effort among government, business, and representatives of the affected public. One of the goals of this effort should be the identification of a common language for assessing regulation and adoption of a widely accepted set of tools for reaching reasonable analytical conclusions.

The Task Force stands ready to work with the National Economic Council, the Vice President, the Office of Information and Regulatory Affairs, and federal agencies and the Congress to achieve our common goal -- eliminating wasteful, irrational, duplicative, and unproductive regulation. We believe that this Survey represents a first step toward that goal.

EXHIBIT 1: SUMMARY OF TEN WORST REGULATIONS

1. SUPERFUND: The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., and its underlying regulations.

CERCLA should be refocused more sharply on its goal: to protect human health and the environment by quickly and efficiently addressing the risks associated with the past disposal of hazardous substances. CERCLA operates on retroactive, joint and several strict liability, and transaction costs are staggering. EPA has enormous discretion to target a few large, solvent parties, without any connection to fault, and to force them to bear the huge costs of not only conducting the cleanup but also trying to locate and sue other responsible parties. Many parties who contributed only minimally to the contamination, or who followed the law at the time of disposal, become liable for the entire cleanup costs.

EPA often has little desire or incentive to settle with large companies to reduce transaction costs. Moreover, a relatively small percentage of total costs have gone directly to cleanup activities. Cleanups are unduly expensive and ineffective. Cleanup standards are inflexible and bear no relation to real risk, actual or planned land uses, technological limitations, or costs. An enormous amount of money is spent on cleaning up sites to a level higher than necessary to adequately protect human health and the environment, and cleanups often have no stopping point.

Many of the problems with CERCLA derive from the statute, such as the cleanup standards, the requirement for permanent solutions (defined as treatment), and particularly the retroactive, joint and several strict liability provision that has given rise to enormous transaction costs. With CERCLA's reauthorization pending, these problems should be scrutinized.

In addition to the statutory flaws, examples of inefficient and ineffective Superfund regulations include:

- The National Contingency Plan ("NCP"), 40 C.F.R. Part 300: The NCP establishes standards and procedures for cleanups of hazardous substance sites. The cleanup standards (ARARs) for sites often bear no reasonable relation to real risks to human health, given the nature of the site. Risk assessments contain unreasonably conservative exposure and toxicological assumptions. Private parties who voluntarily conduct cleanups are often unsuccessful in recovering cleanup costs from other responsible parties.

- Proposed Rule on Recovery of Costs for CERCLA Response Actions, to be codified at 40 C.F.R. Part 308: The Proposed Rule would radically change the way EPA would calculate, document, and prove its response costs in cost-recovery actions. The costs recoverable by EPA would increase dramatically. EPA proposes to charge an indirect cost rate of over $400 per hour, plus its direct cost rate of $15-30 per hour, for each hour of EPA oversight provided at a site. The ability of responsible parties to examine and question the reasonableness of EPA's costs is severely limited.

- Proposed Rule on Natural Resource Damages Assessments, 56 Fed. Reg. 19752 (Apr. 29, 1991): Under the authority of CERCLA and the Oil Pollution Prevention Act, this rule would allow damages for the non-use values of natural resources based on the highly controversial contingent valuation ("CV") method. CV is based on highly speculative and hypothetical cost estimates, and uses unreliable methods, such

as public opinion polling, to determine what a resource is worth to people who never will use it. The costs imposed by this rule could be staggering.

2. RCRA: The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., and its underlying regulations.

RCRA regulates the management and disposal of hazardous waste. The costs imposed by RCRA are enormous and often have no logical relation to risks to human health or the environment. For example, the United States government has estimated that the RCRA hazardous waste listing for wood preserving chemicals costs $5.7 trillion per premature death averted. See Budget for Fiscal Year 1992, Table C-2, Part 2, at 370.

RCRA regulations are labyrinthine, inconsistent, and ever-changing, which creates serious problems: the regulated community cannot make long-range decisions based on the regulations and has great difficulty understanding compliance obligations. The paperwork burden of RCRA is tremendous, and the permitting process is overly cumbersome and slow. The corrective action program is too harsh and should be based on real threats to human health. RCRA also discourages reuse or recycling of materials, contrary to its stated purposes.

The RCRA program is too dependent on complex regulations as well as EPA guidance documents and policy statements. The tough hazardous waste programs of other countries do not approach RCRA in cost, complexity, and onerousness. While the statutory scheme should be reexamined during RCRA's reauthorization, there is a plethora of inefficient and ineffective RCRA regulations that need immediate scrutiny, including:

- Land Ban Rules, 40 C.F.R. Part 268: Require that wastes generated from cleanup activities must meet very complicated and stringent land ban rules prior to disposal. As a result, contaminated soil excavated during cleanup often must be incinerated to meet land ban requirements. The costs are enormous (e.g., $1,000-2,000/cu. yd. for incineration versus $50-200/cu. yd. for landfill or treatment and redisposal) without corresponding benefits to human health. Moreover, air emissions from incineration, if improperly controlled, may pose a greater threat to human health than land disposal.

- Hazardous Waste Identification Rule 40 C.F.R. Part 261: Certain wastes, even after being rendered "non-hazardous," may have to be treated to a much lower concentration level before treatment residues are placed in land disposal units, such as impoundments and landfills. The pending regulations could force the elimination of existing waste treatment impoundments and require unnecessary additional investments for little or no environmental benefit.

- Mixture and Derived-From Rules; Contained-in Policy: Any resulting mixture of a hazardous and solid waste, intentional or not, is treated as hazardous. Any residue or material derived from the treatment of a hazardous waste is treated as a hazardous waste. See 40 C.F.R. § 261.3. The contained-in policy similarly applies to mixtures of hazardous waste and environmental media. These resulting mixtures must be managed and disposed of as though hazardous without regard to the actual characteristics of the combined or derivative substance. As a result, substantial quantities of non-harmful waste must be disposed of as hazardous waste at considerably greater expense than is necessary.

3. CAFE: Corporate Average Fuel Economy Program.

The CAFE program, established by the Energy Policy and Conservation Act of 1975, requires motor vehicle manufacturers to sell passenger cars and trucks that meet fleet average fuel economy standards set by the government. The CAFE program was enacted during a period when government price controls were artificially depressing the price of gasoline. It was intended to encourage energy conservation and lessen U.S. dependence on oil imports.

In its April, 1992 study of automotive fuel economy, the National Academy of Sciences (NAS) concluded: "The CAFE approach to achieving automotive fuel economy has defects that are sufficiently grievous to warrant careful reconsideration of the approach."

The CAFE program has been ineffective in reducing dependence on imported oil. Despite a greater than 100% increase in the fleet fuel economy of new vehicles from 1974 to 1992, oil imports as a percentage of U.S. consumption have increased from 35% to over 40%.

The CAFE standards are based on a sales-weighted fleet average. Meeting the standards depends on the purchase decisions of consumers. With consumers facing low gasoline prices and stable supplies, demand for fuel economy improvements has lessened, making it more difficult for full-line American manufacturers to maintain compliance. In addition, the CAFE approach to conservation has not been effective because it does not directly affect how consumers operate their vehicles. Low fuel prices and the increases in fuel economy have greatly reduced the cost of driving and led to increases in vehicle miles travelled.

The CAFE program has serious adverse effects on the competitiveness of full-line American manufacturers. "The CAFE system," the NAS reported, "has operated to the benefit of the Japanese manufacturers, at the expense of the domestic manufacturers. The CAFE system, thus, enhanced the competitive position of those foreign manufacturers that now pose the greatest threat to the domestic industry." The CAFE program continues to undermine the competitiveness of U.S. manufacturers because the mix of vehicles they sell places them the closest to the margin in terms of compliance. Asian manufacturers can use their base of higher mileage small cars to produce mid-size and luxury cars with an emphasis on high performance, while domestic manufacturers must sacrifice utility and performance to maintain compliance across a full line of vehicles. This problem is exacerbated by new emissions and safety requirements that will confront manufacturers over the next decade.

Higher CAFE has been achieved largely through vehicle downsizing. Since 1974, the weight of the average car has been reduced by about 1,000 pounds and the length by 10-19 inches. All things being equal, larger and heavier cars inherently provide better safety than smaller cars, and the record bears this out. Federal government researchers have estimated that safety compromises resulting from compliance with CAFE standards have resulted in increases of nearly 2,000 fatalities and 20,000 serious injuries per year.

4. The Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., and its underlying regulations.

The Clean Air Act attempts to attain and maintain air quality standards. The Act regulates sources of hazardous air pollutants, sets emissions standards for fuels and vehicles, protects stratospheric ozone, and addresses acid rain. The 1990 Clean Air Act Amendments ("CAAA") contain some innovative, market-based approaches, such as the sulphur dioxide emissions trading system. Unfortunately, the CAAA still heavily rely on a cumbersome command-and-control system. Among other things, the CAAA require EPA to develop a federal operating permit program and a multitude of specific regulatory requirements. EPA's program relies heavily on paperwork, reporting, and certifications in an attempt to ensure compliance, and states are adopting this approach. Unfortunately, the cumulative effect from the multitude of complex and inefficient regulations that are mushrooming out of the CAA will begin to create significant concerns. Poorly worded regulations that base compliance on minute recordkeeping details (that have no environmental benefit) create a situation where 100% compliance will be unachievable. EPA must streamline the regulatory requirements (especially recordkeeping and certifications) and focus on the ultimate goal of emission reduction. A few examples that demonstrate these and other concerns are:

- New Source Review: Current New Source Review ("NSR") regulations put projects to a test of past actual emissions versus future potential emissions to determine if there is a significant net emissions increase. With this type of accounting system, many projects which are actually environmentally beneficial are put through NSR, which greatly impedes the project by the lengthy review time and can cause cancellation of the project due to capacity constraints imposed by the NSR process. The accounting system needs to be altered to allow environmentally beneficial or neutral projects to be exempt from NSR.

- Onboard Vehicle Emission Diagnostic Systems: The Clean Air Act Amendments require the installation on cars and trucks of systems to monitor emission control components for malfunction or degradation which would cause the vehicle to exceed applicable emission standards and to alert the customer as well as guide the service technician. Current EPA rules allow manufacturers to use the same system as required by similar California regulations but only through the 1998 model year. An action that could be taken quickly to reduce the regulatory burden facing the auto industry would be to allow manufacturers the option to use indefinitely the California system nationwide. Development of a unique OBD system for non-California vehicles will provide little, if any, incremental air quality benefit (because of the stringency of the California OBD regulation) but requires expenditure of limited development resources on a second system.

- Permits: The regulations require industry to complete a "re-permitting" process whenever the owner changes the process or alters the input feedstock, even if these variables were accounted for in the initial permit. The regulations add another layer of paperwork without eliminating existing requirements of federal pre-construction (PSD) permits.

- Reformulated Gasoline Regulations: The CAAA require that reformulated gasoline ("RFG") contain a minimum oxygen content. The fuel oxygen mandate reduces refiners' flexibility in achieving other RFG performance mandates and reduces fuel economy, which increases costs for consumers. The air toxics standards for RFG are tremendously expensive. EPA has stated that its own analysis indicates that "fuel

controls for the sole purpose of reducing toxic emissions do not appear to be cost-effective," and "fuel modifications for the control of toxics emissions would cost over $100 million per cancer incidence recorded." Notice, 58 Fed. Reg. 17175, 17179 (Apr. 1, 1993). Some estimates of industry investment costs required by the RFG rules approach $20 billion.

- "Top Down BACT": The CAA requires facilities to obtain a permit to construct a major source anywhere in the United States, and the Best Available Control Technology ("BACT") standard applies. Under CAA § 169(3), BACT determinations were meant to be local decisions that balanced "energy, environmental, and economic impacts and other costs." EPA has imposed a policy on state permitting agencies that reverses the statutory provisions and requires states to impose the most stringent permit conditions possible, unless the state has a compelling justification for allowing a less stringent technology.

- Benzene NESHAP: The National Emissions Standard for Hazardous Air Pollutants for benzene waste operations will impose staggering costs on industry. EPA originally estimated capital costs for compliance at $250 million, but industry experience indicates they will be higher. The environmental benefits are questionable. The United States government has estimated that the benzene NESHAP for waste operations costs over $168 million per premature death averted. See Budget for Fiscal Year 1992, Table C-2, Part 2, at 370. The container rules impose burdensome recordkeeping and monitoring requirements even though potential emissions are negligible. The rules also require car sealed closed bleeders and drains on closed vent systems and monthly checks of the car seals, even though other regulations require these valves to be capped or plugged except when in use. The broad definition of waste imposes added requirements on solid wastes, already subject to RCRA, by requiring incineration of certain materials and imposing an extra set of recordkeeping, monitoring, and control requirements on waste handlers.

5. Clean Water Act Effluent Guidelines.

Under the Clean Water Act, 33 U.S.C. § 1251 et. seq., EPA issues regulations to establish effluent quality standards for a variety of industries. The effluent limits are independent of receiving water standards set forth by other provisions of the law. U.S. industries are running treatment systems at high capital and energy costs while foreign competition is not. An increasing problem for industry is EPA's practice of reevaluating effluent quality requirements and severely increasing them based on assumptions EPA has made about what kind of production technology and materials could be used in U.S. facilities. The pulp and paper rulemaking is one such example.

There are many dangers associated with this practice. First, discharge limits are being reduced without thorough evaluation and prioritization of environmental benefits and economic impact. Second, EPA is telling U.S. industry what production technology and materials to use, and EPA assumes it has the expertise to do so. Third, EPA's revision of effluent limits can occur before treatment systems or long-term capital has depreciated, wasting huge capital investments. Fourth, multi-media impacts are not thoroughly evaluated, such as energy consumption and solid waste generation. Finally, U.S. facilities that compete in world markets will be forced to carry additional costs that do not apply to the competition, thereby reducing worldwide competitiveness.

6. Delaney Amendment/FDA Approval Process.

FDA regulatory programs are hampered by the unwillingness to consider real risks and by regulatory inefficiencies. For example, Section 512(d)(1)(H) of the Federal Food, Drug and Cosmetic Act, known as the Delaney Amendment, applies a scientifically unsound "zero-tolerance" approach to carcinogens that is not based on true risks. This not only adversely affects the registration of much-needed products and medications, but also prohibits the use of science-based assessment and decision processes. The zero-tolerance approach is based on antiquated notions of food safety because modern science can detect chemicals with carcinogenic properties that may pose only a negligible health risk. Moreover, the FDA has chosen to interpret the meaning of "inducing cancer" very broadly and relies on exaggerated test systems. This necessitates very costly and time-consuming rodent studies that have a high possibility of generating false-positives or information that is not relevant to product use. The costs accrue to U.S. consumers and farmers but not to their foreign competitors.

In addition to being handcuffed by bad science, the FDA approval process for new drugs is riddled with delays and inefficiencies. New medicine development takes an average of 12 years from basic research through final approval at an average cost to a pharmaceutical company of about $350 million. Typically, two and one-half years of this time are consumed by the FDA regulatory review process. Slow drug approvals have plagued patients, drug companies, and the FDA for over a decade. Although FDA has initiated some reforms, it still takes far too long to get a new drug approved.

The resulting costs are tremendous, both for business and consumers. In addition to the direct costs connected with the FDA review process, delays in the approval process have significantly lowered the value of new product patents. Moreover, patients are denied access to advanced medications. The major problem is not the drug approval requirements themselves, but the length of time that it takes for FDA to approve a new drug. Problems in the FDA approval process include the following:

- The drug approval process has lacked organizational efficiency. Duplication of review and management has been far too common.

- The FDA has often lacked long-term, consistent leadership needed to institute the kind of dramatic reforms that create greater agency accountability and efficiency, and produce speedier drug approvals.

- There are insufficient agency resources. FDA needs more funding and staff for the drug approval process.

- Increasing Congressional demands have led to a formidable array of regulations that too often go beyond FDA's mandate of determining pharmaceutical safety and effectiveness.

7. Export Controls.

In the international trade arena, one of the chief barriers to better performance by American companies is the failure of the United States export regulation process to keep pace with the introduction of new technology. Every product leaving the United States must have an export license. Today's controls are still tied to levels that were in place when the

Soviet Union was perceived as a threat. Control levels, which determine the kind of licensing authority needed for a given product set, have not been revised for four years. These kinds of outdated procedures have drawn more commodity-level, consumer-oriented products into a control system that previously was geared to address only the most sophisticated products.

The Commerce Department's Enhanced Proliferation Control Initiatives ("EPCI") regulations impose a license requirement for any international transaction where the American business has reason to know that the product user could be involved in proliferation activities. These regulations impose a burdensome "due diligence" obligation on American businesses to recognize the possibility of proliferation activities by third world customers. U.S. firms are compelled to create export management systems for all benign products and services, which comprise perhaps 99% of all international transactions. The costs of compliance and delay are high, and give a competitive advantage to foreign businesses that are not subject to such requirements. Finally, foreign policy controls, which prevent U.S. firms from doing business with foreign nations based on moral grounds, cost billions of dollars in lost business opportunities.

8. Labor/Employment Regulations.

Labor and employment regulations too often impose requirements which are not necessary to effectuate the purposes of the statutes under which they are issued, and thus impose needless costs and burdens on employers. In many cases, the costs take the form of administrative expenses of complying with unduly complex or duplicative recordkeeping and procedural requirements, or expenses from inefficiencies in production and management which must be incurred to comply with requirements that are not compelled by the statute. In such cases, the employer incurs these expenses without any corresponding benefit inuring to the employees whom the statute is designed to benefit or protect. On the contrary, such regulations ultimately work to the disadvantage of employees by reducing employment opportunities, either by decreasing the competitiveness and profitability of employers generally, or, in many cases, by creating direct disincentives for employers to hire additional personnel. Examples of regulations needing reform include the following:

- OSHA worker safety regulations: Process Safety Management of Highly Hazardous Chemicals, 29 C.F.R. § 1910.119, and Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910.120, offer two examples of OSHA regulations flawed by excessive and duplicative documentation and training requirements, as well as rigid penalties.

- DOL regulations on overtime pay for highly salaried employees, 29 C.F.R. Part 541: Recent court decisions and agency interpretations of DOL's regulations governing overtime pay exemptions for managerial, professional and administrative employees have greatly confused employers as to compliance requirements. Employers who adjust the pay of such workers for specific absences from work, or who have policies requiring such deductions, can face astronomical back-pay liability for failure to pay overtime to employees who were believed to be exempt. This will raise business costs for employers and reduce flexibility for employees.

9. Procurement/Government Contracting Regulations.

Government procurement regulations work at cross purposes with government procurement policies. Government policy is to foster innovation and cost-effectiveness by following commercial practices and using commercial pricing to the maximum extent possible. Regulations -- such as FAR 15.804-3 and GSA's "Multiple Award Schedule Policy Statement" -- stifle innovation by supplanting commercial practices and pricing with a burdensome data collection and disclosure regime that the U.S. Court of Appeals for the First Circuit recently compared to a "paperwork blizzard." Under this regime, only items with an established record of substantial commercial sales -- relatively old technologies -- may be sold to the government on the basis of commercial prices; new technologies are embroiled in the morass of cost-based pricing.

Regulations governing the allocation of intellectual property rights in technologies developed partly with government funding -- such as FAR Part 27 -- are complex, confusing and so uncertain that innovators are discouraged from risking their innovations to government involvement. Regulations across the board routinely impose artificial constraints that have no commercial counterparts and no business or social rationale. Other procurement regulations add layers of redundant bureaucracy on top of existing mechanisms that are already adequate to the purpose.

- Federal Acquisition Regulation ("FAR"): The wasteful burdens imposed on business by the FAR are legion. In addition to regulatory data requirements, there are many inefficiencies in FAR. For instance, regulations limiting design costs for defense and civilian agency contracts, such as FAR § 15.903(d)(1), create the potential for mediocre design by limiting design cost to 6% of construction costs, regardless of the circumstances. Agencies complicated the procurement area by developing Supplements tending to circumvent the FAR by preserving the Defense Acquisition Regulations ("DAR").

- The Office of Federal Contract Compliance Programs ("OFCCP"): Enforces affirmative action compliance by government contractors and investigates claims of individual and class discrimination and utilizes its administrative enforcement powers to obtain damages on behalf of individuals and classes in the same manner as the EEOC and state agencies. Thus, OFCCP regulations duplicate EEOC regulations. The two agencies often have authority to pursue separate actions against contractors for the same events. Moreover, the cost of maintaining databases of statistics to show compliance with OFCCP regulations is enormous. A great regulatory burden could be removed, while still preserving the important goals of equal employment opportunity, if OFCCP's activities were combined with EEOC.

10. Tax- and Benefits-related Regulations.

A source of great concern for virtually all members of The Business Roundtable is the unprecedented and unwarranted increase in the complexity of the Internal Revenue Code and its underlying regulations during the past decade. The extraordinary cost of compliance with these ever-changing rules, combined with the uncertainty engendered by them, is a constant drag on the productivity of American companies.

Specific examples of needlessly complex regulations are described below. However, the problem is no less fundamental than the abdication by Congress of meaningful debate about tax policy, exemplified by its willingness to pile on exception to exception to exception to rules that were too complex to begin with and by the significant increase in "legislative" regulations (where Congress delegates its authority to the IRS to draft substantive, not merely interpretive, regulations). Congress has effectively said time and again that it wants increased revenue with minimal political repercussions. As a result, it has failed to consider broad-based reform of corporate taxation, and it has left the development of tax law to Congressional staff and regulation-writers at the IRS. This hands-off attitude by Congress, combined with an IRS determined to plug every theoretical loophole regardless of the cost of compliance, has led to a maze of rules and regulations through which corporations must venture.

This situation is exacerbated every time Congress pushes for more revenues from a new alternative minimum tax adjustment, a more precise measure of estimated tax, a new shuffling of the "baskets" of foreign income, new penalties for not divining the correct "transfer" price between related entities, and so on. The political fallout is minimal because virtually nobody understands either the content or the impact of these new rules. While compliance costs for business may seem remote, the cumulative impact of these rules is tremendous, and is a very real cost borne by American industry and consumers.

The solution to this situation is two-fold: in the short term, an effort must be made to chip away at the damage already done and to avoid doing further harm. In the long-term, fundamental reform of corporate taxation must be undertaken to allow American industry to compete aggressively in the world economy without being hampered by a set of unfathomable tax rules that are expensive, unclear, and are not grounded in either sound tax policy or, more importantly, common sense.

Examples of inefficient regulations in the tax/benefits area include:

- Employee Benefit Plans: The employee benefit plan rules are complex, vague, expensive, and create compliance problems. See 26 C.F.R. § 1.401. In particular, Treasury and IRS have changed their approach to enforcing regulations mandating that employee benefit plans not discriminate in favor of highly-compensated employees with respect to contributions or benefits by issuing lengthy regulations which create objective tests not outlined in the Internal Revenue Code. The existing regulations, while arguably an improvement over prior rules, are still a highly complex and confusing matrix of expensive mathematical tests and elusive "safe-harbor" provisions. The current testing requirements demand expensive participant data collection procedures.

  Duplicative regulation by the IRS and Department of Labor of employee benefit plans is unnecessary and burdensome.

- Estimated Tax Payments for Large Corporations: The law on estimated tax payments for "large corporations," I.R.C. § 6655 and its associated regulations, is a model of needless complexity imposed on corporations to accelerate tax payments. In addition, these rules do not recognize or address several practical problems common to cyclical industries.

- Foreign Transaction Taxation: Treasury regulations regarding foreign exchange deal with the timing, source, and characterization of foreign exchange transactions, as

well as translating foreign branch and subsidiary results. See I.R.C. § 988; 26 C.F.R. §§ 1.985 - 1.988. The regulations on foreign exchange and foreign currency transactions exemplify government rules that do not account for the business realities of multinationals. The timing of income provisions in the foreign exchange rules require the taxpayer to determine a "functional currency" for each business unit and translate the functional currency profit and loss statement into dollars each year. These regulations are among the most difficult in existence, both for taxpayers to understand and for the IRS to administer. Large multinationals must devote great time and resources to understanding and complying with the regulations. Duplicative accounting is required because an accepted method for financial accounting to date is not allowed by the Treasury. The regulations have also been a burden on examining revenue agents who have been unable to recompute a taxpayer's income according to their own rules.

- Intercompany Transfer Pricing Regulations: New IRS regulations concerning intercompany transfer prices were recently issued in temporary and proposed form, along with proposed regulations regarding penalties for tax deficiencies occasioned by transfer price misstatements. These regulations are a marked departure from the prior rules and impose significant new burdens on multinationals. Compliance is compelled by the severe provisions in I.R.C. § 6662(e) unless taxpayers qualify for a reasonable cause exception, which requires burdensome documentation. The rules effectively require tax department involvement at all levels of business decision making for each market and product. The result is damage to business decision making, enormous recordkeeping costs, reduced competitiveness of U.S. companies, and the likelihood of reprisals by U.S. trading partners.

- Tax Treatment of Environmental Remediation Costs: In a recent Technical Advice Memorandum ("TAM"), the IRS held that voluntary and mandated environmental remediation expenditures should be capitalized instead of deducted as an ordinary and necessary business expense. This aggressive position of the IRS, unless reversed, will dramatically slow such cleanups.

- Allocation of Related Party Interest Expense: The 1986 Tax Reform Act and subsequent Treasury regulations significantly changed the U.S. expense allocation rules by providing that interest expenses of all members of a U.S. controlled group (80% or more) must be considered for this purpose. These changes particularly harmed U.S. corporations with a controlled U.S. finance subsidiary. Such companies have lost the full use of their foreign tax credits, and therefore have been unable to channel dividends from their foreign subsidiaries back to the U.S. Thus, the rules have hampered the ability of U.S. corporations to create new jobs and to contribute to domestic economic growth.

- Hedging Transactions: The IRS has applied the Supreme Court's Arkansas Best decision to a variety of hedging transactions, especially short futures, so that losses from such transactions are treated as capital losses, rather than as ordinary, deductible business losses. This interpretation imposes large costs on affected industries and could easily spill over into industries such as energy and precious metals.

- Alternative Minimum Tax: Presents an extremely complex, dual set of tax regulations. There is no rational justification for what amounts to a second distinct tax system, requiring an entirely separate set of complex regulations which are roughly one-quarter of an inch thick.

EXHIBIT 2: LIST OF FIRMS RESPONDING TO THE BUSINESS ROUNDTABLE SURVEY

Aetna Life & Casualty
Air Products and Chemicals
American Airlines
American Cyanamid
American Electric Power
American Home Products
American International Group
AMOCO
ARCO
Baxter International
Bell Atlantic
Carolina Power & Light
Caterpillar
Chevron
Chrysler
CIGNA
Circuit City
Citicorp
Columbia Gas
CPC International
CSX
Deere
Delta Air Lines
Duke Power
Du Pont
Eastman Kodak
Exxon
Federal Express
Fluor
Ford
FPL Group
GenCorp
General Electric
General Mills
General Motors
BFGoodrich
Halliburton
IBM
Illinois Tool Works
Ingersoll-Rand
ITT
J.P. Morgan
Marsh & McLennan
Martin Marietta
Mead
Merck
Monsanto
National Intergroup
Nynex
Olin
Owens-Corning Fiberglas
Pacific Gas & Electric
Pennzoil
PHH Corporation
Philip Morris
Phillips Petroleum
Potomac Electric Company
Procter & Gamble
The Prudential
RJR Nabisco
Roadway Services
Rohm and Haas
Ryder System
Saint Gobain
Santa Fe Pacific
Springs Industries
Sprint
Tenneco
Texas Instruments
TRW
Union Camp
Union Carbide
United Parcel Service
Upjohn
USX
Warnaco
Whirlpool
Williams Companies, The
WMX Technologies

EXHIBIT 3: SUMMARY OF RESPONSES TO THE SURVEY OF "WORST REGULATIONS" BY THE BUSINESS ROUNDTABLE GOVERNMENT REGULATION TASK FORCE

SUMMARY OF RESPONSES TO THE SURVEY OF WORST REGULATIONS BY THE BUSINESS ROUNDTABLE GOVERNMENT REGULATION TASK FORCE

TITLE	AGENCY	DESCRIPTION	COMMENTS
I. COMMERCE/TRADE			
Antitrust Laws	FTC DOJ	Antitrust laws on international mergers, acquisitions, joint ventures, etc.	U.S. laws and enforcement are behind the times in this area.
Enhanced Proliferation Control Initiatives	DOC	License requirement for intentional transactions	License requirement is unnecessary, unfair, overly broad, and unenforceable. Process has not kept pace with technology. Control levels have not been changed in four years and are still tied to Soviet Union threat. This leads to lower demand and lost exports.
Import Quotas		Quotas on textile and apparels	Established unfairly without notice. Limits access, raises cost, lowers quality. Process ignores purchasers.
Foreign Claims Settlement	For. Cls. Settlement Comm'n	Documentary and legal standards	Make it difficult for U.S. Companies to obtain just compensation.
Foreign Military Sales (FMS)	DOD	FMS and direct sales	Distinction needs to be made in choice of FMS vs. direct sales.
Postal Regulations	USPS	Postal monopoly	Through regulations USPS maintains a monopoly both within and without the U.S. through rate regulation and other means.
Sanction Regulations		Criminal sanctions for selling to "blacklisted" countries	Affect U.S. jobs and balance of payments. Political goals of regulations could be met by other limitations.
Arab Boycott Regulations		Arab Boycott Regulations	No due process if a company is blacklisted by an Arab country.

TITLE	AGENCY	DESCRIPTION	COMMENTS
II. COMMUNICATIONS			
Cable Act of 1984	FCC	Prohibition on telephone companies providing cable services within their telephone service areas.	Prevents competition in the cable television industry. The evolution of technology demonstrates the outdated nature of the provision.
Depreciation Rates	FCC	Hearings and review process for granting/approving depreciation rate schedules	Lacks flexibility.
Long Distance Service Prohibitions	FCC	Provisions that prohibit Bell operating companies from providing long-distance service and from manufacturing communications equipment.	Reduces competition and restricts innovative services. Manufacturing ban curtails equipment design efficiency and reduces competition.
Pricing Flexibility	FCC	Rate of return and price cap rules	Limits flexibility and requires "unending" submissions of data. Base prices are based on economically inefficient "fully distributed" costs. These prices tend to penalize carriers for efficiency and should be modified to allow greater pricing flexibility and to eliminate waiting periods for new services. Modifications are also warranted in the state regulatory regimes as well as in the subsidy structure.
Tariff Requirements, Communications Act of 1934	FCC	Tariff requirements	High cost burden; could alleviate this burden by adopting proposed rules for non-dominant carriers (Docket No. 93-36 proposed 2/19/93). Approval process for tariffing of new services and for construction of facilities glacial at best.

TITLE	AGENCY	DESCRIPTION	COMMENTS
III. ENVIRONMENTAL/NATURAL RESOURCES			
Appliance Energy Standards	NAECA regulations	Expensive and burdensome.	
CERCLA/SARA	EPA OSHA	Reporting environmental releases Risk management plan	Regulations carry relatively little environmental or risk reduction benefit. All reporting should be combined in one regulation under one agency. Agencies are not knowledgeable enough about reporting requirements under CERCLA/EPCRA. Continuous release rule is costly, unnecessary, and should be eliminated.
	EPA	Entire environmental regulatory program	Streamline program by evaluating standard and procedures to use resources effectively, reducing administrative and oversight costs, eliminating unnecessary site investigation studies and standardizing remedial action. Companies should not be exposed to liability for actions that were legal at the time.
	EPA	CERCLA statutory scheme	Numerous problems and costs without benefit. Costs are extraordinary and are driven by impossible remedies. Prime example of "counterproductive ... regulation." To reduce costs and improve benefits, eliminate joint/several/strict liability (and replace with proportional liability), mitigate transaction costs, use sensible standards, risk assessment, and do not exempt municipalities. Liability scheme has caused failure to achieve the goal of the law: to clean up hazardous waste sites. Cleanup requirements are often overly stringent and unnecessary. EPA should target all PRPs and make list of all PRPs public instead of choosing only certain (usually larger) PRPs. Current scheme is currently unfair to both small and large generators. Need more mechanisms for large contributors to pay their share and remove themselves from the process as well as acceptance of more de minimis settlements. There is a need for finality. Use of inspections at completion of cleanup or at certain milestones instead of on day-to-day basis would lower oversight costs. Reauthorization should focus on a more environmentally effective and economically sound program with clear criteria, even application, and broader, more equitable funding. EPA should use NBARs to reduce individual PRP transaction costs, freeing the money for cleanup. Provisions of SARA for mixed funding should be utilized.

TITLE	AGENCY	DESCRIPTION	COMMENTS
	EPA	Remediation	EPA needs to share technical information with administrators and PRPS. There should be an end to treating each site as the first site to be remedied. Need more risk/benefit analysis.
	EPA	CERCLA cost recovery, 40 CFR 308	Proposed rule relating to documentation and calculations in a cost recovery action would dramatically increase company costs.
	EPA	CERCLA § 119: Indemnification of PRPs and Contractors -- 1993 final guidelines	Leave low level of indemnification for contractors as well as applying the guidelines when contract was first signed, imposing retroactive and uncompensated liability. Guidelines should be withdrawn and modified, adhering to the APA requirements.
	EPA	Risk assessment guidelines, 40 CFR 300 -- exposure and toxicological assumptions.	Unreasonably conservative. Inflates costs with overprotective approach. Risk assessment guidelines should be based on current use or planned use. Often industry will not hear from regulator when matter is settled or closed. In addition, regulators are more interested in meeting inter-agency needs than in cleaning sites.
Clean Air Act	EPA	Clean Air reporting requirements	Regulations should be reconsidered to eliminate duplicate reporting requirements.
	EPA	Prevention of significant deterioration (PSDs)	Air quality analysis requirements make BACT a moving target. NSR workshops discussing locking-in of BACT and elimination of requirement to collect data before permit is issued are suggested changes.
	EPA DOE	Reformulated fuels	Oxygen content mandate reduces flexibility in achieving other mandates and reduces fuel economy. Air toxics reduction mandates are not cost-effective. Will require large modifications and industry investments without sufficient cost/benefit analysis.
	EPA	Permitting modifications	Requires full public and regulatory review; will place U.S. business at a disadvantage. Will freeze flexibility with little benefit. Confidentiality may be issue.
	EPA	Combustion strategy: Proposed rewrite of rules	Will require off-site risk assessment and full-scale public hearings. Would force sites to close and undue public alarm. Waste will be trucked at greater cost.

TITLE	AGENCY	DESCRIPTION	COMMENTS
	EPA	"Top Down BACT" permitting policy	Such policies should at the least be developed through normal regulatory procedures.
	EPA	New Source Review (NSR)	Discourages utilities from improving plants for fear of environmental scrutiny. Permit process complicated and lengthy with little environmental impact. WEPCO rule promulgated a few years ago is slight improvement. Ambient air effects are ignored.
	EPA	Non-road engine and vehicle planned interpretation	Contrary to legislative intent.
	EPA	Incentive allowance draft model air permit	Allowance conditions are too narrow. Will also cause premiums. EPA interpretation results in more stringent limits then intended.
	EPA	Draft regulations relating to NOx emissions; CFC Regulations	Require massive investments into unproven technology. Regulations are internally inconsistent. Should suspend Title I until II and IV can be assessed to determine if I is necessary and cost-effective. CFC regulations are expensive without benefit.
	EPA	CAA benzene waste NESHAP; RCRA corrective action; RCRA recycling	All are burdensome and costly. No risk or cost/benefit analysis.
	EPA	Onboard diagnostics (OBD) requirements	Requirements for 1999 model years creates major workload issues for manufacturers. EPA has never offered quantification of benefit.
Clean Water Act; Oil Pollution Act of 1990	EPA	Effluent discharge limits	Companies should not be told what technology to use or which discharge limits are being reduced without considering environmental need. Pulp and paper BAT effluent standards are using control standards that are not currently environmentally beneficial. MACT standards, currently under consideration, will do little to reduce risk.
	EPA	Surface toxics control regulation, 54 FR 23868	Allows agencies broad discretion in taking stringent approach without use of best scientific judgement.
		Regulation of non-petroleum oil	Regulations are unnecessary.

TITLE	AGENCY	DESCRIPTION	COMMENTS
	EPA	NPDES-stormwater	Industry is a major target for enforcement even though most stormwater discharges are not industry related.
	EPA	OCPSF effluent guideline and pretreatment standard, 40 CFR 414	Requirements to obtain removal credits under 40 CFR 403 are too restrictive. Requires redundant and otherwise unnecessary pretreatment systems.
	EPA	Wetlands permits	Agency interpretations, especially as they relate to alternative sites, need to be clarified.
Endangered Species Act		Complete regulatory scheme	As administered imposes increased costs, delays, operating conditions.
Environmental Regulations (General)	EPA FAA States Other	All environmental regulations	Entire regulatory program could be streamlined by evaluating standards and procedures to use resources effectively, reducing administrative and oversight costs, eliminating unnecessary site investigation studies, and standardizing remedial action. Regulations are confusing, conflicting, and complex. All agencies, but in particular EPA, fail to use consistent scientific standards, incurring unnecessary costs for studies. Interpretations of last 12 years tended to informally substitute for rulemaking, causing numerous problems. Duplicative standards are imposed such as RCRA requirements on plants that meet CWA or CAA requirements.
	EPA OSHA NTP	Risk assessment	Risk assessment should be based on uniform, rational and science-based procedures. Policy is often based on agency response to unwarranted fears and results in wasteful spending. Without clear guidelines on risk assessment, agencies often end up misusing outside information to determine risk. Realistic risk assessment methods, utilizing information on actual conditions and exposures should be used to determine how a site should be decontaminated under RCRA and other statutes. No cost/benefit analysis. Priorities must be set based upon harm to human health and damage to environmental/ecological resources.
FIFRA	EPA	Pesticide program	Huge amounts of paperwork without corresponding benefit. Export labels carry too narrow a definition of registered product.

TITLE	AGENCY	DESCRIPTION	COMMENTS
Fish Entrapment	FERC	Policy allowing states to extract cash from operators based on fish count without having to show adverse effect	Demonstration of impact should be necessary.
Minerals -- Normal Blowout Procedure	Mineral Mgmt. Service	Requirements for testing	Too frequent. Should be revised.
Natural Resources Valuation	EPA DOI DOC	Nonuse valuation	Methods such as contingent valuation to place dollar values on nonmonetary and emotional values based on polls are inaccurate and unrealistic.
Pipeline Regulations	EPA FERC	Mix of regulations from endangered species act to FERC oversight and NEPA, CWA	Combination of regulations means projects are delayed by years. Millions of dollars are added to cost of projects with no environmental benefit.
Radiation Control Act		Radiation emitting products	Recording serial numbers of radiation emitting products is outdated, burdensome, and unnecessary.
RCRA-- Inconsistent, Duplicative Requirements	EPA	RCRA vs. CWA	Permit requirements discourage recycling. Permit process is too long. Corrective action rules encourage abandonment.
		RCRA vs. TSCA	EPA needs to expedite its planned revision to PCB regulations under TSCA to make them consistent and compatible with hazardous waste regulation under RCRA. Regulations are currently excessive.
		Hazardous and solid waste regulations	The current federal/state program of hazardous waste management is not consistent with the national program intended by Congress. Landfill disposal regulations are administratively complex and contain multiple treatment standards for the same chemical. Should not use BDAT for treatment standards. BDAT techniques are not necessarily the best. Other methods are available which are less costly and just as beneficial as some BDATs. Requiring wastes generated during remedial actions to meet land ban rules means waste must be incinerated at high cost and creates disincentive to clean up sites. Residual regulations could force elimination of existing impoundments. Legislative proposals relating to the installation of liners could threaten legitimacy of systems that were

TITLE	AGENCY	DESCRIPTION	COMMENTS
			recently added, at great cost, to comply with the Clean Water Act. Prohibition against reuse of material defined as hazardous waste causes material that could be reused without harm to be disposed (at cost to the company). This is unnecessary when there is no environmental harm. Definitions need work. Requirements should based on legitimate health studies. Eliminate the requirement under 40 CFR 261 to use a correction factor in determining if waste is hazardous. Costs and ease of compliance could be enhanced. As to 40 CFR 261.3, specific concentration of hazardous substance should be required before regulation. Changes in chemical composition should be considered. As pertains to 261.3(b) and (c), there should be generic delisting approach as well as concentration based thresholds. Regulatory bias against energy recovery inhibits burning of material that is often environmentally safer than fossil fuels initially used. Changing policy interpretations concerning the characterization of corrosive solid wastes could bring non-hazardous alkaline wastes into the RCRA regulatory scheme.
RCRA Mixture and Derived-From rules	EPA	Mixture and derived-from rules	Waste mixed with or derived from hazardous waste is required to be treated as hazardous although it may not actually contain hazardous substances. Results in much greater cost and exacerbates shortage of disposal facility storage. These regulations should be replaced with a concentration based limit, or in the alternative, eliminate at least the rules and policy relating to remedial wastes.
RCRA Toxicity Characteristic (TC) rule	EPA	Industry compliance costs	Imposes large compliance costs on industry.
Regulations affecting silver waste	EPA	SDWA/RCRA/water quality standards; pretreatment limitations	Too many standards. Inhibit reclamation. Too conservative.
Toxic Substances Control Act		TSCA program	High paperflow cost without corresponding benefits.

TITLE	AGENCY	DESCRIPTION	COMMENTS
IV. FOOD and DRUG			
Delaney Amendment § 512 (d) (1) (H) of Federal Food, Drug and Cosmetic Act.	FDA	Zero tolerance approach	Is antiquated because of lower detection limits. Too broad; results in higher costs; relies on exaggerated test systems.
Duplicate Testing of Biologics	FDA	Testing of both bulk and finished product	Is unnecessary and time consuming.
		Interpretation of "important"	Formal submission for review slows process. Requirement for reporting of "important" changes read too broadly.
Exports of Drugs and Medical Supplies--FFDCA	FDA	Approval for export	Is lengthy and filled with delays and restrictions. May result in loss of U.S. jobs. Entire process needs to be simplified. If country accepting export has already approved product, it should not need to be approved again. Guidelines for efficacy data are unrealistic. FDA requirement that exported drugs be identical to drug for which approval is sought in the U.S. is beyond the intended scope of the legislation.
Nutrition Labeling Regulations	FDA	Required labeling format	Confusing format should have been tested before being adopted.
Prescription Drug Regulations	DEA	Paperwork relating to Schedule II shipments	Processing costs could be reduced by 40% if the DEA would allow electronic order processing.
Regulatory Procedures Manual	FDA	FDA replaced notice of adverse findings and regulatory letters with warning letters in May 1991	FDA did not follow the APA when implementing this policy and have since almost routinely issued these letters; results in seriously adverse consequences to the company even if perceived violations are minor.
FDA Review Process	FDA	Delays in review	Have negative across board impacts including cost, patent impacts, and suffering and loss of life. Many types of minor manufacturing changes should be allowed without filing of the New Drug Application Supplement. Annual Reports would provide adequate safeguards. Marketing of medical devices is delayed by unnecessary requirement that all items contained in the kit with the device also be reapproved.

TITLE	AGENCY	DESCRIPTION	COMMENTS
V. INSURANCE			
H.R. 1257		Insurance to inner-city businesses	Would require extensive recordkeeping and reporting regarding insurance for these small companies.
H.R. 1700		Home mortgage disclosure	Bill is unnecessary. Insurers are voluntarily including themselves under the Home Mortgage Disclosure Act as of fall of 1993.
Overall Insurance Regulation	States	State system	Does not recognize difference between personal and commercial lines. Causes difficulties operating nationally and internationally. Solvency regulation approach recommended in support of HR 1290.
	States	Mandated coverage	Is expensive, multi-state approach leads to a "patchwork" of regulations. Certain mandated coverage is not necessary and increases costs.
		Price controls for health care	Would have very unfavorable impact.
	States	Federal oversight of insurance industry	Dingell bill to regulate insurance federally is not necessary.
VI. LABOR/EMPLOYMENT (see also: Insurance)			
ADA-EEOC	EEOC	New rules expected 6/93	Could affect coverage and eliminate current exemption allowing employers to sponsor/operate health plans free from prohibitions and sanctions of the Act.
Coal Industry Retiree Health Benefit Plan		Posting of security to support guaranty	Is costly and unnecessary. Could result in loss of jobs and decrease in competitiveness.
Double Breasting		Proposed legislation that would not allow single company to operate union and non-union subsidiaries in same industry	Will force divestitures.

TITLE	AGENCY	DESCRIPTION	COMMENTS
Enforcement	OSHA	OSHA general enforcement	Not only targets inappropriate issues, such as recordkeeping, but also is not consistent among similar companies, such as transportation companies.
Equal Employment Affirmative Action	OSHA	General regulations	Too time-consuming and costly.
Ergonomics	OSHA	General Duty Clause	Use of the General Duty Clause as a basis for an ergonomic standard (using repetition as basis for deeming hazards) is inappropriate.
ERISA	OSHA	OSHA, compliance testing regulations	Impossible to understand.
	OSHA GSA OMB IRS	Defined pension plan	Eliminate inconsistency between ERISA, CAS, and FAR to remove unfair burden on contractors. FAR should be removed to allow CAS to govern this area.
Immigration Control Act		I-9 Form requirements	Impedes hiring process and is burdensome.
Medicaid, Medicare Fraud	HHS	Rules promulgated 11/92	Do not extend safe harbor and are too narrow. All but ignore effective use of managed care.
National Labor Relations Act § 8(a)(2)	DOL NLRB	Guidelines concerning "sham unions"	Decisions are not clear enough to distinguish illegal action committees from other non-union employee involvement groups.
OSHA	OSHA	Exposure limits	Should be based on actual hazards "rather than irrelevant exposures." Provisions are duplicative and costly. Modifications of regulations necessary, including communication of hazardous conditions. Reduction in arsenic limits causes direct expense and loss of productivity without evidence of injury.
	OSHA	Cost/Benefit Analysis	OSHA does not use adequate cost-benefit analysis in rulemaking. An example is that the agency took 17 years to implement a "confined space" regulation, saving 55 lives a year, yet has made no requirements that air bags and seatbelts be used in company cars, an action that could save 5,000 lives each year. Many regulations are duplicative and require excessive documentation at high cost.

TITLE	AGENCY	DESCRIPTION	COMMENTS
	OSHA	Hazardous material/hazardous waste/personnel testing 29 CFR § 1910.120 29 CFR § 1910.119	Penalty mechanism arbitrary and rigid. Personnel testing is arbitrary, excessive and costly.
	OSHA	Material Safety Data Sheets (MSDSs)	Definition of what constitutes a "hazardous substance" requiring dissemination of MSDSs is not clear. In addition, material contained in MSDSs can also be found elsewhere.
Pension Insurance	PBGC	Premiums	Require well-funded plans to pay several hundred thousand yearly to insure less well-funded plans.
Overtime Pay 29 CFR 541	DOL	Unpaid leaves of absence	Private sector employees need relief from potential back pay liability due to unpaid leaves of absence. Diminished ability of employers to give flexible working hours. Although FMLA exempts private employers from liability in granting unpaid leaves of absence, it only applies if the circumstances fit FMLA; it needs to go further.
Permanent Strike Replacement	DOL	Proposed legislation	Legislation making it unlawful for employers to hire permanent replacement for economic strikers could have adverse impact.
Uniform Guidelines on Employee Selection 29 CFR 1607	DOL	Validation procedures	Need to be streamlined so the cost will be lowered but goals of equal employment are met.
Workers Compensation	DOL	Adequate pricing	Needs to be ensured so private insurance companies will remain in the workers compensation area, which in turn will lower prices and maintain jobs.
VII. PROCUREMENT/GOV'T CONTRACTING			
DAR, FAR, DFAR Regulations	GSA DOD	General regulations relating to certifications/reporting, thresholds, claims, accounting and other procurement areas	Certain regulations should be modified or eliminated as burdensome and unnecessary. Thresholds relating to competition, reporting, and small purchases need to be amended. Contracting officer regulations need to be reemphasized and redefined. Modifications are also needed in the area of contract claims.

TITLE	AGENCY	DESCRIPTION	COMMENTS
Design Costs Limitations	GSA	Design cost maximum	Regardless of circumstances, design cost is set at a too low 6%. Law is also inconsistent, ambiguous.
Government Accounting/Pricing/ Audits	GSA	Submission of cost or pricing data	Possible solution to costly process of "sweeps" resulting from these burdensome, costly regulations would be to have cut-off dates. There should also be a new form for determining reasonable pricing as well as a restriction to the levels of information required.
		Regulatory data requirements	Exceed statutory requirements and are inconsistent with commercial practice. (FAR 15.804-3)
		Cost accounting standards	Application of standards needs to be changed to eliminate impediments to companies trying to change organizational aspects.
OFCCP Regulations	OFCCP EEOC GSA	OFCCP regulations	OFCCP regulations are duplicative of EEOC regulations; both agencies can pursue separate actions for the same events. OFCCP should be eliminated and jurisdiction transferred to EEOC.
Telecommunication Procurement Restrictions	GSA	Requirement for government to purchase long distance under FTS 2000	Unnecessary expense, deprivation of latest technology, loss of competitive access.
VIII. SECURITIES/BANKING			
Financial Accounting Standards Board (FASB) Accounting Rules	FASB	Change in accounting rules to require companies to record an expense for "fair value" on date that stock options are granted to employees	This reverses long-standing accounting practices and serves only to increase the expense charged against earnings of the company, even if the options are never exercised. The award of such an option is strictly a capital transaction between employer and employee and does not, in reality, represent an expense to the company.
Glass-Steagall Act § 20	SEC Other	Prohibition against affiliation of commercial banks and firms engaged principally in underwriting and other non-bank activities.	Limits competitiveness, impairs ability to raise funds. The problems that § 20 initially addressed are now addressed in other legislation.
PUHCA Regulation (Public Utility Holding...)	SEC	Restrictions on utility business areas	Revised regulations, and perhaps statutory revisions, are necessary to allow utility companies to expand into other areas.

TITLE	AGENCY	DESCRIPTION	COMMENTS
Recourse and similar transactions	FFIEC	Proposed regulations relating to capital and reporting treatment of recourse and similar transactions	Proposed regulation would impose significant additional costs on ... the asset securitization market.
Trading Reports 17 CFR § 240.16a	SEC	Reporting/Recordkeeping	Reporting by insiders of changes in ownership has costs greatly outweighing benefits, especially as it relates to employee benefit plans. Recordkeeping requirements are a complex and costly potential liability for "insiders," without offsetting benefits.
IX. TRANSPORTATION			
Airline Safety Regulations	DOT FAA	DC-9 tailcone airworthiness regulations	5 Airworthiness Directives since 1987 are costly and unnecessary.
		Airport access door rule, FAR Part 107.14	Access door rules are also costly, unnecessary.
Corporate Average Fuel Economy ("CAFE")	EPA	Statute and regulations	Complex and costly without fulfilling purpose. Also results in lighter, more dangerous vehicles and harms competitiveness. Other options are available.
Clean Air Act Energy Policy Act of 1992	EPA DOE	Provisions of CAA and energy policy act relating to operation of commercial motor vehicle fleets	High costs of compliance due to maintenance needs, costs of vehicles, etc. Many service fleet operators state they would be forced to disband.
Drug/Alcohol Testing	DOT DOD	50% random testing requirements Proposed requirements for alcohol testing	50% requirement is unnecessary, too costly. Interim rule should be adopted instead of the final rule. This would give the contractor more discretion. Rules in general are too time-consuming, paper intensive. Insufficient cost/benefit analysis. Lowering to 10% would still act as deterrent and save millions of dollars.
Hazardous Material Transportation	DOT	Hazardous material transport regulations	There is a need to reduce needless testing systems and change to a simple information system for registration to be filed once each year.

TITLE	AGENCY	DESCRIPTION	COMMENTS
High Density Traffic Airport Rule, 14 CFR § 93.123(c)	FAA	Air carrier and commuter slot restrictions and assignment process	8/91 temporary rule allowing carriers at O'Hare to use some of commuter slots has helped. 12/92 FAA proposed rulemaking would relax rules permanently with great economic advantages.
Interstate Pipelines	FERC	FERC Order 636	Causes regular filings of unnecessary forms. Individual pipelines may make up to 2500 meaningless filings a year.
		FERC Order 497	Undue economic and organizational hardships, especially as concerns the requirements for an Electronic Bulletin Board, Complaint procedure, Annual Reports, loss of vertical integration.
Interstate Trucking Regulations	States	Interstate regulations on leasing to private carriers	Regulations vary from state to state. There is a need for federal legislation as well (H.R. 1077 attached to comment letter).
Over the Road Trucking Regulations	DOT	Applicability to utility workers	Utility workers driving is incidental to job and should not be subject to the same Federal Highway Administration regulations as "true" over-the-road truckers.
Railroad Hours of Service	FRA	Court of appeals decision	Close to 8,000 technical violations had to be reported in first 3 months of 1993 (with potential penalties of 10,000 per violation) due to adverse court of appeals decision.
Surface Transportation Assistance Act "STAA", 29 CFR § 1978.100 et seq.	DOL DOT	Regulations on retaliation	DOL reads "discrimination" too broadly as it relates to drivers claiming retaliation for complying with regulations.
State Trucking Regulations	States	State economic regulation of trucking	Too costly.
U.S. Flagged Vessels Regulations	DOT	Standards for operation and construction of U.S. flagged ships	Result in operating differentials with foreign flagged ships in excess of 100,000 with cost differential for construction amounting to approximately 5-8% of capital cost of ship.

TITLE	AGENCY	DESCRIPTION	COMMENTS
X. TREASURY/TAXES			
Alternative Minimum Tax (AMT)	Treasury (IRS)	All AMT regulations	Creates dual set of tax regulations.
Employee Benefit Plan Non-Discrimination Rules 26 CFR § 1.401(a)(4) (1992)	Treasury (IRS)	Complex and confusing mathematical tests and "safe harbors	Requires recordkeeping not otherwise needed. Forces small plans out of existence. Duplication by DOL and IRS should be reduced. Eliminate rules relating to testing of deferral percentages. Rely on limits regarding compensation considered under tax qualified plan and contribution limit (currently $8,994). Requirements to determine non-discrimination between high/low salary employees is burdensome, complex, and costly, currently requiring 9 different tests to ensure there is no discrimination.
Environmental Cost Disallowance	Treasury (IRS)	Policy interpretations of IRS in general and specifically to environmental cost disallowance	Costly and hinders cleanups. Treatment of remediation costs need to be reconsidered.
Est. Tax Payments for Large Corporations	Treasury (IRS)	First quarter payments	Should be based on two months annualized (not three) for bookkeeping purposes; exception allowing payment to be based on prior year's taxes is of no benefit.
Foreign Currency Transaction Taxation	Treasury (IRS)	IRC § 988-regulations on foreign currency; foreign exchange	Market to market methodology (modifications already proposed, although not retroactive) should be adopted. Duplicative accounting currently required. Needs to be simplified.
Hedging Transactions	IRS	IRS interpretation of ruling in Arkansas Best	Causes losses from hedging to be non-deductible capital losses. Will force grain companies to stop using futures and options markets. Could spill over into other markets.
Incompany Transfer Pricing 26 CFR 1	Treasury (IRS)	Systems and recordkeeping requirements	Regulations require tax department involvement in every market and for every product. Requirements are burdensome, thus chilling competition.
Related Party Interest Expenses	Treasury (IRS)	1986 Tax Reform Act and regulations	Provision that interest expenses of a U.S. controlled group must be considered has effect of restricting dividend flows back to U.S. and limiting ability to reinvest in U.S.

TITLE	AGENCY	DESCRIPTION	COMMENTS
XI. OTHER REGULATIONS			
Aircraft Leases -- Bankruptcy		60-day period for bankrupt party to decide whether to accept or reject a lease, 11 U.S.C. § 1110	Gives debtor too long a period.
Economic Health Indicators	DOC	Economic indicators	Economic Indicators are based on industries that are no longer important economically.
General Regulations	OSHA EPA DOJ	Application and enforcement processes	Problems are command and control mentality of regulators, permanence of these regulators, and unevenly applied regulations between different regional offices of the same agency.
Lobbying/Byrd Amendment, 57 FR 1772	OMB	OMB proposals on the Byrd Amendment	Recommend that the amendment not be expanded to program level actions.
Nuclear Safety	DOD	Application of penalties for violation of DOD nuclear safety requirements	Regulations should be revised to limit application to formal rules, regulations, or orders as specified in statute.
Regulatory authority should be centered in one agency.		State, local, and federal regulations	Companies not only have to contend with differing state, local and federal regulations -- they often must deal with two or more federal agencies to accomplish the same objective. Cost of compliance greatly increased, especially in interstate matters where regulations may differ. Uniformity would reduce costs.

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The Business Roundtable:
Superfund Background and
Principles

6pgs

The Business Roundtable

Superfund Background and Principles

March 1993

file regulatory review

April 1, 1993

93 APR 27 P7:08

NOTE FOR: SALLY KATZEN

FROM: JIM MacRAE

SUBJECT: Limited Scope of OIRA's Regulatory Review

Summary: The attached chart shows the number of rulemaking documents currently exempted from OMB review under Executive Order No. 12291. Less than 30% of the total rulemaking documents published in the Federal Register are subject to E.O. 12291 review. Of rules issued by the agencies subject to E.O. 12291 review, we have exempted two-thirds (over 4,300) from review.

Items in Each Column:

The numbers in each column are totals for calendar 1992.

Column 1: Rulemaking documents published by each agency in the Federal Register in 1992.

Column 2: Rules published by the independent regulatory commissions (agencies not subject to E.O. 12291 review).

Column 3: Substantive rules exempted by OIRA from E.O. 12291 review. These include, for example, revisions to reimbursement rates and eligibility criteria for School Lunch and Child Care Food programs; power marketing administration rules; more specifically focused transportation safety regulations; IRS revenue rulings; EPA pesticide tolerances; and EPA approvals of State Clean Air and Clean Water plans.

Column 4: Technical rules exempted by OIRA from E.O. 12291 review. These include technical corrections, schedule changes, and other minor, miscellaneous rules. (This is not an actual count, but instead a percentage of the total derived from a sample of the daily Federal Register.)

Column 5: Rules subject to E.O. 12291 review. This column is calculated by subtracting from Column 1 the total of Columns 2-4.

Column 6: Rules actually reviewed by OIRA in 1992. The numbers in columns 5 and 6 are not exactly the same because the list of rules "Subject to Review" in Column 5 is an approximation (principally because of column 4).

COMPARISON OF FEDERAL REGISTER AND E.O. 12291 REVIEWS

ENCY	F.R. RULE DOCS 1992 (1)	F.R. EXEMPT AGENCIES 1992 (2)	F.R. EXEMPT DOCS 1992 (3)	F.R. NOISE DOCS 1992 (4)	F.R. CORE DOCS 1992 (5)	E.O REVIEWS 1992 (6)
USDA	667		326	124	217	380
DOC	476		347	89	40	227
DOD	199			37	162	5
ED	75			14	61	142
DOE	69			13	56	25
HHS	439			82	357	401
HUD	103			19	84	72
DOI	423		251	79	93	82
DOJ	113			21	92	78
DOL	124			23	101	51
STATE	27			5	22	18
DOT	1,645		1,118	306	221	217
TREAS	628		501	117	10	70
VA	97			18	79	91
EPA	636		298	118	220	157
EEOC	12			2	10	3
FEMA	90			17	73	13
GSA	111			21	90	33
NASA	79			15	64	7
OMB	8			1	7	1
OPM	98			18	80	95
[illegible]	46			9	37	29
[illegible]ER	473		223	88	162	86
CFTC	60	60			0	
CPSC	22	22			0	
FCC	669	669			0	
FDIC	46	46			0	
FERC	17	17			0	
FMC	57	57			0	
FRS	76	76			0	
FTC	23	23			0	
ICC	97	97			0	
NRC	107	107			0	
SEC	64	64			0	
TOTAL	7,876	1,238	3,064	1,235	2,339	2,283
Cabinet	5,085	0	2,543	946	1,596	1,859
Other Executive	1,553	0	521	289	743	424
Independent	1,238	1,238	0	0	0	0

(1) F.R. Proposed Rule and Final Rule Documents from Table V of F.R. Report (7,325)
(2) Deduct F.R. Documents for Independent Agencies (1,238)
(3) Deduct count of F.R. documents in programs exempted from E.O. 12291 review
(4) Deduct 18.6% (1,364 of 7,325) for Corrections, Schedule Changes, Nonsubstantive Updates, and Miscellaneous Documents
F.R. Documents subject to E.O. 12291 and expected to add new requirements, revise or eliminate existing requirements in the CFR
Data as of February 10, 1993

April 27, 1993

MEMORANDUM FOR THE REGULATORY REVIEW WORKING GROUP

FROM: KUMIKI GIBSON

SUBJECT: MEETING SCHEDULE

The Regulatory Review Working Group will be meeting on Wednesday, April 28, 1993, from 10:00 a.m. to 11:30 a.m., in the Vice President's Ceremonial Room. In preparation for the meeting, you may want to review the attached memorandum to Sally Katzen from Jim MacRae which addresses, among other things, the number of proposed regulations that were subject to review in 1992 and the number of those that were actually reviewed. This may be useful in our discussion about the criteria for OIRA review.

Also, Thursday's meeting with the Women's Rights/Civil Rights Group has been cancelled. Hopefully, it will be rescheduled for sometime next week. I will keep you posted.

If you have any questions, please feel free to call me at ext. 7022.

Attachment

Distribution: Jessica Goldfarb
Andy Joskow
Sally Katzen
Bob Knisely
James Kohlenberger
Linda Lance
Murray Liebman
Jeff Lubbers
Mark Middleton
John Podesta
Jack Quinn
Heather Ross
Ellen Seidman
John Shafer
Joseph Stiglitz
Paul Weinstein
Peter Yu

Options Paper on Review of Existing Regulations

I. Issue: Goals of review process

The ultimate goal of any regulatory review process is to assure that the entire body of regulations, considered as a whole, conforms to the substantive principles applicable to new regulations, including principles relating to process (e.g., openness, competence). However, since the review process involves a large body of existing regulations, additional prioritizing principles are necessary. Among the possibilities are:

- o Alignment of the existing regulatory system with Presidential priorities

- o Alignment of the existing regulatory system with individual statutory mandates

- o Identify non-regulatory sources -- legislation, Executive Orders, court cases -- of inappropriate regulatory policy and suggest ways of changing the situation

- o Reduction in regulatory burdens on individuals, families, companies, industries, geographic or political entities
  - Reduction/elimination of inconsistency (e.g., two or more agencies or regulations require **inconsistent** conduct by an entity)
  - Reduction/elimination of overlap (e.g., two or more agencies or regulations require the **same or consistent** actions by an entity, but have duplicative -- consistent or inconsistent -- filing, reporting, examination, evaluation requirements)
  - Reduction/elimination of unintended interactions or excessive cumulative interactions
  - Reduce transactions costs, e.g., paperwork, that are excessive for regulatory objectives
  - ~~Reduction/elimination of unintended interactions~~

- o Revision or deletion of regulations: (i) whose benefits (however defined) in practice have not been of the magnitude or nature predicted; (ii) whose costs (however defined) have substantially exceeded those predicted, without a comparable increase in benefits; (iii) which have generated unexpected costs or benefits of a substantial enough nature to change the assumptions used in development of the regulations; or (iv) which have proven to be administratively unenforceable or unenforced.

- o Revision or deletion of regulations that are outmoded, because, for example: the problem has been solved; the problem has changed; potential solutions (scientific, technological or regulatory, ~~potential solutions (regulatory and technological,~~ including substitution of information for regulation) have changed; ways of analyzing problems (e.g., cost/benefit, risk

analysis) have changed; markets have changed, including through international competition; there are interactions with subsequent events (including subsequent regulations) or there have been unexpected and undesirable consequences

- o Revision or deletion of regulations to accomplish better overall use of the total "regulatory budget" in the economy, e.g., starting from a clean slate, prioritize costs and benefits (both defined broadly, and not exclusively financially) of all regulations on entire economy and/or specified sub-sectors.

- o Conformation of all regulations to a single, consistent set of goals, methodologies and assumptions

- o Revision ~~or deletion~~ of regulations to make them clear, concise and understandable to those who need to use them

- o Revision or deletion of politically sensitive regulations

II. Issue: Criteria to be used in choosing the order in which regulations are to be reviewed

While the ultimate goals of the regulatory review will guide the overall process, separate administrative criteria are required to determine which regulations will be reviewed first. Among the possibilities are:

- o Age of regulation

- o Ability to acheive regulatory objective at reduced costs

- o Contemporaneity of last serious review

- o Number of people, size of industry, proportion of economy affected, directly or indirectly

- o Level of costs/level of benefits

- o Number, extent, apparent validity, vociferousness, political implications of complaints

- o Single or multiple agency; single or multiple program within an agency

- o Extent to which change is possible without legislation

- o Centrality of regulation to agency's mission

III. Issue: Centralization/decentralization of the process

The decision of who will choose regulations to be reviewed can have a major impact on not only what is reviewed but how and at what speed. There appear to be four basic options, all of which assume the actual review will be conducted by the agency that promulgated the regulation, in conformity with the Stiglitz principles and informed by the goals of the review process:

- o Choice by the agencies, based on centrally-established criteria
- o Choice by agencies, based on agency-specific criteria, which would be informed by and consistent with centrally-established criteria, but might go beyond it or have different priorities
- o Choice by agencies, subject to central entity adding to or subtracting from list based on centrally-established criteria and consideration of inter-agency overlaps, conflicts and timing choices
- o Choice by a central entity, based on centrally-established criteria, but with agency and public comment and advice ~~based on centrally-established criteria~~

IV. Issue: Extent of public involvement in choice process

An agency's or central entity's choice of regulations to be reviewed may not be consistent with the priorities of "the public." Some of the programs for review in the past have included an opportunity for the public to comment on regulatory review lists, presumably suggesting additions as well as deletions. These programs have included a number of different levels of information in the preliminary publication. Options include:

- o No opportunity for public comment on list of regulations to be reviewed
- o Publication of criteria and list of regulations to be reviewed for comment, but without specific analysis based on the criteria of individual regulations chosen
- o Publication for comment of list of regulations to be reviewed, with analysis of how each regulation was chosen for review
- o Publication for comment of list of regulations to be reviewed, with discussion of how regulation was chosen and preliminary analysis against ultimate goals of review
- o Conference to elicit views of public on regulatory review process and selection of regulations using established, previously published, criteria

V. Issue: Continuous or sporadic review

Both President Reagan and President Bush put in place programs for one-time, quick-strike (90 days in the case of Bush) review of existing regulations. Although E.O. 12291 also provides for ongoing agency initiation of reviews of currently effective regulations, this appears to have been honored in the breach. President Carter's Executive Order (E.O. 12044) called for "periodic" review of existing regulations. Several bills introduced in the late 1970s and early 1980s contained provisions requiring a regular, rolling review of major regulations and review after ten years of new regulations (the so-called "high noon" rule). There appear to be three major options:

- o Do a relatively quick, one-shot review of chosen regulations, leaving the option of further reviews solely to agency discretion

- o Combine a one-shot review of regulations that meet specified criteria with a requirement for "periodic" review by agencies of existing regulations, with specific time-tables for review of all "major" or significant regulations

- o Initiate program of regular, rolling reviews of all "major" or significant regulations without one-shot fast track

- o Use RegRevCorps (see separate note)

VI. Issue: Items to be reviewed

Over the past several years, agencies have expanded the extent to which they issue general policy positions through non-notice-and-comment "guidance," handbooks, and public "private" letter rulings. President Carter's Executive Order covered "regulations," which were defined to mean "rules and regulations . . . including those which establish conditions for financial assistance." E.O. 12291 defines "regulation" to mean "an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice of requirements of an agency," a definition which arguably includes non-notice-and-comment guidance, etc. It is also possible for a regulatory review program to include recommendations for statutory changes implied or required to enable existing regulations to conform to the stated criteria. Coverage could include:

- o Only official "notice and comment" regulations

- o Any agency statement of "general applicability . . ." no matter how promulgated

- o Statements of "general applicability . . . " explicitly including certain categories, such as financial assistance standards, handbooks, etc.

- o Statutes underlying regulations, with the output of recommendations for statutory change

VII. Issue: The meaning of "review"

After a regulation is chosen for review, any number of actions could be taken, ranging from cursory inspection to full blown analysis of the sort required for a new major regulation. The bills of the late 1970s/early 1980s had a two-step process in which the "review" produced first an "assessment" that considered benefits, adverse effects, costs, problems in obtaining compliance, and overlap or duplication and then, if the assessment determined that the rule should be changed, a notice of proposed rulemaking that would start the traditional process. Neither the Carter nor Reagan Executive Orders specified a procedure. Options include:

- o Two-step process in which the analysis required to determine whether a regulation would be reviewed would be less intense, but any review must be conducted as full-blown rulemaking, with, if applicable, full regulatory impact analysis

- o Two-step process in which an agency could determine, with or without centralized review, that revision of a regulation to be reviewed was likely to be of a minor enough sort (e.g., putting it into "plain English") that the change can be treated as "minor," even if the rule itself would be "major"

VIII. Issue: Timing

An Executive Order governing new regulations promulgated in May could include the review of existing regulations. Alternatively, initiation of the review could be delayed until, for example, some initial targets were chosen for a quick-strike process and the Administration thus had some experience with how various criteria and systems would work. The retrospective Executive Order could be promulgated in September as part of the Reinventing Government initiative, or at some other time. Options are:

- o Include in Executive Order on new regulations in May

- o Include with Reinventing Government in September

- o Issue free-standing Executive Order

- o Take action through another medium, e.g., a memo to agency heads, which was how the Bush review was started

- o Establish intent to review, objectives and outline of the process in May Executive Order. Publish later Executive Order if necessary, with expanded substantive or procedural information, in September or at another time.

IX. Issue: Evaluation

Many Presidents have attempted regulatory review processes; some (Reagan and Bush) have had their Vice Presidents write about the success of the process. However, the intention to evaluate the process and the criteria for evaluation have never been stated in advance. Moreover, there is a tendency to claim credit for statutes and regulations altered in earlier regimes. Options include:

- o Making no specific promise of evaluation
- o Including an explicit commitment to evaluate the regulatory review program at a time certain
- o Including an explicit commitment to evaluate the regulatory review program at a time certain under specified criteria
- o Establish Regulatory Review Day (see separate note) ~~—o Including an explicit commitment to evaluate the regulatory review program at a time certain under specified criteria~~

John Podesta -

For your review

Re: Presidential Records

April ___, 1993

MEMORANDUM FOR ALL EXECUTIVE OFFICE OF THE PRESIDENT STAFF

FROM: JOHN D. PODESTA
Assistant to the President and
Staff Secretary

STEPHEN R. NEUWIRTH
Associate Counsel to the President

RE: Presidential Records

The offices with the Executive Office of the President generate two categories of records: "Presidential Records" and Federal Records." A separate memo from David Watkins and Bruce Overton has been circulated today concerning "federal records."

This memorandum sets forth guidance on the creation, maintenance and disposition of "Presidential records" -- records "created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional duties of the President."

It is important that all staff in the Executive Office of the President review this material carefully. The failure to designate documents and other materials properly can have serious implications, including subjecting those materials to immediate public disclosure under the Freedom of Information Act.

I. UNITS WITHIN THE EXECUTIVE OFFICE OF THE PRESIDENT THAT GENERATE PRESIDENTIAL RECORDS

All records of the White House Office, the Office of Policy Development, the National Economic Council, the Council of Economic Advisors, the President's Intelligence Oversight Board and the President's Foreign Intelligence Advisory Board are Presidential records.

As discussed below, records of the Office of the Vice President are treated in the same manner as Presidential records

under the Presidential Records Act. The records of the Office of the Vice President are not federal records.

The records of the National Security Council staff are Presidential records if they were received or created for the President, the Assistant to the President for National Security Affairs, the Deputy Assistant to the President for National Security Affairs or the White House Office, and created independently of any statutorily mandated agency functions of the NSC. (By contrast, NSC internal administrative records, as well as NSC records received or created in connection with the work of the statutorily-created NSC, are federal records.)

Records produced or received by the Director of the Office of Science and Technology Policy in his role as Science Advisor to the President are Presidential records; all other OSTP records are federal records.

Records of the Office of Management and Budget, the Office of the United States Trade Representative, the Council on Environmental Quality, and the Office of Administration are federal, not Presidential, records.

II. Types of Records Covered by the Act

The Presidential Record Act defines "documentary materials" as "all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audio-visual, or other electronic or mechanical recordations." 44 U.S.C. § 2201(1).

The Act defines "Presidential records," in turn, to mean:

> documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term --
>
> (A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

44 U.S.C. § 2201(2).

Under this definition, Presidential Records are documentary materials that meet two tests. First, the materials must have been created or received by the President, his immediate staff, or a unit or individual of the EOP whose function it is to advise and assist the President. Second, the records must relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Presidential records may be in any physical form, including paper, film and disk. The method used to record information may be manual, mechanical, photographic, electronic, or any combination of these or other technologies.

A document created in a White House office, or an EOP office that advises and assists the President, normally becomes a Presidential record once it is circulated to others in the course of conducting activities which relate to or have an effect upon the carrying out of Presidential duties. Moreover, even documents that are not circulated can become Presidential records if, in the judgment of the office at issue, those documents are needed to conduct business that relates to or has an effect upon the carrying out of Presidential duties.

Materials received by personnel in the White House office, or in EOP offices that advise and assist the President, similarly can become Presidential records when they are received in the course of conducting activities which relate to or have an effect upon the carrying out of Presidential duties. Materials received can become Presidential records whether they have been transmitted in person, by messenger, by mail, by electronic communication, or by any other means.

At the same time, several types of documentary materials are not subject to the Presidential Records Act. The Act expressly excludes documentary materials that are (1) official records of an agency outside of the White House or the EOP offices that solely advise and assist the President; (2) stocks of publications and stationery; and (3) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

The Act also excludes "personal records," defined to include all documentary materials, or any reasonably segregable portion thereof, "of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President." Personal records include:

-- diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal, which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

-- materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President;

-- papers and other materials accumulated by a staff member before joining government service;

-- materials that relate to a staff member's private affairs, such as personal financial records, insurance forms, and materials relating to an individual's professional activities and outside business and political pursuits;

-- personal photographs;

-- materials relating exclusively to the President's own election to the office of the Presidency; and

-- materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

Further examples of "nonrecord" materials not covered by the Presidential Records Act include:

-- preliminary drafts, that are not circulated to any other individual, of correspondence, reports, and studies;

-- preliminary drafts, work sheets and informal notes that contain information reflected in final documents and that do not document policy development or execution;

-- tickler, follow-up or suspense copies of correspondence, provided there are copies of such documents in the official files;

-- newspaper clippings or news summaries, particularly if they are not annotated;

-- copies of printed or processed materials, such as operating and procedural manuals, directives, and notices, distributed for the information and use of office employees;

-- shorthand and other notes that have been transcribed or converted to formal documents that

have been verified for accuracy and completeness; and

-- catalogs, trade journals, and other publications that are received from other government agencies, commercial firms, or private institutions and that are maintained for reference purposes.

It is important to remember, however, that certain informal documents may be Presidential records -- particularly given that, in the White House, drafts, working papers and other informal documents may document policy development, significant decisions, or other matters related to the carrying out of Presidential duties.

III. Requirements for creation and maintenance of Presidential records

When advising or assisting the President in carrying out his duties, White House and EOP employees are responsible for complying with the Presidential Records Act and related regulations.

The law imposes an affirmative obligation on staff members to document adequately the performance of the President's constitutional, statutory and ceremonial duties. Where appropriate, staff members should document -- through notes, minutes or memoranda -- meetings, conversations and other business in connection with, or related to, the carrying out of the President's duties.

All Presidential records must be preserved in complete and orderly files. **It is critical that staff members carefully segregate Presidential and federal records. Once a document is filed as a federal record, it becomes subject to the Federal Records Act and may be subject to immediate public disclosure under the Freedom of Information Act. Presidential records, by contrast, are not subject to the Federal Records Act and are not subject to the provisions of the Freedom of Information Act during the President's term of office.** Those offices (such as the National Security Council) that create or receive both Presidential records and federal records should file them separately with a clear indication of which records are Presidential and which are federal.

In addition, staff members should, to the extent possible, ensure that any files containing particularly sensitive information are clearly labelled to reflect that fact. Under the terms of the Presidential Records Act, as well as constitutional and common law privileges, most sensitive Presidential records are not subject to public access, at least for a specified time period. File labels for sensitive materials may include:

(1) "classified information";

(2) "information the release of which may be prejudicial to the maintenance of good relations with foreign nations";

(3) "sensitive personal information" (i.e., information the release of which may be embarrassing to the individuals mentioned or to their families);

(4) "sensitive information involving confidential advice requested by or provided to the President or his advisers";

(5) "sensitive law enforcement materials";

(6) "trade secrets or sensitive commercial or financial information"; and

(7) "information subject to attorney-client or attorney work product privileges."

Finally, personal records should be clearly labeled and kept apart from Presidential records.

IV. Electronic Presidential records

Increasingly, Presidential records may be created electronically. Records may be generated on word processing or electronic mail ("e-mail") systems, or on electronic databases.

Records generated electronically must be incorporated into an official recordkeeping system. Thus, no word processing or e-mail document that is a Presidential record should be deleted unless it has been (a) printed and placed in an appropriate file, or (b) preserved in an appropriate electronic system. Questions concerning the status of electronic records should be directed to the White House Records Management Office. That office will periodically monitor electronic records systems to ensure that correct records status determinations have been made.

V. Disposition and destruction of Presidential records

Once a decision is made to memorialize and maintain information as a Presidential record, that record becomes the property of the United States and may be disposed of only in accordance with procedures established by the Archivist of the United States. The Presidential Records Act prohibits the

disposal of Presidential records unless those records no longer have administrative, historical, informational, or evidentiary value. Moreover, **before** disposing of any Presidential records, the President must notify the Archivist and, under some circumstances, appropriate Congressional committees.

The White House Records Management Office will maintain records disposal schedules, which are approved by the Archivist, for certain recurring types of disposable papers, such as form letter public mail, anonymous public mail, unsuccessful and unsolicited applications for employment, and enclosures received in public mail.

Offices that have recurring types of disposable material may wish to request that the White House Records Management Office enter that material on the records disposal schedule. No such documents should be disposed of without prior approval from the Records Management Office. (Such prior approval is not necessary for the destruction of exact duplicates of documents which are being maintained, or for unmarked copies of officially published documents, such as printed reports.)

The White House Records Management Office can also arrange for storage of records that are to be preserved, but for which there is no longer a current need. Offices are encouraged to develop systematic records retirement schedules, reserving filing space for records in current use.

VI. Legal control of Presidential records

Presidential records remain in the custody and control of the President during his term of office and are not subject to disclosure under the Freedom of Information Act during that term. As noted above, federal records are, by contrast, immediately subject to FOIA public disclosure provisions.

Upon completion of the Administration, the Archivist acquires custody of Presidential records. For twelve additional years, however, the President may assert control over public access to certain categories of records, generally including security classified items; documents related to appointments to federal offices; items specifically exempted from disclosure by other statutes; trade secrets and commercial or financial information; confidential communications requesting or submitting advice between the President and his advisers, or between such advisers; and personnel or medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. After twelve years, public access to these categories of documents is governed by the FOIA, subject to the President's right to invoke any Constitutional privilege against disclosure.

VII. Records that may be retained by staff members upon departure from office

Staff members may **not** remove copies of Presidential records from their offices at any time, except in connection with an official function. Classified Presidential records may not be removed from the office at any time without compliance with the rules applicable to such materials. Records used in an official capacity should be returned to proper files immediately after such use.

When a staff member leaves the White House or another office in the EOP, he or she must deliver all Presidential files and records to the White House Records Management Office, except that National Security Council files and records should be delivered to the Executive Secretariat of the National Security Council. Staff members are not entitled to retain copies of any Presidential records for personal use.

Federal records should be left at the appropriate agency, and disposed of in accordance with the advice set forth in the federal records guidance memorandum from David Watkins and Bruce Overton.

Purely personal, unclassified materials may be removed from the office by staff members at any time, subject to any agency procedures regulating such removal.

VIII. Records in the Office of the Vice President

The Presidential Records Act expressly provides that Vice Presidential records shall be treated in the same manner as Presidential records. Thus, materials created or received in the Office of the Vice President should be treated in accordance with the guidance set forth above.

The Presidential Records Act further provides that "[t]he authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository."

IX. Training

The White House Office of Records Management and other appropriate personnel will be providing records management training for all employees who generate or receive Presidential records.

* * *

The foregoing is designed to provide general guidance with respect to the Presidential Records Act. Specific questions of coverage or interpretation should be addressed to the White House Counsel's office. Assistance in records maintenance and storage can be obtained from the White House Office of Records Management.

Proposal for A Regulatory Review Team

In the course of considering the general retrospective regulatory review process, including reading Judge Breyer's Holmes lectures, we've become intrigued by the possibility of establishing a structure that would both recognize and reward truly innovative reviewers and accomplish some of the objectives of Breyer's specialized civil service regulatory corps.

Broadly, the proposal is as follows:

- o Each year, the Regulatory Policy Council, after getting public input, would chose between five and ten regulatory review projects accomplished during the year that had met stated criteria such as:
  - substantial burden reduction without reduction in efficacy of the regulatory system;
  - truly effective interagency teamwork;
  - creative substitution of non-regulatory (including information) solutions for regulations; or
  - development and implementation of analytical methodologies that are accurate, comprehensible and administrable.
- o There would be an annual Regulatory Review (a/k/a RegRev) Day, at which the chosen regulatory review projects and the people who did them would be recognized, with the President in attendance.
- o Project team leaders (admittedly, they would be difficult to choose if there really was teamwork, but assume it would be possible) would be invited to become members for one or two years of the Regulatory Review Corps (which would definitely have to be given a catchier name). Probably this group should have no more than ten people in it at a time, but it could be done in two groups of five for overlapping two year terms. The intention would be that the group would include scientists and program people as well as economists and lawyers.
- o The RegRevCorps would be the staff -- working under the guidance of OIRA or the Regulatory Policy Council -- responsible for ferreting out promising review projects, helping coordinate interagency reviews, helping development of government-wide consistent methodologies, and recommending the winners for the following years' awards.
- o RegRevCorps members would not be expected to go back to their old jobs after their term of service was completed. Rather, they would be assisted to getting experience in the legislative branch (or perhaps judicial) or at another agency. They would eventually be expected to take senior career regulatory policy positions at an agency.

Date: 4/13

Time: 12 :00

93 APR 13 P4: 49

THE WHITE HOUSE

FAX COVER SHEET

TO: Regulatory Review Working Group

Phone: (___)_____

FAX: (___) see attached

FROM: Heather Ross

Phone: (202) 456-2802

Pages following cover sheet = 3

REGULATORY REVIEW

Name	Agency	Room	Phone	FAX
Jim Kohlenberger	OVP	286	456-6276	456-6231
Peter Yu	NEC	233	456-2802	456-2223
Sally Katzen		315	663-6306	293-0074
Jack Quinn	OVP	268	456-7022	456-6429
Kumiki Gibson	OVP	265	456-7022	456-6429
Ellen Seidman	NEC	234	456-2802	456-2223
Andy Jaskow	CEA	322	395-5614	395-6947
Joseph Stiglitz	CEA	315	395-5036	395-6947
John Shafer	OEP	356	456-6224	456-2710
Jessica Goldfarb	OVP	286	456-6264	456-6231
Heather Ross	NEC	234	456-2802	456-2223
John Podesta	OSS	WW	456-2702	456-2215
Paul Weinstein	DPC	224	456-7930	456-7739

Regulatory Review - Existing Regulations

Outputs - of initial review activity

1. Process for screening, reviewing and improving body of existing regulations over time.

2. Selected set of early demonstration successes to illustrate what is intended and what can be accomplished, and to lead on to wider, longer-run successes through the application of process 1.

Process 1. informed by:

   a. analysis of success and failure of previous federal regulatory review arrangements and reform efforts

   b. lessons from non-federal regulatory systems

Selection 2. informed by:

   a. specific criteria consistent with anticipated application of process 1.

   b. principles developed to guide both prospective and retrospective review

Criteria - for selection of early demonstrations

- Integrated concept preferred to ad hoc targets of opportunity -- straighten out a body of regulatory activity, addressing interactions and cumulative effects, e.g., for a particular industry or customer group

- Ideally, identify a potentially rewarding body of regulatory activity, where early demonstration of success can be followed up by more ambitious later success

- Searching for some intersection of worthwhile and doable

  worthwhile:
  - who is affected
  - what burdens are lifted
  - how to build upon

  doable:
  - administrative rather than legislative
  - single agency (unless "overlap" is clear winner)
  - ride a wave of current momentum - what's happening now

Organization - of initial review effort

- o Place activity within structure and timeframe of Reinventing Government -
  - provide content to System Reinvention Team 7: Improving Regulatory Systems
  - link administratively and substantively to Reinventing Government suite of activities
  - meet Reinventing Government September reporting timeframe
- o Provide candidate(s) to Reinventing Government for Team 7 leader
  - individual reports administratively to Reinventing Government
  - individual receives substantive guidance from Regulatory Review activity and attends Regulatory Review meetings.
- o Retrospective review process to be laid out in post-September Executive Order
- o Demonstration set selection and development and implementation of ongoing review process to involve regulatory agencies

Timetable

March	Begin Regulatory Review
April	Appoint Reinventing Government Team 7 leader
May	Develop concepts re: process and demonstration targets
	Query agencies re: process and demonstration targets
June	Agree on demonstration targets
July	Circulate draft process; report on precedents and lessons
August	Interagency colloquium, public hearings
September	Circulate final process; report on demonstrations
October	Publish Executive Order on Review of Existing Regulations

MAJOR ISSUES IN REGULATION

1. Standardization -- High Definition Television

2. Natural Monopoly -- e.g. local electric utilities

3. Natural Oligopoly -- e.g. natural gas pipelines

4. Regulation of more competitive markets -- e.g. capital markets, insurance markets

5. Price regulation -- e.g. rate of return, price caps, yardstick regulation

6. Quality standards -- CPSC

7. Health and Safety -- OSHA, NRC

8. Environment -- EPA

9. Consumer protection -- FTC, FDA

- Neil Eisner DOT
- Alex Cristeferos EPA
- Art Frost OIRA & ant reg?
- Don Arbuckle ~~OIRA~~
-

11:30 wed

[DRAFT]

PHILOSOPHY OF REGULATION

When do we consider regulating?

- o A central purpose of regulation is to correct imperfections in the market. The result of market imperfections, or "market failure," will be that desirable social results cannot be achieved by the autonomous workings of the competitive market.

  - Markets may not be sufficiently competitive, thus subjecting consumers to the exercise of market power. The goal of regulation is to act as a substitute for the missing competitive markets.

  - Firms or individuals may take actions that impose costs on others for which they are not compensated, or confer a benefit on others, but do not reap the rewards of that benefit -- effects known as "externalities." In the former case, individuals will engage in an excessive amount of these activities (e.g. pollution), while in the latter case the activity will be underprovided (e.g. basic research). The goal of regulation is to compel private parties to internalize the costs or benefits they impose on others.

  - Because firms or individuals cannot always appropriate the benefits of creating information, the market may underprovide information to consumers. The goal of regulation is require disclosure of information such as through food labeling or truth-in-lending laws.

  - Market failures may also lead to the underprovision of certain products by the private market such as flood insurance or deposit insurance. The government may provide these directly.

- o Even when consumers have full information the government may wish to protect individuals from the risk of injury or when they may not act in their own best interest -- for example by mandating universal education, by enacting seat-belt laws, product safety laws, drug laws or bans on smoking.

How do we regulate?

- o When choosing a regulatory approach to market failure, regulations actions should be based on the following principles:

  - there should be a clear understanding of the market

failure the regulation is attempting to correct.

- the costs of the regulations are justified by their benefits.

- the most cost-effective approach is used in achieving regulatory goals.

- the regulatory objectives are chosen to maximize the net benefits to society -- for both consumers and producers combined.

- the regulations are simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation.

o Systematic procedures should be developed to insure that the principles stated above are followed.

o Direct regulatory solutions, or command and control approaches, discourage efficiency by mandating particular technologies or establishing uniform standards across all firms.

o Direct regulatory measures often require higher levels of intervention than the government can provide efficiently. In particular, government regulators also operate under conditions of imperfect information:

- The costs of data gathering and scientific analysis required to actually solve a market failure must be considered when setting regulatory goals.

- It is difficult, if not impossible, for government to predict all the consequences of regulation.

Alternatives to Direct Regulation

o In markets where consumers are not protected by competition, regulations should be devised to protect consumers while still encouraging firms to reduce costs and to innovate.

o When the goal of regulation is to correct market failures the government should create new markets for previously untraded goods and bads, thus drawing on the market system for regulatory purposes. Alternatives to direct regulation include:

- Establishing and assigning property rights. Establishing property rights encourages individuals to internalize the costs of their actions, while minimizing the need for government action -- for example, establishing property rights in grazing

land or fisheries.

- Using marketable permits. As in direct regulation the government must ascertain the desired outcome, such as the level of pollution, but saleable permits encourage achieving the goal at the lowest overall cost.

- Using taxes to ensure the desired behavior. Taxes provide a system of rewards and penalties, thus using the financial incentives of the firm to achieve the desired behavior at the lowest cost.

Problems with Regulation

o In establishing a regulatory program the Federal government should consider the overall burden of the existing stock of regulations on particular sectors. In particular the form of regulation may actually reduce the burden. Thus consideration should be given to alternative ways that the total regulatory burden can be reduced:

  - using market incentives in place of command and control regulation.

  - eliminating administrative burdens by introducing one-stop shopping in regulation. That is, eliminating overlap in agency jurisdiction over a particular regulatory problem.

o In establishing a regulatory program the Federal government should consider that regulation is a cost of government over and above the size of the Federal budget. Even when accomplished efficiently, regulation has the effect of a hidden tax on firms and individuals, showing up in the form of higher prices and reduced output. Unlike most taxes, which are on-budget, regulations are off-budget.

  - This lack of transparency means that regulatory goals are not subject to the same budgetary tradeoffs as other government programs.

  - The incidence of the tax -- upon whom the burden actually falls -- is often unclear.

o In establishing a regulatory program the Federal government should consider the relationship with State and local regulations.

  - Often, local governments can more effectively respond to problems that arise in their communities. However, in cases where differing

local regulations would interfere with economies of production, the Federal government may be the more efficient regulator.

- The costs and benefits of regulatory competition across States and communities needs to be assessed.

- The issues of regulatory burden imposed on firms by the Federal government also apply to States and local communities.

o The view that the government should intervene because it knows what is in the best interest of individuals risks the danger of imposing the preferences of one group of individuals over another.

o Regulation can affect the profits of private firms. The choice of regulation and regulatory instruments may well be a response to rent-seeking behavior on the part of special interest groups to capture profits. The power of regulation to grant rents results in regulations that benefit particular parties rather than the general welfare. Regulatory policy needs to be attentive to this possibility.

DISCUSSION DRAFT (April 9, 1993)

PRESIDENTIAL REVIEW OF AGENCY RULEMAKING

I. OBJECTIVES

A. Overall Objectives.

Establish consultative, coordinating process to assure effective regulation.
Assure end product is consistent with President's policies.
Assure end product is understandable, justifiable, and reasonable.
Provide a focal point for coordination and substantive consistency.
Simplify rulemaking process while preserving Presidential oversight.
Maximize input at earliest stages to minimize disputes at the end of the process.
Maximize opportunity for public input early in the rulemaking process.

B. Benefits for Institutions

(1) Agencies.

Encourage advance planning.
Encourage management of regulatory process within agency.
Think through how regulatory programs can serve President's economic/social program.
Afford opportunity for coordination with other agencies.
Assure that regulatory actions improve overall quality of life without unnecessary costs.

(2) EOP/WH.

Provide opportunity for early development of policy.
Provide leadership in pursing Administration's regulatory initiatives.
Provide early warning of significant, sensitive regulatory projects.
Assure interagency coordination.
Assure final product meets procedural and substantive standards.

(3) Public/Congress.

Permit public and Congress to participate in formulation of specific regulatory programs.

II. REGULATORY PLANNING MECHANISM

A. Development of Administration's Regulatory Philosophy, Priorities, and Preferences.

[CEA, NEC to provide.]

[To be incorporated in E.O. to provide guidance to agencies. To be supplemented, from time to time, through EOP/WH memos.]

[Meetings between agencies and reviewers to establish collegial working relationships and shared objectives.]

B. Agency Development of Regulatory Plans.

(1) Agency Assumes Responsibility for Preparing Regulatory Plan.

Responsibility consistent with congressional delegations of authority.
Process reflects bottom up development of regulatory program informed by Administration priorities.

(2) Internal Agency Process.

Plan receives Secretarial approval.

Use to manage program.
Use to set institutional priorities.

(3) Content of Agency Regulatory Plan.

Shift from Reagan Administration "Regulatory Program" format to Carter Administration format -- see attached.
Articulate applicable Presidential goals set forth in E.O., as supplemented over time.
Articulate how ongoing significant rulemaking projects (including statutory requirements) will serve these goals.
Include any other regulatory plans -- existing or contemplated.

C. Compilation and Review of Agency Regulatory Plans.

(1) OMB/OIRA as central clearinghouse function.

(2) EOP/WH review -- see options below.

(3) Plans published in Federal Register.
(This would give early warning to other agencies and to public.)

Note: Limit development of regulatory plans to agencies with significant domestic rulemaking authority.

D. Timing.

Agency submission after budget completed.
"Regulatory Plan Year" -- July 1 to following June 30.
Preparation -- March to May.
Publication -- in June.
Preparation times.
Without EOP review, within 2 weeks of receipt from all.
Depending on scope of EOP/WH and interagency review, add 2 to 8 weeks.

E. EOP/WH Review of Agency Regulatory Plans.

The more detailed the review, the higher the likelihood of consistency, the greater WH imprimatur -- but the greater the delay and the greater the accountability without having all the details.

Option 1: Collect/publish plans without any review.

Option 2: Circulate plans to other agencies, with OIRA the clearinghouse.

Option 3: EOP/WH review of agency plans.

Option 4: EOP/WH and interagency review of agency plans.

Option 5: Collect/publish draft plans without any review; 30 or 60 days for public, agency, congressional comment; agency revision combined with internal EOP/WH review; agency publication of Administration regulatory plans in final.

III. REVIEW OF INDIVIDUAL AGENCY RULEMAKING.

A. Nature of Policy Documents Under Review.

Option 1: Informal (§ 553) rulemakings.

Option 2: "Agency statements of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing procedure or practice requirements." Includes informal rulemakings, substantive advance notices of proposed rulemaking (ANPRMs), and other policy documents as requested by agency or EOP/WH.

Option 3: All forms of policy statements, including informal rulemakings, ANPRMs, strategy statements, guidelines, handbooks, policy manuals, enforcement manuals, grant and loan procedures, conditions for financial assistance, press releases and all other documents announcing or implementing regulatory policy that affects the public.

B. Which rulemakings to review.

Option 1: All.

Option 2: Include significant rulemakings identified in agency plans.

Option 3: Include rulemakings with annual effect on economy of over $100 million (or such other sum as decided).

Option 4: Include rulemakings of interest to other agencies.

Option 5: Include rulemakings/guidance relating to "entitlements" (i.e., the budget-related rulemakings/guidance that are not subject to OMB appropriations/apportionment controls.)

Option 6: Include rulemakings/guidance involving designated Presidential priority areas (e.g., health care, education initiatives).

Option 7: Exclude agency organization, management, and personnel policies.

Option 8: Exclude individual determinations (e.g., social security disability adjudications).

Option 9: Exclude independent regulatory commissions/agencies.

Option 10: Exclude national security affairs functions, but --
Retain Corps of Engineers.
Retain DOD/NASA/GSA procurement.

Option 11: Exclude foreign affairs functions, but --
Retain import/export regulations.

Option 12: Exclude specific categories of regulations, where review is not necessary (see attached list of existing exclusions), augmented as necessary.

Option 13: Include or exclude any combination of the above.

Note: Agency and EOP/WH need to know in advance what should be/what need not be submitted for review.

C. Regulatory review criteria.

(1) Process Checklist.

Document sets out basis for need.

Document sets out basis for proposal to solve need.

Document sets out alternatives to achieve same objectives.

Document sets out statement of benefits desired from proposal.

Document sets out statement of costs.

Document sets forth enforcement measures appropriate for State and local governments.

Document provides meaningful opportunity for public comment.

Document can be understood by public.

(2) Substantive Checklist.

Substantive consistency with Presidential program.

Sound basis for findings re --
-- effect on health, safety, and the environment.
-- effect on economy, jobs, competitiveness.
-- any Constitutional or other legal concerns.

Not inconsistent with actions of other agencies.

Better/more effective/creative approach possible.

D. Process issues:

(1) Agency.

Review does not interfere with agency compliance with APA or own rules and procedures.

In case the agency needs to meet a statutory/court-ordered deadline or to act expeditiously to solve health, safety, environmental, or other emergency, the agency needs to allow adequate time for EOP/WH review.

(2) OIRA.

OMB, in coordination when appropriate with OVP, to act as coordinator of interagency reviews.

OMB to act as EOP/WH clearing house for collecting and presenting EOP/WH concerns to agency.

Disclosure.

Gramm compromise endorsed through general statement in E.O.--see attached summary of Gramm disclosure procedures.

Additional disclosure options:

1. Notwithstanding the Wolfe case, OIRA to disclose publicly titles of draft rules submitted for review as they are submitted.

2. Agencies to publish in Federal Register the titles of rulemakings sent to OIRA for review.

3. Notwithstanding the Wolfe case, OIRA to disclose publicly the status of review actions as they are made -- including conclusion of review, suspension of review/return for additional information, return of rule to agency for reconsideration, and at EOP/WH for resolution of any disputes.

4. Agencies to publish notice in Federal Register of OIRA's review actions -- including conclusion of review, suspension of review/return for additional information, return of rule for reconsideration, and at EOP/WH for resolution of any disputes.

5. OIRA Administrator/Deputy Administrator to log the existence of meetings (but not the substance of the discussions) they hold with private individuals and congressional employees relating to specific rulemakings. (No disclosure of meetings with rulemaking agency, other agencies, or EOP/WH.)

(3) EOP/WH.

EOP/WH not to be conduit from outside to agencies -- written material received by EOP/WH from public that is sent to OIRA will be made publicly available in OIRA's reading room and sent to agencies for inclusion in agency rulemaking record.

EOP/WH to preserve President's opportunity to be advised -- no disclosure of consultations/meetings between/among OIRA and EOP/WH staff[, and between EOP/WH and agencies].

E. Timing of review.

Structure review to assure prompt consultation and minimize delay.

10 working days for OIRA screening to --
-- Tell agency whether concerns/no concerns.
-- Tell agency of need for interagency coordination.

60 working days for complete pass-back of OIRA concerns, and interagency consultation. (90 working days for complex, technical issues).

Any extension requires sign-off by OMB Director.

EOP/WH resolution of any disputes to be completed within 10 days, subject to extensions by the Vice President.

F. Resolution of Disputes or Controversial Issues.

Any dispute between OIRA and the agency, or between agencies, would be resolved by the Vice President (or, if necessary, by the President, after receiving a recommendation from the Vice President) at the request of--

1. OIRA/OMB.
2. Head of affected agency.
3. Head of other interested agency.

Appeals to the Vice President not available to the public or Congress.

Vice President to resolve disputes, in consultation with the following EOP/WH offices and others having something to contribute: CEA, NEC, NSC, OEP, OPD, OSTP, OVP, and White House Counsel.

G. General:

Agency is lawful decisionmaker; agency legally responsible for rulemaking. EOP/WH and interagency review is consultative; limited to raising concerns; not to displace statutory authority of agency heads or legal responsibilities of agencies. Review criteria applicable only to the extent permitted by law.

Agency not to publish/announce regulatory policy until review completed and all concerns resolved.

Calendar of Federal Regulations

Federal Register
Vol. 45, No. 228
Monday
November 24, 1980

United States Regulatory Council

EPA—OWWM

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants From Steam Electric Power Plants (40 CFR Part 423)*

Legal Authority

The Clean Water Act, §§ 301, 304, 305, 306, 307, 311, 402, and 504, 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1318, 1321, 1364, 1346.

Reason for Including This Entry

The Environmental Protection Agency is including this entry because of the high public interest in these regulations and because they may have an annual effect on the economy of $100 million or more.

Statement of Problem

The Environmental Protection Agency (EPA), in its efforts to control water pollution under the Clean Water Act, is required to develop technology-based effluent limitations guidelines and standards to control pollutant discharges from the steam electric power generating industry, and review these regulations once every 5 years. We initially promulgated effluent limitations guidelines for this industry on October 8, 1974 that reflected the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), new source performance standards (NSPS), and pretreatment standards for new sources (PSNS). The U.S. Court of Appeals for the Fourth Circuit remanded parts of the guidelines (*Appalachian Power* v. *Train*, 545 F. 2d 1351 (4th Cir. 1976)). The court found the record insufficient with respect to various technical aspects and non-water quality considerations (especially cost data and ultimate disposal of wastes).

We have reviewed the 1974 regulations to reflect updated information and remedy the deficiencies pointed out by the Fourth Circuit Court of Appeals. In addition to the pollutants examined in the previous regulations, we expanded the review to include toxic substances cited in the June 8, 1976 Consent Decree, *Natural Resources Defense Council et al.* v. *Train*, 8 ERC 2120 (D.D.C. 1976). The NPRM was published in the FEDERAL REGISTER on October 14, 1980. We did not include guidelines for thermal discharges in these regulations. The Agency is still considering various thermal options in light of *Appalachian*.

The steam electric generating industry is composed of approximately 850 generating plants nationwide. These plants have extremely large discharge flows, therefore the quantity of pollutants they discharge may be substantial even though the concentration is relatively low. The average discharge flow from a steam electric power plant is 210 million gallons per day. Discharges from the Steam Electric power industry constitute about 15 percent of the total flow in the United States rivers and streams. Pollutants detected in the wastewaters of steam electric plants during an EPA sampling program were total residual chlorine, copper, zinc, nickel, chromium, arsenic, and trihalomethanes.

Alternatives Under Consideration

The Agency considered several wastewater treatment technologies for controlling pollutant discharges from steam electric plants to the Nation's waterways. The primary focus of this effort was to assess the potential control of discharges of toxic substances. In this review of effluent regulations, we focused our efforts on cooling water and ash transport water as the major wastestreams because of their large flows. Over 95 percent of the volume of water used in an average power plant is used as cooling water.

Cooling Water—All steam electric power plants circulate large volumes of water through their condensers in order to condense steam in the turbines. The thermal efficiency of the steam cycle can be greatly reduced if biological growth occurs in the condensers. Plants using chlorine to control biological growth have the potential to discharge total residual chlorine (TRC) and chlorinated compounds into the navigible waters. TRC is a pollutant that has been studied extensively and is known to adversely affect aquatic life.

For regulatory purposes, the Agency separated those power plants with a recirculating cooling tower and those discharging the cooling water without recirculation. The waste streams produced as a result of these operations are cooling tower blowdown and once-through cooling water discharges.

In addition to TRC discharges, plants with cooling towers have the potential to discharge toxic pollutants through chemicals added for cooling tower maintenance.

The technologies that the Agency evaluated for control of pollutants from cooling water included 1) chlorine minimization, 2) dechlorination, 3) alternative chemicals, and 4) mechanical antifouling devices.

Chlorine minimization is a program designed to insure the most efficient use of chlorine and reduce the amount of TRC discharged. Plant personnel conduct a series of tests to determine the minimum

amount of chlorine necessary to control biological growth in the condensors. Many plants undergoing such a program find that chlorine doses can be reduced significantly. Chlorine minimization programs are difficult to conduct at plants with cooling towers since chlorine may also be used for cooling tower maintenance.

Dechlorination is chemical treatment that removes a significant amount of TRC from the cooling water discharge. Although dechlorination reduces the amount of TRC, it does not eliminate it.

Alternatives to chlorine were explored for use in both cooling tower blowdown and once-through cooling water discharges. While adequate substitutes for chlorine were found, they were not viable in all cases, and could not be applied on a national basis. Alternative chemicals were also evaluated for use in cooling towers because other chemicals (besides chlorine) are commonly added to prevent scaling and corrosion in the cooling tower. Many of these chemicals contain priority pollutants. For example, high levels of chromium and zinc are present in cooling tower blowdown only if they were added for cooling tower maintenance. Alternatives to these chemicals were found to be available.

Some plants use mechanical antifouling devices to control biological growth in the condensers. Two types of methods are used. One uses sponge rubber balls that are forced through the tubes under water pressure and then recycled. The second method uses brushes that are installed on the inside of each tube. Although this method eliminates chlorine use, it is expensive to install on existing sources. Furthermore, mechanical antifouling devices are not always adequate substitutes for chlorine.

For plants with once-through cooling water, the Agency has chosen to combine a chlorine minimization program with a maximum limit for TRC of .14 milligrams per liter (mg/1) and dechlorination, if that limit can not be met through minimization only. In this way the Agency assures proper use of chlorine, as well as limiting the addition of dechlorination chemicals.

For plants with cooling towers, the Agency did not require chlorine minimization technique, because it would be unduly complex for this waste stream since chlorine may also be used for cooling tower maintenance. The proposed regulations instead limit the discharge of TRC to .14 mg/l based on dechlorination technology. For control of toxic pollutants discharged from cooling towers, the Agency has chosen alternative chemicals as the best technology to eliminate toxic pollutant discharges. These alternative chemicals effectively and economically protect cooling towers from scaling, corrosion, and biological growth.

Ash Transport Water—For ash transport water (defined below), the Agency was concerned about the presence of inorganic toxic substances. However, the data on fly ash ponds did not demonstrate a consistent pattern of pollutant concentration, and were considered to be statistically inconclusive. Pollutant concentrations in bottom ash transport water were typically lower than those in fly ash transport water.

These pollutants can enter the water because coal or oil that is burned in a steam electric plant's boiler produces varying amounts of ash that require periodic collection and disposal. The relatively fine and light-weight ash is carried from the boiler with the flue gases and collected with air pollution control equipment. This type of ash is called "fly ash." The relatively bulky and heavy ash that settles at the bottom of the boiler's furnace is called "bottom ash." These two types of ash can be transported wet or dry to their ultimate or temporary disposal sites. (Only those plants that transport their ash using water would be affected by effluent regulations.)

The Agency did not propose any further controls for existing sources of fly ash transport water beyond the current regulation. EPA seriously considered proposing no discharge of fly ash transport water but EPA concluded that the extremely high costs to the industry ($3.2 billion in capital costs for 1980–1985) could not be justified in view of the inconclusive nature of the available data regarding the degree of pollutant reduction. The technology base for achieving this option was the use of transport methods that do not require the use of water (dry transport). EPA did not feel that it would be responsible to impose such costly additional requirements in the face of such uncertainty. The Agency is considering further sampling to clarify wastewater characteristics of ash pond discharges. However, the Agency is proposing to prohibit the discharge of fly ash water for all new plants. This is because the technology is clearly demonstrated and available, since about half of the industry already uses dry methods of transport. Moreover, the costs for installing a dry fly ash handling system are not appreciably different than costs to install a wet ash sluicing system in a new plant. We do not anticipate any new sources to discharge their fly ash water to a publicly owned sewage treatment plant.

Bottom Ash—The need to control pollutant discharges from bottom ash transport water was not demonstrated based on the sampling data, since at most plants sampled, the concentrations of pollutants detected in the bottom ash pond were less than the concentrations detected in the plant's inlet water. In addition, the concentrations of these pollutants were not only lower than those detected in fly ash ponds, but also exhibited a greater variability. Thus, we

have proposed to withdraw the current BAT requirement for partial recycle of bottom ash sluice water, since the sampling data suggests that adequate controls are already imposed by the effective BPT technology of settling ponds.

Summary of Benefits

Sectors Affected: The general public; manufacturing of antipollution equipment; and the aquatic environment.

The major benefit of the proposed rule is the improvement of the aquatic environment through the reduction and/or elimination of discharges from steam electric generating facilities. The review found that the chlorine controls were not sufficiently stringent. In addition, toxic pollutant additives were virtually banned from use in cooling towers. Preliminary estimates indicate that the proposed regulations will result in the following reduction or elimination of pollutants by waste stream types:

1. Once Through Cooling Water: 17.4 million pounds per year of total residual chlorine.

2. Cooling Tower Blowdown: a. 30,000 pounds per year of total residual chlorine.

b. 157,000 pounds per year of toxic pollutants (chromium, zinc, chlorinated phenolics, etc.).

Manufacturers of anti-pollution equipment would find increased demand for their products.

Summary of Costs

Sectors Affected: Establishments engaged in the generation, transmission and/or distribution of electric energy for sale (electric services); and users of the electric energy.

On a national basis an estimate of the total capital expenditures required to bring existing plants into compliance with the proposed regulations for the period 1980–1985 equals $120 million (1980 dollars). This represents about 0.05 percent of the total anticipated capital expenditures for the industry during the same period. With the addition of operation and maintenance costs, this means that the average electric bill for consumers would increase by approximately 0.04 percent. The estimated capital expenditures for plants coming on line between 1985 to 1995 are $80 million. None of these requirements is expected to cause plant closings; furthermore, the economic impact is minimal.

Related Regulations and Actions

Internal: The scrubber systems used to comply with air pollution regulations may discharge contaminated water. The proposed requirements of the New Source Performance Standards under § 111 of the Clean Air Act will increase the number of facilities with scrubber systems in the future.

Section 316(b) of the Clean Water Act authorizes the Agency to require the best available technology in the location, design, construction, and capacity of intake structures for cooling water, to minimize adverse environmental impact.

Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the economic and environmental factors associated with various wastewater treatment technologies.

External: The recent emphasis on converting oil-fired power plants to other fuel types and the problems associated with nuclear waste disposal will affect the distribution of generating capacity by fuel types in the industry and, therefore, the amount of pollutants that would be discharged and controlled.

Active Government Collaboration

The Nuclear Regulatory Commission, the Department of Interior, and the Department of Energy have provided assistance by supplying the Agency with information and/or reviewing materials.

Timetable

Public Comment Period—60 days following publication of NPRM.
Final Rule—April 1981.

Available Documents

Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category (EPA 440/1-80/029-b, September 1980).

NPRM—45 FR 68327, October 14, 1980.

Regulatory Analysis—October 1980.

Economic Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category (EPA, August 1980).

Copies of the above reports can be obtained from NTIS or the EPA contact designated below.

Agency Contact

John W. Lum or Teresa Wright, Project Officers
Energy and Mining Branch
Effluent Guidelines Division (WH-552)
Environmental Protection Agency
Washington, DC 20460 (202) 426-4617

EXHIBIT 13. AGENCY RULES EXEMPTED FROM REVIEW PROCEDURES

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service—Special Nutrition program notices that revise reimbursement rates and eligibility criteria for the School Lunch, Child Care Food, and other nutrition programs.

Food and Nutrition Service—Food Stamp program notices that set eligibility criteria and deduction policies.

Agricultural Marketing Service—Regulations that establish voluntary standards for grading the quality of food.

Animal and Plant Health Inspection Service—Rules and notices concerning quarantine actions and related measures to prevent the spread of animal and plant pests and diseases.

Animal and Plant Health Inspection Service—Rules affirming actions taken on an emergency basis if no adverse comments were received.

Rural Electrification Administration—Rules concerning standards and specifications for construction and materials.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration—Certain time-sensitive preseason and inseason Fishery Management Plan regulatory actions that set restrictions on fishing seasons, catch size, and fishing gear.

DEPARTMENT OF ENERGY

Power Marketing Administrations—Regulations issued by various power administrations relating to the sale of electrical power that they produce or market.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining—Actions to approve, or conditionally approve, State regulatory mining actions or amendments to such actions.

Office of Surface Mining—Approval of State mining reclamation plans or amendments.

Office of Surface Mining—Cooperative agreements between OSM and States.

United States Fish and Wildlife Service—Certain parts of the annual migratory bird hunting regulations.

DEPARTMENT OF TRANSPORTATION

All Offices of DOT—Amendments that postpone the compliance dates of regulations already in effect.

Coast Guard—Regatta regulations, safety zone regulations, and security zone regulations.

Coast Guard—Anchorage, drawbridge operations, and inland waterways navigation regulations.

Coast Guard—Regulations specifying amount of separation required between cargoes containing incompatible chemicals.

Federal Aviation Administration—Standard instrument approach procedure regulations, en route altitude regulations, routine air space actions, and airworthiness directives.

National Highway Traffic Safety Administration—Federal Motor Vehicle Safety Standard 109 table of tire sizes.

DEPARTMENT OF THE TREASURY

Internal Revenue Service, Bureau of Alcohol, Tobacco, and Firearms, and Customs Service—Revenue rulings and procedures, Customs decisions, legal determinations, and other similar ruling documents. Major legislative regulations are covered fully.

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances—Actions regarding pesticide tolerances, temporary tolerances, tolerance exemptions, and food additives regulations, except those that make an existing tolerance more stringent.

Office of Pesticides and Toxic Substances—Unconditional approvals of TSCA section 5 test marketing exemptions, and of experimental use permits under FIFRA.

Office of Pesticides and Toxic Substances—Decision documents defining and establishing registration standards; decision documents and termination decisions for the RPAR process; and data call-in requests made under section 3(c)(2)(B) of FIFRA.

Office of Air, Noise, and Radiation—Rules that unconditionally approve revisions to State Implementation Plans.

Office of Air, Noise, and Radiation—Unconditional approvals of equivalent methods for ambient air quality monitoring and of NSPS, NESHAPS, and PSD delegations to States; approvals of carbon monoxide and nitrogen oxide waivers; area designations of air quality planning purposes; and deletions from the NSPS source categories list.

Office of Water—Unconditional approvals of State Water Standards.

Office of Water—Unconditional approval of State underground injection control programs; delegations of NPDES authority to States; deletions from the 307(a) list of toxic pollutants; and suspensions of Toxic Testing Requirements under NPDES.

Office of Solid Waste and Emergency Response—Unconditional approvals of State authorization under RCRA of State solid waste management plans and of hazardous waste delisting petitions under RCRA.

PENSION BENEFIT GUARANTY CORPORATION

Interest Rates—Changes in interest rates on late premium payments and delinquent employer liability payments under sections 6601 and 6621 of the Internal Revenue Code as amended by the Tax Equity and Fiscal Responsibility Act of 1982.

GOVERNMENTWIDE

Office of Federal Procurement Policy—All regulations, except those concerning acquisition of automatic data processing and telecommunications equipment; those implementing and supplementing Federal Acquisition Regulation subparts 15.6 (Source Selection) and 32.5 (Progress Payments Based on Costs); and those implementing and supplementing the Competition in Contracting Act of 1984 (Public Law 98–3691), the Defense Procurement Reform Act of 1984 (Title XII, Public Law 98–525), and the Small Business and Federal Procurement Competition Enforcement Act of 1984 (Public Law 98–577).

OIRA EXECUTIVE ORDER PUBLIC DISCLOSURE

June 13, 1986, OIRA Administrator Wendy Gramm Memo.

- Only OIRA Administrator and Deputy (or designated subordinate) to "communicate" with non-Federal persons concerning draft rules under review.

- OIRA to make available, at end of month, a list of all draft rules for which review concluded, and time taken for review.

- OIRA to send letter to agency explaining reasons for returning rule that is "not consistent" with regulatory review principles.

- OIRA to make available, after publication--

  -- copies of draft ANPRM, NPRM, and final rules;

  -- documents exchanged between OIRA and agency head concerning the draft submitted for review;

  -- draft agency regulatory programs (and changes thereto).

- At option of agency -- now HUD, Labor, DOT, Treasury, and EPA --

  -- OIRA to send agency copies of "all written material" concerning its rules received from non-Federal persons;

  -- OIRA to advise agency of "all ... meetings, telephone calls" concerning rules OIRA has with non-Federal persons;

  -- OIRA to invite agency to "all scheduled meetings" with non-Federal persons concerning agency's rules.

- OIRA to make publicly available--

  -- all written material concerning rules received from non-Federal persons;

  -- list of all meetings and other communications with non-Federal persons if agency opts into extra disclosure provisions.

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

March 16, 1993

cc Messrs. Russ Baum Gaster Podesta orig. sent to me

93 MAR 17 P2:50

NOTE FOR JACK QUINN

FROM: Bob Damus RBD

SUBJECT: Podesta Note and Regulatory Flexibility Proposal

I spoke to Sally Katzen on the two attached items to get her views. She would concur that:

1. The Wendy Gramm memo is still in effect. The memo has not been rescinded by OMB and is still followed. The President's order on regulatory review preserved the status quo on the regulatory review orders pending a review. That would suggest there was no intent to change the Gramm memo at this time, pending review.

Bernie/John →

2. The Reg. Flex amendments are not good policy. Judicial review of reg. flex compliance goes against the idea that reg. flex, like regulatory review, is a managerial tool -- not something to give legal rights and remedies. A 30-day-in-advance rule for sequential review is impractical (e.g., it provides no exceptions) and will slow down regulations, adding yet another layer of review. We will let LRD know of our views on this.

Vince →

Attachment

RUSH

THE WHITE HOUSE
WASHINGTON

TO SALLY KATZEN
BOB DAMUS
OMB

IS THIS OKAY WITH YOU?

Jack Quinn

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

March 15, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-160

93 MAR 15 AM 11:34

TO: Legislative Liaison Officer -

AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
ENERGY - Bob Rabben - (202)586-6718 - 209
HHS - Frances White - (202)690-7760 - 328
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
INTERIOR - Ralph Hill - (202)208-6706 - 329
JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
STATE - Matt Winslow - (202)647-4463 - 225
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
TREASURY - Richard S. Carro - (202)622-1146 - 228
CEA - Francine Obermiller - (202)395-5036 - 242
EPA - Thomas C. Roberts - (202)260-5414 - 326
GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Elizabeth Lindemuth - (202)456-6630 - 429
OPM - James N. Woodruff - (202)606-1424 - 331
FTC - Williams Prendergast - (202)326-2195 - 313

FROM: JAMES J. JUKES (for)
Assistant Director for Legislative Reference

OMB CONTACT: GERRI RATLIFF (395-3883)
Secretary's line (for simple responses): 395-3454

SUBJECT: SBA Proposed Report RE: HR 830, Regulatory Flexibility Amendments Act of 1993

DEADLINE: March 19, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Jeff Hill
Peter Weiss
Don Arbuckle
Doug Criscitello
Adrien Silas
Vince Foster
Bruce Reed
Bob Damus
Steve Aitken
Ahmad Al-Samarrie
Katie McGinty
Jim MacRae
Jack Quinn

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: GERRI RATLIFF
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3883
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

SUBJECT: SBA Proposed Report RE: HR 830, Regulatory Flexibility Amendments Act of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

SBA

Draft

Congressman Thomas W. Ewing
1632 Longworth Building
Washington, D.C. 20515

Dear Congress Ewing:

I am pleased to see that the Regulatory Flexibility Amendments Act of 1993, H.R. 830, has garnered so much bi-partisan support from your colleagues and the small business community.

The Regulatory Flexibility Act (RFA) has played an important role in many rulemakings by insuring that small business' understanding and ability to comply with federal regulations is properly considered during the rulemaking process. However, despite the RFA, all too often the burdens of small business have been underestimated or ignored because there is no enforcement mechanism. I believe the amendments you are proposing, especially those dealing with judicial review and inclusion of indirect effects of regulation within the ambit of RFA consideration, would lessen the excessive cost of government regulation on small business.

I understand that there is some concern within the government about the potential for increased litigation that would be created by H.R. 830, but I believe the added procedural opportunity afforded to small business to pursue regulatory relief is well worth the extra care necessary in issuing rules. These changes will ensure proper agency review of proposed rules by subjecting their small business regulatory analyses to the same kind of judicial scrutiny as other regulatory assumptions, analyses and decisions.

Although I strongly endorse the aforementioned provision, I do have some reservations about the mechanics of prepublication review of agency rulemakings by the Chief Counsel for Advocacy at the Small Business Administration. However, with some modifications, this section could add to the effectiveness of the RFA.

I look forward to working with Congress on this legislation and hope we can act quickly to effect this necessary change.

[Signature]

BILL TEXT Report for H.R.830
As introduced in the House, February 4, 1993

I

103d CONGRESS
1st Session

H. R. 830

To amend title 5, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
February 4, 1993

Mr. Ewing (for himself, Mrs. Meyers of Kansas, Mr. LaFalce, Mr. Skelton, Mr. Combest, Mr. Goodling, Mr. Ramstad, Mr. Shays, Mr. Doolittle, Mr. Montgomery, Mr. Penny, Mr. Baker of Louisiana, Mr. Kyl, Mr. Lightfoot, Mr. Lehman, Mr. Bereuter, Mr. Flake, Mr. Zeliff, Mr. Pete Geren of Texas Mr. Poshard, Mr. Gilman, Mr. Danner, Mr. Sam Johnson of Texas, Mr. Machtley, Mr. Dornan, Mr. DeLay, Mr. Torkildsen, Mr. Porter, Mr. Burton of Indiana, Mr. Hefley, and Mr. Sisisky) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 5, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes.

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

SECTION 1. SHORT TITLE.
This Act may be cited as the "Regulatory Flexibility Amendments Act of 1993".

SEC. 2. JUDICIAL REVIEW.
(a) In General.--Section 611 of title 5, United States Code, is repealed
(b) Conforming Amendment.--The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by striking the item relating to section 611.

SEC. 3. CONSIDERATION OF DIRECT AND INDIRECT EFFECTS OF RULES.
(a) In General.--Title 5, United States Code, is amended by inserting

after section 610 the following new section:

"Sec. 611. Consideration of direct and indirect effects of rules

"In determining under this chapter whether or not a rule is likely to have a significant impact on a substantial number of small entities, an agency shall consider both the direct and indirect effects of the rule.".

(b) Conforming Amendment.--The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by inserting after the item relating to section 610 the following:

"611. Consideration of direct and indirect effects of rules.".

SEC. 4. RULES OPPOSED BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) In General.--Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) Statement of Opposition.--

"(1) Transmittal of proposed rules and initial regulatory flexibility analysis to sba chief counsel for advocacy.--On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration--

"(A) a copy of the proposed rule; and

"(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

"(2) Statement of opposition.--On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of opposition of the proposed rule.

"(3) Response.--If the Chief Counsel for Advocacy transmits to an agency a statement of opposition to a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.".

(b) Conforming Amendment.--Section 603(a) of title 5, United States Code, is amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

SEC. 5. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

FROM THE DESK OF

Jack Quinn 3/16/93

TO: Sally Katzen
Bob Damus

RE: Attached memorandum from John Podesta

I don't know the answer to his question about the Wendy Gramm memo. Do you?

Jack

THE WHITE HOUSE

WASHINGTON

March 13, 1993

MEMORANDUM TO BERNARD NUSSBAUM
STEVE NEUWIRTH
JACK QUINN

FROM: JOHN PODESTA JWP

SUBJECT: WHITE HOUSE REGULATORY REVIEW PROCEDURES

Attached is a copy of Wendy Gramm's 1986 memo outlining procedures for OIRA's review of proposed rules. It supplements Executive Order 12291. In your views, is this memorandum still in effect?

I have also attached a copy of a memorandum from Linda Gustitus, staff director of Senator Carl Levin's Senate Government Relations Subcommittee, which proposes changes to the Gramm procedures.

I strongly agree with points two and five in Linda's memo.

I strongly disagree with points three and four.

I think points one and six are generally good ideas, but need some work to make them practical.

If you would like to discuss these matters, please call me at extension 2702.

Jack, you may also want to be in touch with Linda directly.

cc: Michael Waldman

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

JUN 13 1986

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES SUBJECT TO EXECUTIVE ORDER NOs. 12291 and 12498

FROM: Wendy L. Gramm, Administrator, OIRA wlg

SUBJECT: Additional procedures concerning OIRA reviews under Executive Order Nos. 12291 and 12498

From the time the President signed Executive Order No. 12291 on February 17, 1981, OMB has worked with the Departments and Agencies to develop and implement various procedures concerning the review of draft rules by the Office of Information and Regulatory Affairs (OIRA). We have also developed trial procedures and supported legislative proposals concerning our reviews as we have gained experience with these Executive Orders. For example last year, we implemented on a pilot basis with the Environmental Protection Agency additional procedures concerning OIRA's communications with persons outside the Federal Government.

We have also supported an American Bar Association Resolution that endorsed the President's regulatory review efforts and recommended that more information concerning our reviews be made available to Congress and the public.

The purpose of this memorandum is to advise you of additional procedures that we have determined, as a matter of administrative discretion, to implement concerning our review of draft rules under Executive Order No. 12291 and to set forth our policy on disclosure of agency regulatory program drafts under Executive Order No. 12498.

Current Procedures

These new procedures supplement our current procedures. As you are aware, Executive Order No. 12291 establishes certain procedures; the Administrative Procedure Act sets forth procedural and substantive requirements that govern agency action; other statutes establish procedures; and OIRA has adopted its own internal rules concerning its review of draft rules under Executive Order No. 12291. Furthermore, Departments and Agencies usually have established rules or practices to implement their rulemaking activities.

Attached to this memorandum are copies of some of the relevant materials concerning our reviews and procedures. Several of the most important features of these current procedures are:

Reviews under Executive Order No. 12291

- Rules must meet statutory requirements. Executive Order No. 12291 reviews cannot result in rules not authorized by law or rules that do not carry out statutory requirements.

- Rulemaking decisions are made by agency heads. Executive Order No. 12291 makes it clear that the rulemaking authority of the agency head is not displaced by the Order.

- Rules must be based on the agency record. Executive Order No. 12291 cannot cause rulemaking decisions that are not supported by the agency rulemaking record. The law requires that all agency decisions must be rationally based on information in the agency record.

- Requirements of Executive Order No. 12291 apply only to the extent permitted by law. If there is a conflict between the Executive Order or the President's regulatory principles in Executive Order No. 12291 and the law, the law governs.

Current OIRA Procedures

- Only the Administrator and Deputy Administrator within OIRA (or someone specifically designated by them) may communicate with someone who is not employed by the Federal Government on regulations submitted to OIRA for review under Executive Order No. 12291.

- Written materials received from anyone not employed by the Federal Government are made available in OIRA's public reading room for review by the public.

- OMB has advised persons who wish to send us information about regulatory proposals to send information to the rulemaking agency, with a copy to us, so that the material may be made a part of the agency record.

- In general, OIRA provides written reasons to the agency whenever OIRA returns a regulation to an agency for further review because it is not consistent with the President's regulatory principles.

- OIRA issues full reports annually on the disposition of all rules reviewed under Executive Order No. 12291, including a list of all returned rules.

New Procedures

1. OIRA will make available, upon written request made to OIRA after publication of an ANPRM or NPRM in the Federal Register, copies of any draft of the ANPRM or NPRM submitted for OIRA's review under Executive Order No. 12291;

2. Similarly, OIRA will make available, upon written request made to OIRA after publication of the final rule in the Federal Register, copies of any draft of the final rule submitted for OIRA's review under Executive Order No. 12291;

3. OIRA will make available, upon written request made to OIRA after the ANPRM, NPRM or the final rule is published in the Federal Register, all written correspondence concerning the draft submitted for OIRA's review under Executive Order No. 12291 that is exchanged between OIRA and the agency head;

These procedures are derived from provisions in S. 2433, as reported from the Senate Governmental Affairs Committee, with Administration support, in 1984. The Report on S. 2433 (No. 98-576, 98th Congress, 2d. Sess.) contains explanatory material as to how these provisions would have been interpreted had S. 2433 been enacted. We will be guided by that material in implementing these first three provisions.

4. OIRA will send EPA copies of all written material concerning EPA rules that OIRA receives from persons who are not employees of the Federal Government;

5. OIRA will advise EPA of all oral communications concerning EPA's rules, e.g., meetings, telephone calls, that OIRA (i.e., the Administrator and Deputy Administrator) has with persons who are not employees of the Federal Government; and

6. OIRA will invite EPA to all scheduled meetings with such persons concerning EPA's rules;

In May 1985, we instituted with EPA on a trial basis other procedures to better conform our Executive Order No. 12291 review procedures to EPA's somewhat unique internal procedures and statutory provisions concerning rulemaking. (See attached letter dated May 30, 1985, Attachment D). These procedures are practical, and EPA believes that they are useful. This Memorandum revises those procedures with EPA and makes them a part of OIRA's current procedures.

(Note: These procedures do not apply to information collection requests under the Paperwork Reduction Act of 1980, even if such requests are a part of a proposed agency rule. Other procedures apply to such matters, see 5 CFR Part 1320.)

7. OIRA will apply these procedures (#4 through #6) to any other Department or Agency that is subject to Executive Order No. 12291 if that agency elects to institute these procedures, or any part of them.

Procedures #4 through #6 presently apply only to EPA. Although patterned upon EPA's statutory and internal procedures nonetheless, OIRA is prepared to extend these procedures to other agencies if the head of the agency so requests.

In addition,

8. OIRA will make available upon written request to OIRA made after the Regulatory Program is published, any agency draft submission sent to OIRA under Executive Order No. 12498;

9. OIRA will continue to publish a complete annual accounting of Executive Order No. 12291 activities;

10. OIRA will make available upon written request to OIRA made after the end of a calendar month, a list of all draft ANPRMs, NPRMs and draft final rules for which OIRA has completed review under Executive Order No. 12291 during the preceding month (and the length of our review for each); and

11. OIRA will place in its public reading room: all written material received from persons outside the Federal Government concerning agency rules; a list of all meetings with persons outside the Federal Government pertaining to rules of an agency if that agency elects to participate in procedure #6; and a list of all other communications with persons outside the Federal Government pertaining to rules of any agency if that agency elects to participate in procedure #5.

These procedures do not provide for exemptions for such matters as national security information, criminal investigation information or confidential business information because we have not received such information during our reviews under Executive Order Nos. 12291 and 12498. If we do receive such information, however, that presents questions of the propriety of its release, we will discuss the matter with the Attorney General and the Senate Governmental Affairs Committee.

These new procedures and OIRA's existing procedures are intended only to improve the internal management of the Federal Government, and are not intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers or any person.

Attachments

A - Department of Justice/OLC Opinion dtd 2/13/81
B - Executive Order No. 12291
C - Executive Order No. 12498
D - OIRA Procedures #3

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— RACG
— Key Council

12291

→ OIRA

review & coordinate rules

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review + coordinate science

(A) regulatory calendar

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