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March 25, 1993

MEMORANDUM

TO: Mss. Laura Tyson Messrs. Leon Panetta
 Carol Rasco Tony Lake
 Katie McGinty Robert Rubin
 Sally Katzen Jack Gibbons

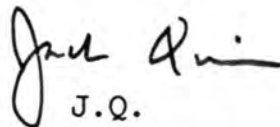
FROM: Jack Quinn
 Counsel to the Vice President

RE: Regulatory Review

Attached is a discussion draft of a proposal for regulatory planning and review. This approach has been reviewed and approved in concept by the President and the Chief of Staff, and they and the Vice President expect us to build upon it and report back to them with a more expansive set of recommendations.

In order to begin the process of developing this proposal further, we will meet at 3:30 p.m. on Monday, March 29, in the Vice President's ceremonial office (Rm. 272-OEOB). If you cannot attend, you are welcome to send a designee.

Many thanks.


J.Q.

Attachment

cc: Mack McLarty
 Mark Gearan
 Alice Rivlin
 Bernard Nussbaum
 John Podesta
 Greg Simon
 Phil Lader
 Bruce Reed
 Joe Stiglitz
 Ellen Seidman

March 26, 1993

Regulatory Review Reform

Regulatory review reform is a vital part of both our commitment to put people first and our mission to reinvent government. This document sets forth an organizational framework to govern regulatory review in the Clinton-Gore Administration. It also incorporates and supplements the attached regulatory review principles drafted by OMB.

1. In the future, regulatory review must be carried out within the framework of a process that reflects major reform. Among other changes, the process must be more open to public view than has been the case in the recent past. And, the process must be accessible on equal terms to all interested parties; it must not provide special access -- as it has in the past -- to narrow interests whose goal is to subvert agency implementation of statutory mandates. The process must also be streamlined to minimize the delays it creates in the rulemaking process. Finally, regulatory review must be guided by the policy objectives of the new Administration and a regulatory philosophy that encourages innovation, flexibility and negotiation in the rulemaking process.
2. On a day-to-day basis, the regulatory review process should be carried out by OIRA. The work of OIRA should

be guided and supplemented by a regulatory planning and review committee that would have the following functions:

- a. to review, on a periodic basis, the regulatory agendas and priorities of the departments and agencies in order to (i) ensure that they reflect the President's policies and (ii) identify emerging regulatory issues that are likely either to create conflict within the government or to have exceptionally significant effect on the economy, the environment, public health or safety, American competitiveness or competition or the efficient functioning of markets;
- b. to facilitate resolution of matters that create conflicts between departments, or between OMB and a department; monitor the regulatory process with regard to exceptionally significant initiatives; encourage the use of negotiated rulemaking and other innovative regulatory techniques; and
- c. to provide to the President recommendations for his resolution of regulatory conflicts that do not lend themselves to resolution at the OIRA or review committee levels.

The committee process of reviewing rulemaking proceedings would be available only to heads of government agencies, the OMB Director and the Director

of OIRA. Private parties would not be entitled to seek review of regulatory matters at the White House level.

3. The planning and review committee would be chaired by the Vice President and include the Chief of Staff (or his deputy); the Chair of the Council of Economic Advisers (or a member of the Council designated by the Chair); the Director of Office of Management & Budget (or his deputy); the Director of the National Economic Council (or his designee); the Domestic Policy Adviser (or her deputy); the National Security Advisor (or his deputy); the Director of the Office of Science & Technology Policy; the Director of the Office on Environmental Policy; and any other agency and Departmental representatives as are invited by the Vice President to serve on an ad hoc basis. Members of the committee would be permitted to act through an authorized designee, and the committee would have a small staff commensurate with its modest responsibilities.
4. As an initial matter, the committee should form a working group of staff designees to make recommendations to the committee with respect to implementing the proposals described above as well as --

- a. the details of a new Executive Order to replace or revise the Orders that presently govern the regulatory review process;
 - b. the process by which the regulatory agendas and priorities required of each Department and agency will be prepared, submitted, evaluated and acted upon by the committee;
 - c. the procedures by which disputed or exceptionally significant regulatory issues are identified and brought before the committee (or review subcommittees made up of some, but not necessarily all, committee members or their designees); and
 - d. the manner in which the regulatory review process will be opened to public scrutiny and made more accountable by the application of "sunshine" rules that, among other things, require the disclosure of all non-governmental contacts on regulatory review matters while preserving the confidentiality of intra-governmental deliberations and communications.
5. The new regulatory review Executive Order should outline a philosophy of openness, efficiency, economy, fairness and "putting people first." As an integral part of the effort to reinvent government, the new review process should stress the Administration's commitments to --

- a. vindicating constitutional and statutory rights;
- b. making the process more responsive and accessible to the citizenry it serves;
- c. the efficient functioning of markets and the economy;
- d. improved quality of life, preservation of the natural environment, efficient and rational use of the world's resources, enhancing the health and safety of the American people as well as ensuring that those who must comply with regulatory requirements are not burdened by unnecessary or unjustified costs of compliance.
- e. streamlining the regulatory process to reduce significantly the number of proposed rules reviewed by OIRA each year;
- f. discouraging unnecessary litigation and administrative proceedings; and
- g. easing the burden on state and local government.

PRINCIPLES OF REGULATORY REVIEW

- A new executive order should be issued that would replace existing executive orders on regulatory review. The new executive order would implement the regulatory principles set forth below.
- The purpose of regulatory review is to help regulatory agencies carry out their statutory functions effectively and in a manner consistent with the Administration's overall regulatory policy; it should not usurp or duplicate agency regulatory functions.
- Regulatory review should resolve conflicts among federal agencies to ensure that citizens are not burdened with duplicative or inconsistent regulations emanating from different agencies.
- Regulatory review should reduce the total burden of regulation on the economy by ensuring that the costs of regulations are justified by their benefits, that innovative and less costly approaches to meeting policy goals have been considered, and that regulations are as simple and easy to understand as possible.
- Regulatory review can provide a useful management function not only by identifying in advance particularly significant rules so that they may be issued and reviewed in an orderly and expeditious manner, but also in identifying those areas where a number of agencies have a legitimate interest.
- Regulatory review should be as expeditious as possible; deadlines for review should be set and enforced. To ensure timely review, there should be early consultation and coordination between OMB and the agencies.
- Regulatory review should be fair; there should be no opportunity for private parties to subvert the regulatory process, and the procedures adopted should reflect the value of openness.
- OMB and the agencies should strive to resolve all issues raised during review without the necessity of appeal. In the exceptional case where issues remain unresolved after OMB review, those issues should be presented for resolution to the Vice President, or if necessary, to the President.

Date:

4/16

Time:

4:00 PM

THE WHITE HOUSE

FAX COVER SHEET

TO:

Regulatory Reform Working Group

Phone:

() _____

FAX:

() See attached

FROM:

Ellen Seidman

Phone:

(202) 456-2802

Attached is options paper on regulations review that we promised.

Pages following cover sheet = 6

REGULATORY REVIEW

<u>Name</u>	<u>Agency</u>	<u>Room</u>	<u>Phone</u>	<u>FAX</u>
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

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 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
- 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 changed; 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 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, 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

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

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

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

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

Procter & Gamble

EDWIN L. BEHRENS
Director
National Government Relations

March 10, 1993

93 MAR 15 AID: 58

Mr. John Podesta
Assistant to the President
and Staff Secretary
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear John:

It was good seeing you last night at Sen. Strom Thurmond's birthday party. I particularly appreciated your seeking me out of the crowd to acknowledge my note; but I was pleased, in turn, to receive your nice note today.

With respect to our brief discussion on "regulatory review," attached are my recommendations, which I provided Tom Grumbly. I am encouraged to know that discussions continue within the Administration; hopefully, the contents of the memo might be of some use to you in your consideration of how to move this issue forward. As discussed, I believe a process along the lines outlined here will help contribute to "good government" and work, importantly, to the benefit and advantage of President Clinton.

Again, good seeing you; you have my very best wishes for every success.

Very truly yours,

Edwin L. Behrens

ELB:ddd

f-

Procter & Gamble

EDWIN L. BEHRENS
Director
National Government Relations

January 19, 1993

Mr. Thomas Grumbly, Deputy Coordinator
Natural Resources Cluster
Presidential Transition Office
1120 Vermont Ave., NW
Washington, D.C. 20270

Dear Tom:

First, I want to thank you on behalf of both Procter & Gamble and the American Industrial Health Council (AIHC) for your generous investment in time meeting with us in your office Friday, January 15, 1993. This is to respond to your request for input regarding the establishment of a "regulatory review" function within the new Administration. I am offering informal comments based on my own personal experience gained during a number of years that I both observed and helped contribute to the evolution of the concept.

As you know, Tom, I was involved in activities related to "regulatory reform" both in my capacity as a representative for Procter & Gamble and as Chairman of the Public Affairs Committee for the AIHC. These activities included "regulatory reform" as a legislative issue during the late 1970s, and as a matter of organizational interest to the Carter and Reagan Administrations. During those years, I observed the function perform both within the White House (e.g., Council of Economic Advisors, the so-called Regulatory Council) and with the regulatory agencies themselves assuming coordination responsibilities (e.g., Inter-agency Regulatory Liaison Group [IRLG]) -- all during the Carter years. President Reagan, of course, established the function within OMB (within the Office of Information and Regulatory Affairs [OIRA]) via the combined authorities of the Paper Work Reduction Act and a series of Executive Orders. President Bush continued the OIRA function and also formed the Council of Competitiveness under the Office of the Vice President. (Due to changes in my own responsibilities, my personal involvement and familiarity with the Council on Competitiveness is substantially less than that experienced with the "regulatory review" functions for the Carter and Reagan years.)

The concept of a "regulatory review" function is not without controversy. On the other hand, the function has also demonstrated its effectiveness and value in helping to contribute to the development of good regulations, where regulations are warranted. This has now been demonstrated through a series of Administrations on a bipartisan basis. The function has accomplished this by providing a basis for (a) coordinating regulatory issues across agencies where there is a potential for inter-agency impact; (b) ensuring the consideration of potential economic impacts for planned, major new regulations by providing for balance in their

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cost/effectiveness; and (c) for ensuring that any potential new regulations are substantially based on "sound science."

I believe history demonstrates that the various Administrations, both Democratic and Republican, found these attributes important both politically and administratively in contributing to the development of broad governmental policies. This is because the agencies often did not apply these national administrative criteria when developing new regulations pursuant to their respective statutory mandates.

In my view:

1. A "regulatory review" mechanism should be established within the Clinton Administration.
2. The mechanism should be established centrally and managed out of the White House. Because regulations can have a major impact on a President's broader policy and political interests, a central mechanism is necessary. The coordinating "regulatory review" mechanism should be located within the Executive Offices of the President to ensure that the broader political and policy interests of the Chief Executive are well served.
3. The mechanism should be established within OMB. The "regulatory review" function should be located where it can have structure within an established administrative framework capable of working across the agencies. For both administrative efficiency and leverage, I believe this argues for OMB.¹

However, providing structure within an existing framework is not only important for reasons of leverage and administrative efficiency. Effectiveness is also served, as it conveys a sense of permanency and signals a commitment by the President to the "regulatory review" concept. (Importantly, the Administration should avoid having the "regulatory review" mechanism simply reporting to any given senior official on an "ad hoc" basis. The mechanism needs the continuity of structure for effectiveness, but also for protection from undue political interference.)

4. The "regulatory review" mechanism should be established by Executive Order, preserving the organizational strengths which have evolved through the years, but also addressing any perceived deficiencies in implementation or operation.

Specifically, the Executive Order should define:

¹This recommendation would be greatly facilitated by the Administration's working with the Congress to resolve the questions which serve as an impediment to the reauthorization of the Paper Work Reduction Act.

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- A. The mission of the "regulatory review" function -- (e.g., to help contribute to sound and scientifically-based regulations consistent with the over-riding policies and priorities of the Clinton Administration). Importantly, the intent of the function should be to result in good, well-balanced regulations, where regulations are warranted. The purpose of the "regulatory review" mechanism is to help facilitate good government by helping to ensure that societal interests are achieved through the most efficient and effective means. This includes encouraging the achievement of desired national or regulatory goals by advancing alternatives to conventional "command and control" approaches to federal regulation; reducing the growth of inefficient bureaucratic oversight and the burden of paper-work; and avoiding undue transactional costs (e.g., excessive use of regulatory "permits.")
 - B. The process for public participation should be described and the status (and timing) for the results of any review should be clarified as a matter of record. (For example, comments and advice relating to particular regulations should be a matter of record; in contrast, discussions of Administration policies and general priorities may or may not be appropriate for public record.);
 - C. The criteria for review should be well identified. (Executive Orders issued by Presidents Carter, Reagan, and Bush all contained parameters outlining the criteria to be used during the review of potential new regulations.)
5. An Executive Order establishing the Administration's overall policies for the "regulatory review" function should be issued as soon as possible.²
 6. OMB's oversight function for potential new regulations should be supported by a small, but excellent science function within the Office of Science and Technology Policy (OSTP) serving under the Science Advisor to the President.³ Science and policy are conceptually separate, but inter-related. Specifically, the President, through OMB, but in consultation with OSTP, should ensure the adequacy of science serving as the basis for planned, major new regulatory actions. (This would generally involve a purely procedural review early in the regulatory process to ensure that the agencies used appropriate means to ensure the

²President Reagan issued his Executive Order 12291 on February 17, 1981. Guidelines for the implementation and subsequent Executive Orders refining the scope of the regulatory review mechanisms issued from time to time in subsequent years (e.g., "Regulations that seek to reduce health or safety risks should be based upon scientific risk assessment procedures, and should address risks that are real and significant rather than hypothetical or remote": Executive Order 12498; "Regulatory Planning Process" -- "Guidelines": January 4, 1985.)

³Recommendations offered to previous Administrations by the American Industrial Health Council.

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adequacy of the science underlying the planned regulations [e.g., utilizing panels of independent scientific experts, such as EPA's Science Advisory Panel]. This could also provide leadership to assure that scientific advances are incorporated in regulatory risk assessment methodologies by establishing contacts between government scientists and leading academic, industrial, and public interest scientists to keep abreast of the latest scientific information.)

Implementation of this recommendation should not require any substantial increase in the number of scientists within the Executive Office; neither should it involve increases in appropriations or budget requirements for the Executive Offices. The authorities already exist for OSTP to serve as a coordinating mechanism drawing upon scientific resources from among the various departments and agencies of the federal government.⁴

It is important, however, that the Science Advisor to the President be supported by distinguished and able expertise in the life sciences, preferably as Deputy Director -- OSTP. Models for the value of such support in life sciences were demonstrated by Dr. Gil Omenn during the Carter Administration and, again, by Dr. Bernadine Healy during the Reagan years. (I understand the FCCSET authority has gone relatively unused with reference to "regulatory review" during the Bush Administration.)

7. Inter-agency approaches requiring substantial dependence upon new developments in science should be encouraged by creating specific coordinating mechanisms across the agencies when warranted. The logical place for leadership is OSTP, as an Executive function.⁵

The President should establish a mechanism for coordinating inter-agency policy-development and scientific review to guide and coordinate agency actions on those occasions where a major generic regulatory question (e.g., biotechnology, cancer policy, etc.) is to be considered. This is particularly important when a number of separate agencies are likely to be involved, respectively, in an issue and where major economic, social or political dislocations are likely to occur.

Biotechnology Coordination Example -- OSTP: A comprehensive policy approach to biotechnology was coordinated within the Executive branch by OSTP for the Reagan Administration. This effort was initiated to ensure a balanced, effective and rational

⁴Attached to this memorandum is a coordination approach for "cross cutting" scientific, engineering and technology based issues available to the Clinton Administration. The Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) is established pursuant to Public Law 94-282, Title V of the "National Science and Technology Policy Organization and Priorities Act of 1976."

⁵Recommendations offered to previous Administrations by the American Industrial Health Council.

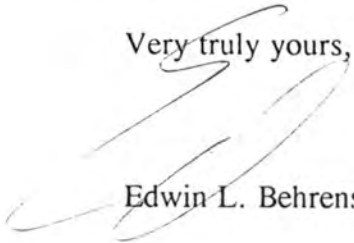
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approach in regulating the products of this new technology. This approach facilitated the protection of human health and the environment, while yet permitting rapid progress for a new and potentially important industry promising enormous economic, competitive and health benefits to the nation.⁶

Again, I want to thank you for your time and hope these comments are helpful.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'E. Behrens', written over the typed name.

Edwin L. Behrens

ELB:ddd

cc: J. Gibbons

⁶BioTechnology Inter-Agency Coordination Reference: 48 FR 50856 (12/31/84).

CHARTER

FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

The Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) is established pursuant to Public Law 94-282, Title V of the "National Science and Technology Policy Organization and Priorities Act of 1976" to consider cross-cutting science, engineering and technology issues. Specifically,

The Council shall consider problems and developments in the fields of science, engineering, technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designed to:

- (1) provide more effective planning and administration of Federal scientific, engineering, and technological programs,
- (2) identify research needs including areas requiring additional emphasis,
- (3) achieve more effective utilization of the scientific, engineering and technological resources and facilities of Federal agencies, including the elimination of unwarranted duplication, and
- (4) further international cooperation in science, engineering, and technology.

OBJECTIVES

In fulfilling this mandate, the FCCSET's two major objectives are:

- o to coordinate science, engineering and technology activities affecting more than one Federal agency and surface and resolve science, engineering and technology policy issues with respect to those activities.
- o to develop authoritative scientific, engineering and technological expertise and advice for the Executive Branch.

FUNCTIONS

To accomplish these two objectives the FCCSET will:

- o serve as a forum for coordinating science, engineering and technology programs affecting more than one Federal agency, sharing information, reviewing and implementing national and international policy objectives and developing consensuses with respect to science, engineering and technology activities;
- o identify research and development needs and priorities;
- o issue reports, studies and assessments of current scientific, engineering and technological capabilities in fields of research and development of concern to the Executive Branch;
- o inform other policy making bodies of review, studies and analyses underway;
- o identify science, engineering and technology issues and concerns of importance to the nation and give expertise and advice to policy bodies;
- o work closely with the Office of Management and Budget in developing and reviewing annual and long-range Federal budget plans in selected cross-cutting areas of science, engineering and technology;
- o improve planning, coordination and communication among Federal agencies engaged in science, engineering and technology.

ADMINISTRATIVE PROVISIONS

To accomplish these functions the FCCSET is authorized to:

- o detail employees to the Council to perform such functions, consistent with the purposes of the FCCSET, as the Chairman may assign to them;
- o establish committees for the purposes of conducting studies, making reports, coordinating Federal science, technology and engineering activities that involve more than one Federal agency, and making recommendations to the FCCSET;
- o develop, review on an annual basis, charters for committees, and assign high priority agenda items as necessary;
- o Council meetings shall be called by the Chairman as deemed appropriate and such agency member shall attend at a senior policy level;
- o Council proceedings, studies and reports, either preliminary or final, shall be printed and distributed only with the Chairman's authorization.

MEMBERSHIP

The Council shall be chaired by the Director of the Office of Science and Technology Policy and shall be composed of one senior policy level representative of each of the following Federal agencies:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of State
Department of Transportation
Department of Veteran's Administration
National Aeronautics and Space Administration
National Science Foundation
Environmental Protection Agency

Ex-Officio Members:

Director, Office of Management and Budget
Assistant to the President for National Security Affairs

Other agencies may be requested to participate in meetings of the Council concerned with matters of substantial interest to such agency.

DETERMINATION

I hereby approve and adopt this Charter which is determined to be consistent with PL-94-282 which establishes the FCCSET.

Approved:



D. Allan Bromley
Chairman, Federal Coordinating
Council for Science, Engineering
and Technology

June 6, 1990

Date:

MEMBERS OF THE
FEDERAL COORDINATING COUNCIL FOR
SCIENCE, ENGINEERING AND TECHNOLOGY

Chairman

The Honorable D. Allan Bromley
Assistant to the President and Director
for Science and Technology
Office of Science and Technology Policy
358 Old Executive Office Building
Washington, D.C. 20506

Members

The Honorable Manuel Lujan, Jr.
Secretary of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

The Honorable Clayton Yeutter
Secretary of Agriculture
12th Street and Jefferson Drive, S.W.
Washington, D.C. 20250

The Honorable Louis W. Sullivan
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20585

The Honorable James D. Watkins
Secretary of Energy
1000 Independence Avenue, S.W.
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Invited Guests

Richard Darman
Director
Office of Management and Budget

Stephen Danzansky
Deputy Assistant to the President
Director of Cabinet Affairs

Roger Porter
Assistant to the President
for Economic and Domestic Policy

Brent Scowcroft
Assistant to the President
for National Security Affairs

Michael Boskin
Chairman
Council of Economic Advisers

Michael Deland
Chairman
Council of Environmental Quality

DRAFT

Revised

File
regulatory
review

March 9, 1993

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: BERNARD W. NUSSBAUM
COUNSEL TO THE PRESIDENT

STEPHEN R. NEUWIRTH
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: Prohibited Contacts with Agencies:
Follow-up Memorandum

As discussed in our memorandum of February 22, 1993 (copy attached), it is important that all members of the White House staff recognize that there are significant restrictions on the kinds of communications a member of the White House staff may have with independent regulatory agencies, executive branch agencies and their components. It is also important that senior members of the White House staff ensure compliance with these restrictions within their offices.

This memorandum is intended to clarify certain issues discussed in our February 22 memorandum. The following points are intended to supplement, not replace, our February 22 memorandum, and the February 22 memorandum should continue to be consulted for the broader range of topics it covers.

The rules discussed below and in our original memorandum are intended to provide guidance in the absence of any other formalized process for White House input in regulatory matters. As noted in our February 22 memorandum, the President and Vice-President are presently considering certain changes to the regulatory review process, and further instructions on contacts with regulatory agencies may be forthcoming as those changes are adopted. Moreover, these rules do not overturn those existing Executive Orders that provide mechanisms for regulatory review (particularly defining the role of the Office of Management and Budget). The procedures set forth in those orders can continue to be followed.

1. As a general rule, no member of the White House staff should contact any independent agency (or its components) with respect to any pending adjudicative or investigative matter.

It may be appropriate in certain circumstances for White House staff to discuss rulemaking matters with an independent agency; but prior to doing so, White House staff members must first consult with the Counsel's office. White House staff members should also consult with the Counsel's office before discussing general policy matters, or administrative or legislative issues, with an independent agency. Such consultation with the Counsel's office can address broad areas of ongoing discussion. (A list of independent agencies is set forth on page 2 of our February 22 memorandum.)

2. If an independent agency contacts a member of the White House staff for information, it is normally appropriate for the White House staff member to respond to such an inquiry. It is important, however, that no such discussions occur if (a) the White House staff member (or a relative, friend or business associate) has a personal interest in the matter at issue; (b) the inquiry relates to a particular rulemaking matter and the White House staff member is aware the private parties have been lobbying the White House with respect to that matter; (c) the inquiry relates to a particular adjudicative or investigative matter. Furthermore, in responding to such inquiries, it is important that White House staff members respond only to the specific inquiry, and not have discussions that would otherwise be prohibited without prior Counsel's office approval.

3. As a general rule, no member of the White House staff should contact any executive branch agency (or its components) with respect to any pending adjudicative or investigative matter. In some circumstances, it may be appropriate for White House staff to have discussions with executive branch agencies concerning rulemaking; but prior to doing so, White House staff members should first consult with the Counsel's office. The purpose of such consultation is to ensure that no private parties are receiving preferential treatment, or having undue influence upon, the rulemaking process. (A list of executive branch agencies with significant regulatory or adjudicative functions is set forth on page 3 of our February 22 memorandum.)

4. As a general rule, no clearance is necessary before a member of the White House staff contacts an executive branch agency to discuss general policy matters or administrative, executive or legislative issues. Keep in mind, however, that such discussions become inappropriate when (a) the White House staff member (or a relative, friend or business associate) has a personal financial interest in the matter being discussed or (b) the White House staff member is, or appears to be, acting on behalf of a private party that has a financial interest in the matter being discussed.

5. White House staff should confer with the Counsel's office before contacting independent or executive agencies with respect to particular individuals. Moreover, White House staff should be sensitive to the constraints placed on agencies by the provisions of the Privacy Act of 1974.

6. Agencies in the intelligence community should not be contacted directly without first coordinating any such contacts with the Assistant to the President for National Security Affairs. Where issues of individual privacy arise, the Counsel to the President should also be contacted.

7. No member of the White House staff should contact any procurement officer about a contract in which that staff member has a personal financial interest or in which a relative, friend or business associate has a financial interest. Moreover, if contacts are made in circumstances where no such financial interests are present, (a) such contacts should, to the extent possible, be made after the contracting procedure is completed and (b) the lack of such financial interest should be made known to those receiving the communication so that unintended inferences do not arise. To avoid even the appearance of impropriety in procurement, the Counsel's office should be consulted prior to any White House staff contacts on procurement matters.

8. Special rules apply to contacts by White House staff with the Department of Justice and with the Department of the Treasury. Those rules are set forth on pages 5 and 6 of our February 22 memorandum. Note that members of the White House staff may communicate directly with either Department with respect to policy, legislative or budgetary matters.

9. The rules governing contacts with agencies apply fully to matters concerning airlines and the airline industry. Private parties attempting to solicit White House support on domestic airline regulatory matters should generally be referred to the agency with rulemaking or regulatory authority. In addition, White House staff members must always refuse to discuss with interested private parties cases subject to the President's approval under Section 801 of the Federal Aviation Act (concerning Presidential review of international aviation decisions). The Counsel's office should be consulted before a member of the White House staff has discussions with parties interested in pending regulatory matters affecting an airline or airlines.

June 22, 1993

*File
regulatory
reform*

MEMORANDUM FOR THE REGULATORY REVIEW WORKING GROUP

33 JUN 22 P2:48

FROM: KUMIKI GIBSON

RE: BUSINESS ROUNDTABLE

Attached are some materials that we received from the Business Roundtable, including its list of the "ten worst regulations." We thought you would be interested in seeing this.

Attachments

Distribution: David Doniger
Andy Joskow
Bob Knisely
James Kohlenberger
Linda Lance
Jeff Lubbers
Mark Middleton
John Podesta ✓
Heather Ross
Ellen Seidman
Gregory Simon
Joseph Stiglitz
Paul Weinstein

"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.



The Business Roundtable

Superfund Background and Principles

March 1993

Background

The Comprehensive Environmental Response Compensation and Liability Act – commonly known as Superfund – was intended to protect human health and the environment by quickly and efficiently addressing the risks associated with past waste disposal. This important goal should be met. The reauthorization of Superfund provides an opportunity to debate in an open and thorough fashion, changes in the law and program which will enable Superfund to accomplish its original objective.

In its twelve years of existence, Superfund has produced some successes. The emergency response (removal) program has reduced immediate risks at many Superfund sites. The threat of future Superfund liability caused many companies to reevaluate their waste disposal practices and take additional precautions to ensure that wastes are handled in an environmentally sound manner. Despite these benefits, the program has achieved comparatively little in terms of long term site remediation and has been plagued with serious problems.

When Superfund was enacted, the public assumed that both the number of waste disposal sites and remediation costs would be limited, that those responsible would be easy to identify and hold accountable, and that remediation would be straightforward and rapid. Superfund was intended as a quick fix program whose policy was based on the "polluter pays" premise. Experience has shown these assumptions to be incorrect. Instead of a small number of sites, more than 1,200 have been placed on the National Priorities List, and at least 100 new ones are expected to be added each year. Over 25,000 potentially responsible parties have been identified including large and small businesses, local and state governments, hospitals, churches, schools, farmers, bankers, and bankrupted businesses. EPA estimates that average remediation costs now exceed \$25 million per site, and remediation of a site takes, on average, a decade to complete. Even Superfund's long term incentive to improve current waste management practices has now been largely subsumed by other environmental programs.

There are a number of reasons for Superfund's failure. With the exception of removal actions, Superfund has not focused on actual risks to public health and the environment. The program is being driven by unrealistic estimates of hypothetical future risks. The cost effectiveness of the remedy and the projection of realistic future uses for the site often take a back seat to reducing hypothetical risk at almost any cost, even when the technology to accomplish this is not available.

Another major weakness in the Superfund program is the unfairness of its two fundraising mechanisms – taxes and liability. Although EPA studies show that a broad spectrum of parties contributed to the waste found at sites, the majority of Superfund taxes which create the Fund are paid by only a few industries. While taxes create a fund to work

from, remediation is also funded on a site-by-site basis. Superfund's site-by-site fundraising mechanism relies on strict, retroactive, joint and several liability. This liability standard means that a single party can be liable for the entire remediation costs even if its actions were legal at the time and others contributed to or caused the need for remediation at the site. Instead of making the "polluter" pay, this system focuses on ability to pay. This litigation based site-by-site financing system diverts public and private sector resources from remediation to fundraising, creates enormous and wasteful transaction costs, results in long delays in the actual remediation of a site, and arbitrarily allocates costs.

The current liability system also creates a series of indirect negative effects which penalize businesses and communities. These range from discouraging new investment in older urban areas to preventing some companies from obtaining bank loans. Superfund has also had a negative indirect effect on the United States' international competitiveness, putting American companies at a disadvantage due to the burden of wasteful transaction costs and unnecessarily expensive remedies.

In recent years, the specter of massive claims for natural resource damages has raised the stakes at many Superfund sites well beyond the remediation costs. Some of the speculative methodologies used to conduct natural resource damage assessments greatly overestimate values. Calculated estimates of damage may eclipse both the actual value of the resources in question and the related Superfund site remediation costs. Without objective realistic standards for the measurement of natural resource damages and prudent goals for resource restoration, the sheer cost of the natural resource damage issue may overwhelm the entire program with little benefit to the environment.

The vast majority of the current Superfund sites, as well as the tens of thousands of potential sites identified by the EPA, were created by waste disposal practices that were certainly not illegal, but rather required or encouraged at the time. It should be recognized that all facets of society – public and private organizations as well as individuals – have had a role in the creation of the problem and should have a role in the solution. The answer to America's waste disposal problem lies in the development of a system which strives for protection of health and the environment through timely, cost-effective solutions, a fair distribution of costs, and incentives for cooperation. We hope that others will join with us in working toward this vision for Superfund.

Principles

The Business Roundtable recommends that Congress undertake a comprehensive review of the current Superfund law, regulations, and program operation based on the following principles:

Goal

- The Superfund program should be refocused on its important goal – to protect human health and the environment by quickly and efficiently addressing the risks associated with past waste disposal.

Remedy Selection

- Remediation standards and remedy decisions should be based on real, not hypothetical, risks.
- Remedies should be chosen to conform to actual or planned land uses.
- Remedy selection should recognize current technology limitations, while being open to innovative technology where appropriate.
- Remedies should be cost effective and recognize that society's resources are finite.

Funding/Liability

- The costs of the Superfund program should be distributed over a broad base.
- Funding for the Superfund program should be stable and at levels adequate to provide rapid response to immediate threats to public health and the environment, and to ensure effective long term protection.
- In that society's resources are finite, a national Superfund budget of a fixed annual amount should be established, setting total public and private sector spending for all of Superfund, including remediation and natural resources damages.
- Total expenditures by affected parties for Superfund should be predictable.
- Retroactive site-by-site liability for past waste disposal activities should be replaced when a viable alternative for funding is found. However, parties determined to have violated the law at the time of disposal should be liable.
- To the extent funds continue to be collected on a site-by-site basis, the same liability standards should apply to the private sector and to federal, state and local governments. Enforcement should be even-handed, and no party should pay more than its fair share. Orphan shares should be paid by the fund.
- Transaction costs and other expenditures for non-remediation activities should be minimized.
- Expenditures for natural resource damages should be contained within well defined and readily established limits.

Program Administration

- The emergency response program has been effective and should be retained.
- Superfund decisions should be based on site specific conditions, not forced into regional or national consistency.
- Early and ongoing community involvement in remedy selection should be encouraged.
- Conflict and duplication between state and federal Superfund programs should be eliminated. Either the federal program or the state program should prevail at a site.
- The Superfund program should seek positive incentives to achieve its goals and encourage voluntary action.
- Proven indirect benefits of the law should be retained; proven indirect detrimental effects should be minimized.
- Adverse effects of the Superfund program on the international competitiveness of business should be minimized.

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

**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
Clean Air Act	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.
	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
Clean Water Act; Oil Pollution Act of 1990	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.
	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 Regulation of non-petroleum oil	Allows agencies broad discretion in taking stringent approach without use of best scientific judgement. 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 be 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.
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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 <u>Arkansas Best</u>	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 Honorable Robert Rubin
Assistant to the President for Economic Policy
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June 30, 1993

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Samuel L. Maury
Executive Director

Dear Bob:

I have been briefed on last week's Roundtable meeting and understand that it was quite productive. I was particularly pleased to learn that a number of suggestions were made that will allow us to continue working together to address concerns around wasteful and unnecessary regulation.

Enclosed is the follow-up letter to Sally Katzen that was requested at the meeting. You will see that it provides additional detail on specific regulations on which reform efforts might focus in the short run, as well as a reiteration of three substantial and significant regulatory programs that we would like to address with you long term. The comments and recommendations contained in that letter are those of the participating Roundtable members and do not necessarily represent policy positions of The Business Roundtable. I hope that we can maintain open channels on these issues and that Roundtable folks can work directly with the Administration's interagency groups.

On the subject of the proposed Executive Order, I am pleased to know that reported early attempts to dilute the rigorous regulatory analysis presently required as a predicate to agency rulemaking have been sidetracked. While expanded advance review of an agency's regulatory agenda might prove beneficial, I do not believe that it can substitute for imposing and managing an analytical framework that involves cost-benefit analysis, preference for the least-cost alternative, and the setting of priorities based upon risk analysis that is founded on sound science. We also continue to support using an entity like the broadly based National Economic Council for maintaining an ultimate check on the balancing of economic and other values that regulatory analysis entails.

Many thanks for your continued interest and assistance in this area. I look forward to seeing you on July 14.

Sincerely,



E. S. Woolard, Jr.



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June 30, 1993

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Samuel L. Maury
Executive Director

The Honorable Sally Katzen
Administrator
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Dear Sally:

I was very sorry to have been unable to join my colleagues for the June 18 Roundtable meeting, but as you know, I had an internal conflict I simply could not resolve. I understand this meeting was productive and covered existing regulations negatively impacting jobs and the economy, as well as the need to maintain rigorous centralized management of future agency rulemaking. The opportunity to provide you a written summary of the proposals made during the meeting is most appreciated.

Regulations For Immediate Review

During the meeting, four regulations were identified as meriting the Administration's immediate attention. The Business Roundtable Government Regulation Task Force was asked to provide additional details concerning those regulations, to suggest how the problems caused by the regulations might best be resolved, and to identify those who might be interested in or affected by the possible resolution. The particular regulatory areas are:

1. Reporting requirements for releases of ammonia under regulations implementing the Emergency Planning and Community Right to Know Act ("EPCRA").
2. Certain provisions in Clean Air Act regulations requiring automobile manufacturers to include on-board diagnostic ("OBD") systems capable of identifying and informing vehicle operators of emission-related malfunctions. Proposed regulations would further require that manufacturers provide all information needed for making emission-related diagnosis and repairs.

3. New IRS regulations concerning intercompany transfer prices.
4. Requirements stemming from Section 214 of the Communications Act of 1934, as amended, and its underlying regulations, that subject carriers obtain a certificate of public convenience for the construction or operation of any new or extended communications line.

Discussions of each regulatory item, and suggested solutions, are included in Attachment 1. As you or others set out to examine these four discrete problems, we would be more than happy to provide additional information and to work with you as you seek solutions.

Follow-Through on Major Regulatory Programs

It was reported to me that there appears to be general agreement that it would be useful for representatives of White House offices with responsibilities for regulatory oversight, government operations, and the economy to join with The Roundtable in an ongoing effort to reform some of the major regulatory programs identified as a substantial drag on the economy. As to this more ambitious project, attention focused initially on Superfund, RCRA, and Export Control regulations.

The materials prepared by The Roundtable's Government Regulation Task Force discuss these three programs and their unnecessarily burdensome impact on business; our summaries on these programs are enclosed for your convenience in Attachment 2. Additionally, a Roundtable policy statement on the principles that should govern reform of the Superfund program was attached to those materials and is included again for your convenience. Rather than extend our discussion of these programs and their problems at this time, I would like to propose the following course of action.

The Roundtable stands ready to participate actively in Administration review efforts relating to these programs. We understand that there are existing interagency groups examining Superfund and Export Controls and that creation of such a group for RCRA is feasible. The Roundtable has its own group or Task Force responsible for each of these subjects as well, and we can bring to the table substantial experience and expertise.

I suggest that each of our task forces or groups involved in studying reform of these three programs meet and independently establish a working relationship and time-line for bringing matters to fruition. Assuming you agree, would you please call Mark Nelson in Du Pont's Washington office (728-3661) to insure that the right connections are made between The Roundtable and the appropriate government groups. Our groups are fully prepared to work with yours to meet the challenges that concern us both.

Assessment

Our Government Regulation Task Force will meet September 8, and that occasion would provide an excellent opportunity for us to assess the progress on the long-term agenda items; the short-term items can be addressed with even greater dispatch. I hope we can get together then. I will look forward to working with you and Messrs. Rubin and Quinn towards the very important goal of improving government regulation.

Sincerely,



E. S. Woolard, Jr.

cc: Robert Rubin
Jack Quinn
John Podesta
Heather Ross

ATTACHMENT 1: DISCUSSIONS OF REGULATIONS DESERVING IMMEDIATE ATTENTION

- 1. Reporting requirements for releases of ammonia under regulations implementing the Emergency Planning and Community Right to Know Act ("EPCRA"). The ammonia listing should be modified to require reporting only of un-ionized ammonia, not total ammonia.**

Section 313 of EPCRA establishes certain recordkeeping and reporting requirements relating to the release of listed toxic chemicals. See 42 U.S.C. § 11023. The information collected is intended to inform the general public and communities surrounding covered facilities about significant releases of toxic chemicals. The criteria for listing chemicals pursuant to Section 313 include: likelihood of causing adverse acute human health effects at concentration levels likely to exist beyond facility site boundaries; likelihood of causing cancer or other chronic health effects; and likelihood of causing significant adverse effects on the environment.

Ammonium (ionized ammonia) does not meet the Section 313 listing criteria, although un-ionized ammonia does. Other large volume chemicals have been removed from the list because they did not meet Section 313 criteria (sodium sulfate, aluminum oxide, and sodium hydroxide). Accordingly, only un-ionized ammonia should be subject to EPCRA Section 313 reporting requirements. Ionized ammonia should thus be removed from EPA's list of toxic chemicals subject to Section 313 reporting requirements. The straightforward regulatory solution would be to change the ammonia listing (CAS No. 7664-41-7) at 40 C.F.R. § 372.65(a) and (b) to read: "ammonia (un-ionized)." This should be considered as EPA is in the process of adding an additional 200 chemicals to the list.

A plethora of chemical and manufacturing businesses would support limiting Section 313 reporting to only un-ionized ammonia. The ammonia sulfate delisting docket includes the following organizations: British Petroleum, American Cyanamid, Sterling, Allied Signal, Chemical Manufacturers Association, The Fertilizer Institute, National Association of Photographic Manufacturers, Merck, AN Group, Bethlehem Steel Corporation, Eastman-Kodak Co., Chevron, Pharmaceutical Manufacturers Association, Eastman Chemical Co., and Du Pont. It is likely that some environmental groups will oppose the recommended change based on their position that the public should have a right to make its own determination of the potential harmfulness of the released material. However, any such position does not consider the EPCRA requirement that listed chemicals meet certain toxicity criteria. State and local governments likely would not actively oppose the change because subjecting only hazardous materials to the reporting requirements controls the paperwork and expense for government, and most state and local governments have other procedures for obtaining this information. A few governmental entities may be concerned about effects on surface water, but any potential effects are regulated under other statutes.

2. **Clean Air Act regulations require automobile manufacturers to include on vehicles on-board diagnostic ("OBD") systems capable of identifying and informing vehicle operators of emission-related malfunctions and to provide all information needed for making emission-related diagnosis and repairs. EPA should allow automobile manufacturers to use indefinitely the California OBD system nationwide and should not require manufacturers to make vehicle computer reprogramming information or tools generally available.**

Section 202(m) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, requires automobile manufacturers to include on vehicles on-board diagnostic systems capable of identifying and informing vehicle operators of emission-related malfunctions. It also requires manufacturers to provide all information needed for making emission-related diagnosis and repairs to independent repair facilities and tool manufacturers. See 42 U.S.C. § 7521(m)(1), (5). The OBD regulations contain two major flaws that deserve scrutiny. First, the EPA rules on OBD systems limit manufacturers to using the same OBD system as required by similar California regulations only through the 1998 model year. See § 86.094-17(j), 58 Fed. Reg. 9468, 9486 (Feb. 19, 1993) (to be codified at 40 C.F.R. § 86.094-17(j)). Second, EPA's proposed regulations would require automobile manufacturers to make enhanced (dealer) diagnostic and vehicle computer reprogramming information (see 56 Fed. Reg. 48,272, 48,297 (to be codified at 40 C.F.R. § 86.094-38(g)(10), (11) (proposed Sept. 24, 1991)) and tools (not yet proposed in the Federal Register) generally available to independent repair facilities and tool manufacturers. This would cause numerous problems, including defeating other EPA regulations that require manufacturers to make computers tamper-resistant to assure that emission control is maintained. See § 86.094-18, 58 Fed. Reg. at 9487 (to be codified at 40 C.F.R. § 86.094-18).

EPA can solve both problems. First, EPA should revise its regulation at § 86.094-17(j) to give automobile manufacturers the option of using indefinitely the California OBD system nationwide. Development of a unique OBD system for non-California vehicles will provide little, if any, incremental air quality benefit (given the stringency of the California OBD regulations) but will require the expenditure of limited development resources on a second OBD system. Second, EPA should revise its proposed rule so as not to require manufacturers to make vehicle computer reprogramming information or tools generally available.

The automotive industry supports these recommended changes, and consumers would also benefit from cost savings. The independent automotive repair industry and independent service tool manufacturers would gain a financial windfall from EPA's proposals and therefore would support them.

3. **New IRS regulations concerning intercompany transfer prices damage business decision-making, impose enormous recordkeeping costs, reduce the competitiveness of U.S. companies, and increase the likelihood of reprisals by U.S. trading partners. The solution is threefold, including altering the Best Method Rule, reducing documentation burdens, and limiting the use of the severe penalties of I.R.C. § 6662.**

New IRS regulations concerning intercompany transfer prices were recently issued in temporary and proposed form, along with proposed regulations on penalties for tax deficiencies occasioned by transfer price misstatements. These regulations are a marked departure from the prior rules and impose the greatest burdens on U.S. multinationals. Compliance is compelled by severe penalty provisions in Internal Revenue Code Section 6662(e) unless taxpayers qualify for a reasonable cause exception, which requires burdensome and costly documentation. In some instances, the documentation burdens are unachievable due to other legal constraints, such as antitrust laws. 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.

The solution to the problems caused by these regulations is threefold. First, regarding the Best Method Rule, the IRS should not rely on hindsight to overturn taxpayer methods and should bear the burden of proof to overturn an otherwise valid method chosen by the taxpayer. The use of the specifically enumerated methods (e.g., Comparable Profits Method) should not have priority over other methods if the use of other methods are more appropriate under the taxpayer's specific circumstances. Second, as to documentation requirements, the documentation burden should be reduced to a description of the method used, the scope of the documentation requirements should be clearly defined and limited to a taxpayer's own financial information, and the burden of proof to change the taxpayer's method of compliance should shift to the IRS if a threshold level of documentation is accomplished. Third, the nominal threshold for application of the punitive provisions of I.R.C. § 6662 should be increased and should fairly reflect the size of the company. Accordingly, the nominal threshold should be set at the greater of \$50 million or 1% of a taxpayer's gross receipts, and a rebuttable presumption of "Reasonable Cause" should be imposed if the taxpayer was following the same pricing guidelines established in prior settlements or Advanced Pricing Agreements with the IRS.

Virtually all taxpayers would favor these suggested changes, and the only opponent would be the IRS.

4. **Section 214 of the Communications Act of 1934 and its underlying regulations require subject carriers to obtain a certificate of public convenience for the construction or operation of a new or extended communications line, but the Federal Communications Commission ("FCC") routinely approves billions of dollars of construction by carriers each year under "blanket" 214 authorizations. Accordingly, for video dialtone services, the FCC should not require individual 214 applications for each service offering, particularly where no new lines are constructed and the carrier wishes to conduct only a technology trial of limited duration; instead, the FCC should eliminate the requirement for separate 214 applications for video dialtone, allow carriers to include these facilities in their "blanket" 214 applications, and thus encourage the deployment of a broadband infrastructure.**

Section 214 of the Communications Act of 1934, as amended, requires subject carriers to apply to the FCC for a certificate, subject to public comment, before the construction, extension, or operation of a new line. See 47 U.S.C. § 214. This requirement covers the construction of any new interstate line, including cable television and related video services. The primary purpose of Section 214 was the prevention of unnecessary duplication of facilities. Since common carriers subject to the Act were regulated on a rate-of-return basis, the certification requirement served as a check against an inflated rate base. This purpose no longer exists because those carriers classified by the FCC as "dominant," i.e., fully subject to Title II of the Act, have been subject to "Price Cap" regulation since the start of the decade. For many years, the FCC has routinely approved the construction plans of carriers under "blanket" 214 applications. In the video area, however, the FCC uses the Section 214 process to evaluate compliance with its cable/telephone cross ownership rules and its video dialtone rules. Section 214 was never intended for this purpose. The FCC practice causes long delays in offering video services and provides the cable companies a means to impede competition unfairly. The broadband infrastructure of the future will carry voice, data, and a wide array of video applications. Video signals will not be carried by facilities separate from those used to transport other information. In such an environment, it is inappropriate separately to authorize the construction of facilities used, in part, to carry video signals, or to classify facilities carrying cable programming as being discrete from other types of construction. Accordingly, the Commission should not require a 214 application when a telephone company proposes to provide a new video dialtone service over existing facilities.

The FCC uses the Section 214 process to insure that a telephone company has no affiliation with a cable television provider when it has agreed to construct cable facilities for the cable television provider in its franchised area. This could be handled by "certification." In addition, the FCC uses the Section 214 process to "police" the Cable Acts of 1984 and 1992. The Commission's concerns regarding the involvement of regional Bell operating companies with video programming could be dealt with in the normal tariff review process or by certification. If the 214 review process is to be applied, exceptions provided by Section 214 for other common carrier facilities should be available for video dialtone facilities. For example, Section 214 specifically provides exemptions for facilities constituting local, branch, or terminal lines not exceeding ten

miles in length. However, the Commission does not exempt such lines if they are used to transmit video programming. The Commission should consistently allow those exemptions and extend them to include those lines used to provide video dialtone and other broadband services. The FCC should streamline the Section 214 Application process by, for example, imposing and observing strict timelines for resolution of issues raised by the application. At the very least, the FCC should eliminate the requirement that carriers file a Section 214 application to conduct trials of video dialtone service. This step would promote the FCC's stated position that video dialtone trials are in the public interest, and would further its commitment to remove regulatory barriers that inhibit such trials. The Section 214 process is such a barrier. For instance, New York Telephone Company waited over eight months for the FCC to approve a video dialtone trial. New York Telephone will consequently begin its one year trial at least six months behind schedule.

These recommended changes would be supported by telephone companies and all common carriers subject to the Act, as well as consumers, who would benefit from faster access to a much wider array of services at a lower cost. The changes likely would be opposed by the National Cable Television Association and cable television companies, given their financial incentive to restrict competition and keep profit margins and prices high.

ATTACHMENT 2: DISCUSSIONS OF MAJOR BURDENSOME REGULATORY PROGRAMS**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, if any, incremental 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.

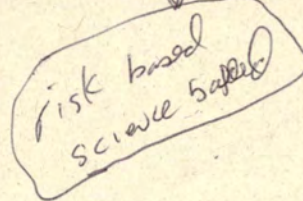
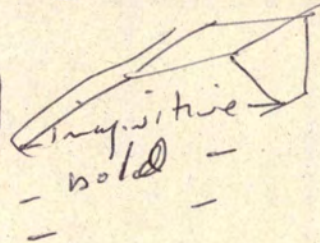
3. Export Controls.

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.

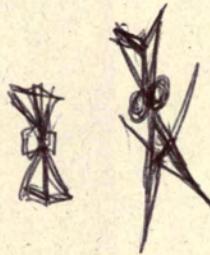
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Reinventing Environmental Regulation



**The National Performance Review
The Council on Environmental Quality
The Environmental Protection Agency**

Time to



March 16, 1995

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OVERVIEW

"Do we need more common sense and fairness in our regulations? You bet we do. But we can have common sense and still provide safe drinking water. We can have fairness and still clean up toxic waste dumps. And we ought to do it."

President Clinton
January 24, 1995

Executive Summary

We are in the midst of an exciting transitional period for our nation's environmental policy. The modern era of environmental protection began in 1970 with the first Earth Day, the passage of landmark legislation, and the creation of the Environmental Protection Agency. We have accomplished much in 25 years to protect the health of our people and preserve natural wonders for future generations. But much remains to be done.

It is time to draw upon the lessons we have learned over the last 25 years to reinvent environmental protection for the 21st century. We have learned that the American people are deeply committed to a clean and healthy environment for their children and communities. We have learned that pollution is a sign of economic inefficiency and business can make money by preventing it. We have learned that better decisions result from a collaborative process with people working together, than from an adversarial process that pits them against each other. And we have learned that regulations that provide flexibility -- but demand accountability in achieving our environmental goals -- can provide greater protection at a lower cost.

This report contains a comprehensive set of 25 High Priority Actions that will make substantial improvements to the existing regulatory system, while taking significant steps toward a new and better environmental management system for the 21st century.

25 Years of Progress

Since the first Earth Day almost 25 years ago, the American people have enjoyed dramatic improvements in public health, worker safety, and the natural environment. A few examples of this success include:

- lead in the average American's bloodstream has dropped by 25 percent since 1976;
- since 1991, fifty million Americans no longer breathe unhealthy air;
- millions of Americans can now fish and swim in formerly polluted waters because municipal waste water treatment has virtually eliminated raw sewage from our waters;
- the most dangerous and persistent pesticides are no longer used or sold; and
- the bald eagle -- once close to extinction -- has been removed from the list of endangered species.

Improvements in the quality of our air, our water, and our land represent investments in the future that will pay dividends for generations to come.

To achieve this tremendous success, we have often used a prescriptive, or "command-and-control" approach. Under this system, Federal and state governments have set standards, issued permits for pollutant discharges, and then inspected, monitored and enforced the standards set for each environmental statute. We have also relied almost exclusively on "end-of-pipe" solutions. By regulating emission points to the air, water, and land we have addressed many of our most egregious environmental problems.

While much has been accomplished, much remains to be done. We face continued degradation of our rivers, lakes, and streams; growing evidence of the public health impact from toxic chemicals; continued pressures on fisheries and forests; and increasing incidence of asthma and other pollution-related illnesses.

But as we address these remaining environmental problems, this prescriptive end-of-pipe approach is reaching a point of diminishing returns. It is imposing ever greater costs on society, sometimes for a marginally smaller return. It sometimes requires costly actions that defy common sense. By focussing resources on attaining minimal compliance, it can discourage technological innovation that could achieve environmental benefits beyond

compliance. This approach can place large burdens on small businesses and small communities, while failing to protect adequately low-income and minority populations. While the prescriptive end-of-pipe approach has been successful in reducing dramatically pollution from emission points, our remaining pollution problems tend to be more diffuse and less amenable to top-down solutions. While this approach was right for its time, the time has come to reinvent environmental protection to address our remaining environmental challenges in a way that is smarter, cheaper, and more effective.

"Command-and-control" regulation and end-of-pipe strategies will always be possible policy options as we seek to address future environmental problems. They will be chosen if they are the most efficient, effective -- or only -- solutions to particular problems. But we have learned a lot about what works and what doesn't. As we seek solutions to complex problems in the future, we will draw upon that knowledge to identify innovative approaches that will achieve even greater levels of environmental protection at a lower cost.

Since 1970, we have learned that the adversarial approach that has often characterized environmental protection reduces opportunities to solve problems through cooperation. Shared decision-making offers opportunities the current system often precludes. In an atmosphere of trust, people can bridge differences, find common ground, and identify solutions. To reinvent environmental protection, we must first build trust among traditional adversaries.

We have learned that a healthy environment and a healthy economy go hand-in-hand. This growing awareness is demonstrated by the strong support that the concept of sustainable development has received from both industry and environmentalists across the country and around the world. Our economic and our environmental goals must be mutually reinforcing.

We have learned that setting "performance standards" and allowing the regulated community to find the best way to meet them can get results cheaper and quicker -- and cleaner -- than mandating design standards or specific technologies. We can promote both lower-cost environmental protection and innovation in pollution control and prevention technology. Using economic incentives along with performance standards encourages innovation. The lowest-cost, most innovative, and most effective compliance strategies earn a greater return in the marketplace. Accountability and responsibility must accompany this increased flexibility so that our citizens have confidence that our environmental goals are, in fact, being met.

And we have learned that Washington, D.C. is not the source of all the answers. There is growing support for shifting some decision-making authority -- and responsibility -- from the Federal government to local communities.

A Vision for the Next 25 Years

We are at a crucial moment in time: the transition between a regulatory system that has served us well for the last 25 years, and the creation of a new system to ensure environmental quality in the future. It is too early to tell exactly what the new system will look like, but based upon experience gained over the last 25 years, some things are clear.

Environmental protection must be driven by clear and measurable national goals. Success will be measured by achieving environmental results, not simply adherence to procedures. We must integrate environmental, social, and economic policy-making so such policies are mutually supportive, not conflicting.

We must rely on an open and inclusive decision-making process that will empower states, tribes, communities, and individual citizens to participate. In particular, low-income and minority citizens must have a meaningful voice in decisions that affect their lives. We must maximize information as a tool to inform policy makers and empower citizens.

We must encourage environmental stewardship by individuals, businesses, and government. We must provide flexibility in the means of achieving environmental goals, while demanding accountability that goals be met. Rather than focusing upon a pollutant-by-pollutant approach to management, attention must shift to developing management strategies for whole facilities, whole economic sectors, and even whole communities.

This new management system will require everyone to accept new roles and responsibilities. Individuals will have new responsibilities as consumers and as decision makers. Business will make environmental protection a strategic consideration that will be designed into their products and services, not considered after the fact. State, tribal, and local governments will serve as full partners in the development and implementation of policies to achieve national goals. EPA will expand beyond its traditional role of regulator to become a partner providing information and research to empower local decision-makers.

Reinvention Yes, Rollback No

How do we attain this vision of the future? The 25 High Priority Actions assembled in this report provide the road map. The first set of High Priority Actions, listed under the heading "Improvements to the Current System" (page 8), are examples of immediate steps to fix problems associated with today's regulatory structure.

But we can't be satisfied with simply improving elements of a regulatory system that has evolved piece-by-piece over 25 years. By implementing the second set of High Priority

Actions, included under the heading "Building Blocks for a New System" (page 14) we will test performance-based strategies that could eventually replace some or all of the current system.

The Clinton/Gore Administration is committed to reinventing our environmental management system so it will protect more and cost less. But we are not starting from scratch. In the last two years, the Administration has already made tremendous progress in reforming our environmental regulatory system (See Appendix C, page ?). In the year ahead, we will continue that progress by implementing the ambitious agenda contained in this report.

But let no one misunderstand us. This effort to reinvent environmental regulation does not imply compromise on the environmental goals to be achieved. While increased flexibility is a central principle of our reinvention effort, flexibility is not a codeword for loophole. Those who abuse this new flexibility will find the old tools still at hand to enforce the law.

The American people, in poll after poll, cite their determination to achieve high standards of environmental quality. This Administration will never surrender to those who would undercut protection of public health and the environment under the guise of "regulatory relief." America does not need dirtier air or dirtier water. The historic protections we have built over the last 25 years must be maintained, sustaining the promise of a clean and healthy environment that has been made and renewed by almost every President since Teddy Roosevelt. We will work with the new Congress whenever possible, but we will not allow them to take us backwards. Reinvention yes, rollback no.

The Administration will adhere to the 10 principles on the next page as we reinvent environmental regulation. These principles are also useful for assessing other initiatives that claim to reform environmental regulations. Some "reform" proposals that are currently under debate simply don't meet the test. Such proposals seek to undermine the regulatory system, not improve it. They would create more bureaucracy, more uncertainty, and more litigation, while seriously threatening protection of public health and the environment. Rather than bringing people together to solve problems in a cooperative, collaborative manner, these rash proposals polarize further a debate that has been polarized for too long already. But even more troubling, because such proposals are intended solely to paralyze the current system, they offer no vision for protecting our families and communities in the future.

The American people expect more than that. They want -- and deserve -- an environmental management system that protects the health of their children and their communities in an effective and efficient manner. That is not too much to ask. The Clinton/Gore Administration committed to achieving that goal.

Principles for Reinventing Environmental Regulation

1. Protecting public health and the environment are important national goals and individual citizens, businesses, and government must take responsibility for the impact of their actions.
2. Regulation must be designed to achieve environmental goals in a manner that minimizes costs to individuals, business, and other levels of government.
3. Our environmental regulatory system should be results-oriented, providing maximum flexibility in the means of achieving our environmental goals, but demanding accountability for the results.
4. Preventing pollution is preferable to end-of-pipe controls.
5. Whenever feasible and effective, market incentives should be utilized to achieve environmental goals.
6. The best science, the best economics, and America's values must be reflected in environmental regulation.
7. Government regulations must be understandable to those who are affected by them.
8. Whenever possible, decision-making should be collaborative, not adversarial, giving citizens the opportunity and the information to participate actively in the decisions that affect them. Such decision-making should devolve to local communities, consistent with broader national interests.
9. Federal, state, tribal, and local governments must work as partners to achieve common environmental goals.
10. Citizens must not be subjected to disproportionate environmental hazard because of their economic situation, their ethnicity, or the color of their skin.

25 HIGH PRIORITY ACTIONS

"We are at a crossroads. The decisions we make today will determine whether we leave to future generations an attractive, livable world or an ever-escalating series of problems. More than ever, we must work vigorously to advance the twin goals of environmental protection and economic growth."

Vice President Gore

July 15, 1994

Our strategy to reinvent environmental regulation will proceed on two tracks that will converge in the future to produce a new era of cleaner, cheaper, and smarter environmental management. The first track is a set of High Priority Actions (page 8) targeted to fixing problems with today's regulatory programs. These actions demonstrate our commitment to providing flexibility, sparking innovation, and demanding accountability; to cutting red tape; to encouraging collaboration; and to focussing upon achieving environmental results in local communities, rather than adherence to bureaucratic procedures in Washington.

The second track is a set of High Priority Actions (page 14) designed to develop innovative -- even revolutionary -- alternatives to the current regulatory system. We will enter into partnerships with businesses, environmentalists, states and communities to test alternative management strategies for single facilities, industrial sectors, or geographic areas. The knowledge gained from such bold experimentation will lay the groundwork for developing a new environmental management system for the 21st century.

This dual strategy is a comprehensive approach to continually improving our environmental management system to help achieve our twin goals of environmental protection and economic growth. One-page descriptions of these 25 High Priority Actions can be found in Appendix A (page?). In addition to the High Priority Actions, a set of Other Significant Actions can be found in Appendix B (page ?).

IMPROVEMENTS TO THE CURRENT SYSTEM

Performance and Market-based Regulations

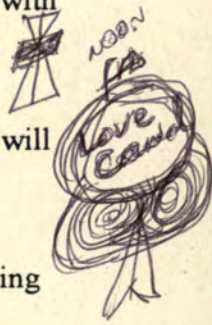
Regulatory policies that rely on market-based incentives in concert with performance standards greatly expand the scope of cost-effectiveness and innovation, by allowing the lowest cost and most innovative compliance strategies.

1. **Open-market air emissions trading.** EPA will issue an emissions trading rule for smog-creating pollutants that will allow states to obtain automatic approval for open market trading of emission credits with accountability for quantified returns. Expanding use of market trading on a local and regional level will give companies broad flexibility to find lowest cost approaches to emission reductions. The rule will provide an additional trading option -- some states will choose to pursue allowance-based systems, which are already under development in several areas, while others will choose this new approach.
2. **Effluent trading in watersheds.** EPA will place top priority on breaking through the institutional inertia that hinders effluent trading beyond technological baselines. Trading can be used to achieve higher water quality in watersheds at lower cost than inflexible discharge requirements for individual sources.

Setting Priorities based on Scientific Analysis of Risk

Sound and credible environmental decisionmaking depends on good science and good data. When hazards are understood and risks have been fully assessed, remedies can be crafted with precision. Twenty-five years ago, little was known about environmental hazards and far less about the risks they posed. Through the years, we have considered both the hazards and how best to assess the resulting risks. We must remain at the cutting edge of risk assessment -- including independent peer review of the science used in regulatory decisions, so such actions will mitigate risk in the most efficient and effective manner possible.

3. **Refocus RCRA on high-risk wastes.** The regulation of hazardous wastes will be reformed so that: low risk wastes exit RCRA; states are allowed latitude in designing management requirements for low-risk, high-volume wastes generated during environmental cleanup operations; and, working with stakeholders, a new "common-sense" definition of solid waste will be developed to simplify industry compliance with RCRA rules.
4. **Refocus drinking water treatment requirements on highest health risks.** EPA will reorder its priorities for drinking water regulations based on a careful analysis of public health risks and discussions with stakeholders. While working on this realignment, EPA will request a postponement of court-ordered deadlines for drinking water regulations. Additionally, EPA will boost support for voluntary efforts to immediately reduce risks through improved management of water treatment facilities and will tailor drinking water monitoring requirements to reflect local contaminant threats.
5. **Expand use of risk assessment in local communities.** EPA has sponsored the development of computer software to train its employees in risk assessment. As part of an expanded risk training program, EPA will provide (at cost) this computer program to local governments, small businesses, and local citizens groups. This tool will allow estimates of exposures and human health risks on a site-specific basis. The broad availability such a tool -- together with training and access to other risk tools and data bases -- will increase public understanding of risk assessment and empower citizens participate in environmental decisions in an informed manner.



Sharing Decision Making

No one has a greater interest in local environmental decisions than the people who are affected by them. States, tribes and communities are anxious for greater autonomy and responsibility for results. EPA is taking an activist role in moving environmental decisions and accountability to the level closest to the problem -- be it state, tribal, local, or the citizen. A major part of achieving a shift in authority is building the capacity at the local level to solve local problems. Upon enactment of necessary legislation, EPA will vigorously pursue:

6. **Flexible funding for states and tribes.** EPA will provide an option for state and tribal governments to combine their existing grant funds to reduce administrative burdens and improve environmental performance. Under these Performance Partnership Grants, states and tribes will be able to target funds to meet their specific needs, as long as they are consistent with environmental requirements. These grants would be subject to performance criteria negotiated between the EPA Administrator and the grant recipients.
7. **Local environmental assistance grants.** This new assistance grant is designed for small towns, cities and counties interested in upgrading environmental planning and prevention, consistent with national goals set forth within the enabling legislation. The amount of each grant to an entitled city or county, and for the states to disburse to smaller communities within each state, will be determined by statutory formula, based on population and factors of local environmental need and financial circumstances. Applications will detail the proposed use of all grant funds, and will include a comprehensive, cross-media needs assessment, prepared with broad participation of local stakeholders.

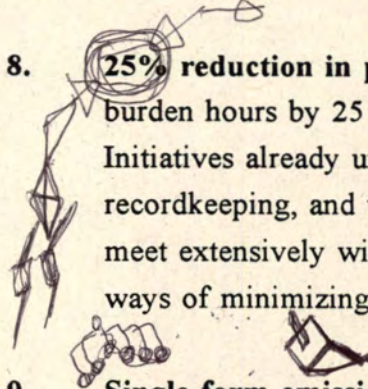
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Sustainable development challenge grants. This new competitive action grant is directed at local formulation of comprehensive, place-based management that connects sustainable economic development with sound environmental practices. Within legislatively set national objectives, stakeholders will be challenged to produce coordinated programs, using the action grant to mobilize, organize and attract community and private sector participation. A successful application must demonstrate a high level of stakeholder involvement, funding requirements and availability of other sources of funds. Recipients will be expected to leverage direct private sector investment for place-based environmental protection.

(NOTE: We must discuss these options for a new community-based environmental grant program. A new program is needed if we are serious about devolving authority to local communities, but such a decision must be made in the context of REGO II and other budget related decisions.)

Cutting Red Tape

Continuing the work started under Vice President Gore's National Performance Review, EPA will search out opportunities to simplify and reduce paperwork, whether up front during the permitting process, or in recordkeeping and reporting. By June of this year, EPA will review all of its regulations and identify those that should be eliminated or simplified. These actions will preserve essential data needed to measure environmental results and determine compliance with the law, but will eliminate low-value requirements. The three examples below illustrate EPA's commitment to eliminating red tape by reducing paperwork, simplifying reporting, and consolidating rules for easier understanding.

- 
8. **25% reduction in paperwork.** EPA will reduce overall reporting and recordkeeping burden hours by 25 %, beginning with local governments and small businesses. Initiatives already underway include expanded use of electronic reporting and recordkeeping, and use of a single form for FIFRA and TSCA reporting. EPA will meet extensively with industry, states and other interested groups to identify additional ways of minimizing reporting and recordkeeping requirements
 9. **Single-form emission reports.** To replace the multitude of reporting forms for different kinds of pollution discharges for one facility, EPA will create a consolidated form for routine emission reporting. Given the enormity of this change and the logistics involved, consolidated reporting will begin with FIFRA and TSCA data and, based on the experience gained, scale up to other environmental statutes.
 10. **Consolidated federal air rules (one-industry -- one rule).** EPA will provide industries with a single rule that details all Federal air compliance requirements for an industry sector (e.g., chemical industry), so there is an easy understanding of emission limitations and monitoring, recordkeeping and reporting requirements. This project will eliminate conflicting and duplicative regulations and, should reduce compliance costs by up to 25% (check number) with no measurable loss of environmental protection. This project will lead to consolidated rules for other media.

Better Accountability, Compliance and Enforcement

While environmental requirements can and will be made more flexible and cost effective, the public will continue to expect compliance with the law and accountability for results. We will encourage good actors and provide incentives for compliance while preserving a level playing field and deterring violations through targeted enforcement actions. We will encourage compliance through incentives for self-policing, including penalty reductions and testing of third-party auditing and self certification, and will provide more effective assistance to small businesses seeking to comply with environmental regulations. We will maintain the level playing field through effective enforcement that targets the highest risks and most significant noncompliance problems. Many of these initiatives will be coordinated through EPA's new Environmental Leadership Program.

11. **Risk-based enforcement.** EPA will target enforcement actions against significant violations that present the greatest risks to human health and the environment. This will require development of tools that allow analysis of risk as well as patterns of violations among corporations and facilities within a particular sector. EPA will also seek to eliminate requirements that every facility within a certain category be inspected annually -- to allow for better targeting.
12. **Encourage self-policing by small businesses and communities.** The nation will enjoy greater environmental protection if small businesses and small communities invest their limited resources in achieving compliance, not paying fines and penalties. Thus, EPA will provide up to 180 days for small businesses to correct violations identified through federal or state technical assistance programs without fear of fines or penalties. A similar approach will be used for small communities.
13. **Small business compliance assistance centers.** EPA will develop national customer service centers for several small business sectors (including printing, metal finishing, auto service stations) that face multiple environmental requirements. The centers will support trade associations and state small business associations through plain-English guides to compliance, electronic access to information linking pollution prevention and compliance opportunities, and by cutting paperwork and consolidating reporting for the affected industries.

14. **Incentives for disclosure and correction.** To reward today's responsible companies and eliminate costly litigation and red tape, EPA will provide incentives through reduced penalties for companies that disclose and promptly correct violations -- except for criminal violations, imminent and substantial endangerment, or repeat violations.
15. **Self certification.** Compliance through self certification can reduce the reporting burden for those environmental requirements not associated with emissions or risk data. EPA will develop a self certification programs for pesticide registrants, and then expand self certification into other program areas.

The Power of Information

Information -- the sharing of data -- is central to all aspects of environmental decisionmaking, whether in government programs or in encouraging citizens to be involved in environmental protection decisions. Government and citizens need better baseline information about prevailing environmental conditions, about the effects of pollution, about the success of mitigation strategies, and about costs and benefits of the strategies and the impacts they prevent. and EPA needs to make sure that information is made available to all. Alternative performance-based systems of environmental protection -- such as facility-; sector-; and community-based approaches -- can only succeed if high quality information is

16. **Center for environmental information and statistics.** EPA will administratively create a new center, reporting directly to the Administrator, that will be charged with assessing, consolidating and disseminating information to all stakeholders. The center will serve all stakeholders -- creating products that fill ascertained needs of its customers. The center will be designed using recommendations from an independent study that evaluates additional data needs (and unnecessary data elements currently collected), EPA data management systems and technological improvements that can increase efficiency and access.
17. **Public electronic access.** EPA will significantly expand its existing programs (e.g., Public Information Center, hotlines) to make information from all EPA programs available through Internet and other electronic means that many Americans can access directly from their homes, schools and libraries.

BUILDING BLOCKS FOR A NEW SYSTEM

It isn't enough to focus on improving the current regulatory system. Incremental changes will never get us where we ultimately need to be. As we move toward the 21st century, it is imperative that we challenge ourselves to step outside the context of the existing system. The High Priority Actions that follow will test the building blocks for an alternative performance-based system that could eventually replace all or part of our traditional environmental management system.

Alternative Performance-based Strategies

EPA has developed a coordinated series of projects designed to test new management approaches that can provide increased flexibility while ensuring accountability. The goals of the projects are to move from an adversarial to a collaborative process, to reward technological innovation and encourage multi-media pollution prevention, and to decentralize and integrate economic and environmental decisionmaking in communities with increased citizen involvement. Participants in these projects will demonstrate a commitment to environmental quality by setting environmental goals *beyond* what the law requires while involving community participation in the goal-setting and accountability process. In return, participants will be allowed increased flexibility and cooperation from the Federal government to reach their environmental goals most effectively. After enactment of necessary legislation, EPA will sponsor the following projects:

18. **Facility-based alternative strategies.** For those companies that are seeking to use more flexible approaches to achieve environmental results, EPA (working through the Common Sense Initiative) will conduct a new program that will stress performance-based flexibility. This initiative will authorize the Administrator to allow a facility to replace the requirements of the current regulatory system with the requirements of an alternative management strategy that will result in environmental performance superior to that which would be achieved by full compliance with current laws and regulations. Other requirements will be that alternative strategies are "transparent" so that citizens can examine assumptions contained in the strategy and track progress toward meeting promised results; that it won't create worker safety or environmental justice problems;

that the alternative management strategy enjoys the support of the community surrounding the facility; and that the alternative strategy is enforceable.

19. **Sector-based alternative strategies.** Through the use of industry covenants, EPA and several industries will demonstrate how adjustments and modifications in environmental regulatory requirements can achieve more cost-effective environmental results. The industries involved in the Common Sense Initiative will provide the first opportunities to test this approach.
20. **Community-based alternative strategies.** EPA will join with a limited number of communities to conduct pilot projects that will shift environmental management focus from adherence to bureaucratic procedures in Washington to developing community driven strategies for achieving environmental and economic results. The pilots will apply the concepts contained in the facility-based and sector-based programs to a geographic area, building on the Administration's Empowerment Zone and Ecosystem Management Initiatives. These pilots will integrate the mutually supportive goals of economic development and environmental protection at the community level with full public participation.
21. **Agency-based alternative strategies.** EPA will work with other federal agencies that have environmental responsibilities to ensure that their programs achieve environmental results in the most cost-effective manner, while eliminating needless bureaucratic procedures. The initial pilot in this effort will focus on two to four Department of Defense facilities. EPA and DOD will enter into a cooperative agreement to define performance goals and jointly devise an optimal approach to achieve those goals. The approach will combine pollution prevention, compliance and technology research projects.

New Tools for Government and Industry

In addition to sponsoring alternative strategy pilot programs, EPA will place increased emphasis on developing new management tools for government and industry to utilize in implementing new environmental management systems.

22. **Third-party audits for industry compliance.** One approach for streamlining compliance oversight is to use independent, certified, private sector firms to audit industry performance. The Environmental Leadership program, with input from environmental groups, will develop criteria for third-party audits which assure the public that environmental requirements are being met. Subsequently, a pilot program - - designed to lower cost and be attractive to companies -- will be conducted to demonstrate compliance audits by independent third parties.
23. **Multi-media permitting.** For those companies that are looking for ways to consolidate all their permitting requirements, EPA will conduct several demonstrations of multi-media "one-stop" permits. By addressing all of the releases in a single permit that assures that environmental standards will be met but includes performance standard approach, can assure comprehensive environmental protection, encourage pollution prevention, minimize delay and duplication and allow facility managers to use lowest cost solutions.
24. **Design for Environment -- green chemistry challenge.** EPA and the chemical industry will jointly sponsor cash prizes and national awards for companies that develop pollution prevention processes for chemical production and use. Major targets will be using renewable resources for chemical production, substituting solvents that do not contribute to air pollution, and designing new chemicals and chemical processes that are more safely made and that are safe for the environment.
25. **Technology verification centers.** Under the President's Environmental Technology Initiative, EPA will establish six to eight pilot verification centers this year to provide independent evaluation of the performance and cost of new technologies. Formation of stakeholder groups to guide development of these centers is underway.

Committee on Energy and Natural Resources

304 Dirksen Senate Building
Washington, D.C. 20510
(202) 224-4971
Fax: (202) 224-9026

Pat
Sally
Katie
Jack

FAX TRANSMISSION COVER SHEET

Date: 3/14/95
To: Tracy Thornton
Fax: 456-12604 6221
Re: Risk assessment letter
Sender: Wick Thoma

YOU SHOULD RECEIVE 7 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO
NOT RECEIVE ALL THE PAGES, PLEASE CALL (202) 224-4971.

FRANK H. MURKOWSKI, ALASKA, Chairman

MARK O. HATFIELD, Oregon
 PETE V. DOMENICI, New Mexico
 DON NICKLES, Oklahoma
 LARRY E. CRAIG, Idaho
 CRAIG THOMAS, Wyoming
 JON KYJ, Arizona
 ROD GRAMS, Minnesota
 JAMES H. JEFFORDS, Vermont
 CONRAD BURNS, Montana

J. BENNETT JOHNSTON, Louisiana
 LALU BUSHONG, Arkansas
 WENDELL H. FORD, Kentucky
 BILL BRADLEY, New Jersey
 JEFF BINGAMAN, New Mexico
 DANIEL K. AKAKA, Hawaii
 PAUL WELLSTONE, Minnesota
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GREGG D. RENKES, STAFF DIRECTOR
 GARY G. ELLSWORTH, CHIEF COUNSEL
 BENJAMIN S. COOPER, STAFF DIRECTOR FOR THE MINORITY

United States Senate

COMMITTEE ON
 ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

The Honorable John Glenn
 Ranking Democrat
 Committee on Governmental Affairs
 340 Dirksen Senate Office Building
 Washington, D.C. 20510

March 14, 1995

The Honorable Carl Levin
 459 Russell Senate Office Building
 Washington, D.C. 20510

The Honorable Joseph I. Lieberman
 316 Hart Senate Office Building
 Washington, D.C. 20510

Dear John, Carl, and Joe:

Thank you for your recent letter requesting my views regarding two bills pending before the Governmental Affairs Committee, S.291 and S.343, that would require risk assessment and cost benefit analysis in the development of regulations. As you know, this is a subject of intense interest to me, and I am pleased to provide you with my thoughts.

Thanks to the leadership of Democrats, the Senate has an excellent record on the role of risk assessment and cost-benefit analysis in regulatory policy. Let me briefly recap the work that we did on this issue in the 103rd Congress. In April of 1993, I offered an amendment to the EPA Cabinet bill that would have required risk assessment and cost/benefit analysis with respect to EPA regulations. With your support, that amendment passed the Senate by a vote of 95-3. However, it did not become law because of the opposition of environmental advocacy groups and several House committee and subcommittee chairmen.

I then spent nearly a year working with those who had concerns about the amendment. The result was a revised amendment, co-sponsored by Senators Baucus and Moynihan, that met every legitimate concern. In May of last year, I offered the revised amendment to the Safe Drinking Water bill, and it passed by a vote of 90-8.

That simple amendment would have required EPA to do a risk assessment and cost-benefit analysis when preparing regulations that have an impact on the economy of \$100 million or more in any one year. As part of the process, the amendment provided that the Administrator must certify that the best reasonably obtainable science was used, that the regulation would actually reduce the risk addressed, that the regulation is the most cost-effective alternative, and that the benefits of the regulation justify the costs.

The amendment also directed the Administrator to compare the risk to be addressed by the regulation to three risks regulated by EPA or another federal agency, and to three other risks not directly regulated by the federal government. The purpose of this provision was to put the risk to be regulated in perspective, both for policymakers and the general public.

Of equal importance is what the amendment did not do. It did not change or override any environmental laws, create any new rights to judicial review, or in any way bar the Administrator from issuing a regulation. It was simply a truth-in-regulating provision, bringing good science to the forefront of regulatory policy and making the basis for regulatory choices as understandable as possible.

Unfortunately, environmental advocacy groups and certain members of the House continued to oppose the revised provision, and it died along with the Safe Drinking Water bill. The Republicans then picked up the risk assessment and cost-benefit issue and included it in their "Contract with America." As a result, it is part of their 100-days agenda.

Although we should be pleased that the risk issue is now receiving so much attention, I share your concern that some of our Republican colleagues have gone overboard. If we do this right, we will inject much-needed discipline into the process of setting environmental priorities. But if we go too far, we will bring the regulatory process to a grinding halt, a result that is not in the best interest of the public or the regulated industries.

Now let me turn to the major issues in S.291, which was introduced by Senator Roth, and S.343, which was introduced by Senator Dole.

Judicial Review

Judicial review is perhaps the most important issue in this legislation. My view is that judicial review should be extremely limited, so that this bill does not become a lawyers' dream by allowing litigation at every step of the process and regarding every aspect of the science. To achieve this, the results of a risk assessment and cost-benefit

analysis should be included in the administrative record in the event that the major regulation to which it relates is otherwise subject to judicial review. However, a separate cause of action should not be available with respect to the adequacy of the risk assessment or cost-benefit analysis.

The Roth bill, S.291, generally reflects this view. It provides that the agency's analysis shall not be subject to separate review, and instead shall be included in the record for purposes of judicial review of the regulation. It does, however, allow judicial review of whether a rule is "major" (and therefore not subject to the requirements of the bill). This concerns me largely because of the bill's long, vague definition of "major." Under this definition, there will be endless litigation of whether a regulation has "significant adverse effects" on such things as "competition," "investment," and "innovation."

The Dole bill takes judicial review much farther. First, it provides that if a court decides that a rule is major, it shall have "no force or effect" until such time as it receives the analyses required of a major rule.

Second, and more importantly, the Dole bill requires a court to set aside an agency action that fails to satisfy certain "decisional criteria" in the bill. Those decisional criteria provide that no final rule shall be promulgated unless the agency finds that "the potential benefits to society from the rule outweigh the potential costs of the rule to society," and that "the rule will provide greater net benefits to society than any of the reasonable alternatives identified...." This means that unelected judges, rather than politically accountable appointees of the Administration, will be deciding whether a regulation is in the public interest.

Finally, the Dole bill allows litigation where an agency denies a petition to perform a cost-benefit analysis of an existing regulation. I expect that this will greatly impair an agency's ability to set rational priorities for the review of existing regulations. Instead of allowing agencies to prioritize the review of regulations on a rational basis, priorities will be distorted by the threat of litigation with respect to particular regulations.

In short, I believe that the judicial review provisions of the Dole bill are exactly the lawyers' dream that I most fear. I urge you to oppose them strongly in your Committee, as I intend to do on the floor.

Override of Existing Environmental Laws (also Known as the Supermandate Provision)

Another crucial issue in this legislation is how to handle a situation in which the results of the risk and cost-benefit analysis do not appear to support the issuance of a regulation that is required by an existing environmental law. For example, the analysis may show, at least in the view of the agency head, that the benefits of the regulation do not justify the costs. In such an instance, should we prohibit the proposed regulation, thereby effectively overriding the environmental law that requires it?

My view is that we should not. The analysis required by this legislation will undoubtedly show that some of the standards in other environmental laws need to be changed. However, this should be done by amending those environmental laws individually, either at the time of reauthorization or otherwise. This view is shared by Chairman Roth, whose bill provides that: "Nothing in this title shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment."

The Dole bill, on the other hand, flatly overrides existing law by barring the issuance of a regulation unless the agency finds that the "potential benefits of the regulation outweigh the potential costs," and that the "rule will provide greater net benefits than any of the reasonable alternatives identified." The only exception to this prohibition is where the underlying environmental law contains "explicit textual language" prohibiting consideration of these tests. To my knowledge, no environmental law contains such explicit language.

Although I certainly share the goal of bringing our environmental standards in line with good science and good sense, I think it would be unwise to take an across-the-board approach that disregards any reasons there may have been for establishing different standards in the various environmental statutes that we have enacted over the last 25 years. In my view, we should oppose this provision.

Review of Existing Regulations (also Known as the Lookback Provision)

Everyone seems to agree that agencies should review existing regulations in light of the risk and cost-benefit analyses required by this legislation. If existing regulations can be revised to conform more closely to risk and cost-benefit analyses, billions of dollars could be saved at little or no cost to human health and the environment. The trick is to perform this review in a rational, methodical fashion that does not overwhelm the limited resources of the agency or fuel litigation.

To help set priorities for the review, I prefer some sort of advisory committee to assist the agency head. I am very skeptical of a petition process, which is likely to skew the priorities, and am strongly opposed to any judicial review of actions taken under a lookback provision.

The Roth bill takes a reasonable approach. It provides that within nine months after the date of enactment, the agency head shall publish a proposed schedule to review and revise existing major rules within 10 years. In so doing, the agency must seek proposals from the public regarding modifications or alternatives to the rules being reviewed. Judicial review of this process is precluded.

The Dole bill, however, allows any person to petition for a cost-benefit analysis of an existing regulation. If the analysis shows that the regulation does not satisfy the "decisional criteria" of the bill (e.g. that the benefits of the regulation outweigh the costs), the agency must either revoke the regulation or amend it to conform to the decisional criteria. Denial of a petition by an agency head is subject to judicial review. Needless to say, I strongly disagree with this approach.

Agencies Covered

It is extremely important that this legislation applies to the appropriate agencies, and only to those agencies. I am confident it should apply to EPA and the Department of Energy, but I think we need to carefully examine whether to include other federal agencies.

The Roth bill is broader. It lists nine agencies to which it applies: EPA, the Department of Labor, the Food and Drug Administration, the Consumer Product Safety Commission, the Department of Transportation, the Department of Energy, the Department of Agriculture, the Department of the Interior, and the Nuclear Regulatory Commission.

The Dole bill is even broader. It applies to all agencies except the Nuclear Regulatory Commission. Here again, I think that the Dole bill has gone too far.

Definition of Major Regulations

I continue to believe that we should choose a simple dollar threshold in defining major regulations, whether it be \$100 million or \$50 million, and should avoid narratives.

6

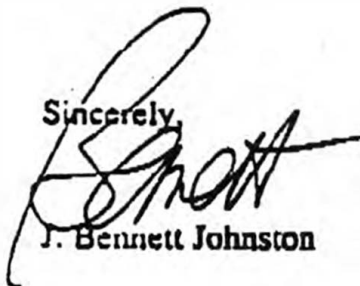
such as "significant effect on any sector of the economy, competition, innovation,...." My concern is that narratives are so vague that they will tend to capture virtually all regulations and, if subject to judicial review, will cause interminable litigation.

I was comfortable with a \$100 million threshold last year because OMB estimated that this would capture those EPA regulations that impose 85 percent of the total cost of environmental regulations, but I would certainly consider moving the threshold down as low as \$50 million. Below \$50 million, I expect that we would be contributing to "paralysis by analysis."

The Roth bill has a \$100 million threshold with a long narrative, and the Dole bill has a \$50 million threshold with virtually the same long narrative. If we can convince our Republican colleagues to drop the narratives, I think we can resolve the dollar threshold quite easily.

I hope that this letter is helpful. While you are working in the Governmental Affairs Committee, Chairman Murkowski and I are working toward a revised version of our bill, S.333, which we plan to mark up in the Energy and Natural Resources Committee on March 29. As we proceed toward the floor, I look forward to working with you and our Republican colleagues to produce the best possible regulatory reform legislation. If you have any questions, please call me or have your staff call Craig Gannett of my Energy Committee staff at 4-4820.

Sincerely,



J. Bennett Johnston

cc: The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
The Honorable Frank H. Murkowski
Chairman, Committee on Energy and Natural Resources

OFFICE OF THE VICE PRESIDENT
WASHINGTON, DC

6/24

93 JUN 24 P7:11

John -

Here is the
proposed language
re: VP's role. Please
review & let me
know* what you
think

file
rev
review

Thanks!

*on Friday, perhaps?

Section 7. *Resolution if 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 the 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), shall be automatically extended 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 waived its review of the action or has completed its review without any requests for further consideration or (2) the applicable time period in Section 6(B)(2) (as may be extended under Section

93 JUN 24 P7:11

Mr. ~~Whinny~~ Podesta -

~~EYE~~

Boxer will introduce

later this week. Should

be bipartisan - Tracey

> 11

1 of 1 items

CQ's WASHINGTON ALERT 03/08/95

SRES170

Chafee (R-RI)
Introduced in Senate

11/19/93

(108 lines)

To express the sense of the Senate that obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care.

Special typefaces used in this bill version:

// \\ Italic
Item Key: 9055

103D CONGRESS
1ST SESSION

S. RES. 170

To express the sense of the Senate that obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care.

=====

IN THE SENATE OF THE UNITED STATES

November 19 (legislative day, NOVEMBER 2), 1993

Mr. CHAFEE (for himself, Mr. INOUE, Mr. HATFIELD, Ms. MIKULSKI, Mr. BOND, Mr. MCCAIN, Mr. STEVENS, Mr. MURKOWSKI, Mr. KEMPTHORNE, Mr. LOTT, Mr. COCHRAN, Mr. COHEN, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Mr. SIMON, Mr. DURENBERGER, Mr. LUGAR, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. WARNER, Mr. AKAKA, Mr. SPECTER, Mr. BRYAN, Mr. HOLLINGS, Mr. THURMOND, Mr. GRASSLEY, Mr. JEFFORDS, Mrs. FEINSTEIN, Mr. BURNS, Mr. LEAHY, Mr. LIEBERMAN, Mr. REID, Mr. FORD, Mr. DECONCINI, Mr. WOFFORD, Mr. MCCONNELL, Mr. PELL, Mr. BINGAMAN, Mr. EXON, Mr. MACK, Mr. JOHNSTON, and Mr. DODD) submitted the following resolution; which was referred to the Committee on Labor and Human Resources

=====

RESOLUTION

To express the sense of the Senate that obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care.

Whereas women constitute more than 50 percent of the population of the United States;

Whereas, because women's health historically has received little attention in terms of Federal funding and in terms of research priorities, there should be an increased emphasis on the needs and preferences of women in such areas;

Whereas the Federal Government should increase its support for women's health and can make a significant difference in improving

the status of women's health;

Whereas increased funding for research is insignificant if women's health care services are restricted;

Whereas many women view their obstetrician-gynecologist as their primary or sole physician;

Whereas approximately 70 percent of women would be unwilling to change their obstetrician-gynecologist to save money;

Whereas an obstetrician-gynecologist improves the access to health care of a woman by providing primary and preventive health care throughout the woman's lifetime, encompassing care of the whole patient in addition to focusing on the processes of the female reproductive system;

Whereas preventive and primary care provided by an obstetrician-gynecologist includes instruction in breast self-examination, cervical cancer screening, health education, instruction in health promotion, hypertension and cardiovascular surveillance, osteoporosis counseling, sexually transmitted diseases counseling, and identification of victims of domestic violence;

Whereas the most effective way to treat health problems is to prevent such problems from occurring or to catch such problems in the early stages, when such problems are most treatable;

Whereas 60 percent of all office visits to obstetrician-gynecologists are for preventive care;

Whereas obstetrician-gynecologists refer their patients to other physicians less frequently than other primary care providers, thus avoiding costly and time-consuming referrals;

Whereas more than two-thirds of all visits to obstetrician-gynecologists were by established patients of the physician who were returning for care of a medical condition;

Whereas obstetrician-gynecologists manage the health of women beyond the reproductive system, and are uniquely qualified on the basis of education and experience to provide such health care services to women;

Whereas obstetrician-gynecologists provide health care to women with an awareness of the relationship of disease to family history;

Whereas over two-thirds of general family practice physicians do not deliver newborns and will not be able to address this need of women; and

Whereas 80 percent of maternity care services in the United States are provided by obstetrician-gynecologists: Now, therefore, be it

//Resolved, \\ That it is the sense of the Senate that--

(1) obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care; and

(2) legislative proposals that define primary care should include primary care services performed by obstetrician-gynecologists in such definition.

COMPUTER SYSTEMS DOCUMENTATION

FAX COVER SHEET

Wed Mar 08 1995 08:55 pm

To: Assistant to the President
Attn: John Podesta
Fax #: 1-202-456-2883

From: Bill Payne whpayne@abq-ros.com
Fax #: 505-292-7037
Voice #: 505-292-7037

Fax: 2 pages and a cover page.

Note: John Deutch and Perry want to get their hand on Hazel's bombs. Bombs, I said. This is politics at its worst. Japan will worry if DOD is control of the bombs. Japan SHOULD worry. Please initiate corrective action. And get our cases settled.

Wednesday March 8, 1994 07:09 file bal06.txt

Gene Ballinger
Hatch Courier
Hatch, NM

Gene,

DOD/NSA tried to do the number on DOE/Sandia to get the bomb business back. Some of us recognized that one way DOD did this was to give DOE/Sandia bad advice in the form of requirements and cryptographic algorithms.

Requirements which were unreasonable. Requirements which were most likely to lead to project failure. And cryptographic algorithms which were deficient.

I documented some of NSA's bad advice and algorithms in my SAND report on the CTBT data authenticator. WE (some at Sandia) knew what NSA was up to. WE sent NSA a message that WE knew what NSA was up to.

So your friend, Madt, and I are apparently not able to communicate on the Internet.

I hope this story is clearer to you. This story is not complicated.

DOD wants to gain control of the nuclear arsenal. DOD spin doctors are at work.

So I hope you journalists can present the story correctly to the public.

Dill

BBS: The Albuquerque RUS
Date: 03-08-95 (12:47) Number: 0
From: BILL PAYNE Refer#: 4746549
To: MADT.JUDSON@WDM.COM Recvd: NO (PUT)
Subj: mail and so forth Conf: (0) E-mail

IM>Dill, this is Wednesday, 1:40P DC. To this date no e-mail from the Land IM>of the Enchanting. Do not know why. Sysop reports no trouble at this IM>end as far as he knows. He dls internet feeds 4 or 5 times a day. Much IM>for others, nada for moi. Que lassime.

Madt,

I am sending AT LEAST one message per day to you. Looks as if something strange is going on. I will the ABQ-ROS sysop know. Perhaps the problem is on this end.

At one time I received 27 e-mail message at once. This was apparently the result of a software bug. Bugs, I guess, may never be completely removed.

Sayonara,
Bill

Madt & SYSOP,

What about this?

```
=====
BBS: The Albuquerque ROS
Date: 03-08-95 (16:44)           Number: 4746550
From: INTERNET: MAILER-DAEMON@  Refer#: NONE
To: BILL PAYNE                  Recvd: YES (PUT)
Subj: Returned mail: Host unkno  Conf: (0) E-mail
=====
```

```
----- Transcript of session follows -----
421 Host wdn.com not found for mailer ddn.
550 madt.judson@wdn.com... Host unknown
```

```
----- Unsent message follows -----
Return-Path: <whpayne@abq-ros.com>
Received: from abq-ros.com by RT66.com (4.1/SMI-4.1)
        id AA28919; Wed, 8 Mar 95 16:44:01 MST
Received: by abq-ros.com (UUPM-1.51)
        id D0053kz Wed, Mar 08, 1995 16:08:37 EST
From: whpayne@abq-ros.com
Message-Id: <9503081608.D0053kz@abq-ros.com>
X-Mailer: UUPlus Mail 1.51
To: madt.judson@wdn.com
Subject: wir17.txt
Organization: Associated Information Services
Date: Wed, 08 Mar 95 16:08:36 EST
```

At least one message per days is being sent!
bill

```
===== Automated Message =====
There was a file attached to this message on the Bulletin Board System.
This file attachment has been routed in subsequent messages.
This file has been detected to be a binary file. Because of this,
the file has been converted to 7-bit ASCII using UUENCODE. You will
need UUDECODE to translate the attachment(s) back into binary format.
===== End of Message =====
```

■ SLMR 2.1a ■



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Handwritten: Mar 8
Handwritten: for meeting
Stamp: 95 MAR 6 3 47

Kathleen A. McGinty
Chair

MEMORANDUM

To: Regulatory Advisors
From: Katie McGinty
Re: Transmitting Draft Reinventing Environmental Regulation Report
Date: March 6, 1995

As you know, on January 25 the Reinventing Environmental Regulation Working Group made a presentation to the Vice President and the regulatory advisors group outlining a range of possible changes to our system of environmental management. At the close of that session, the Vice President directed the staff of the National Performance Review and the Council on Environmental Quality to work with other White House offices and the Environmental Protection Agency to develop a reinvention package. The Vice President indicated that the package should be crafted to build support among businesses, environmentalists, and state and local governments.

On February 9 the group delivered to the Vice President a draft package containing 47 specific actions. After reviewing the package, the Vice President requested additional refinements. The attached document is the product of that effort. The report focuses upon 25 "High Priority Actions."

Three appendices to this document are still being developed: (1) one-pagers on the 25 High Priority Actions; (2) A list of Other Significant Actions; and (3) a summary of Clinton/Gore Administration actions over the last two years to reform the environmental regulatory system.

The NPR has scheduled a meeting with the Vice President and the regulatory advisors group for Tuesday, March 7 to discuss this report. This meeting is in preparation for an event that has been scheduled for March 16 for the President and the Vice President to unveil the Administration's package to reinvent environmental regulation.

In the course of developing the February 9 report to the Vice President, CEA and OIRA raised some additional ideas that were not included in the group's report. Those "Additional Reinvention Ideas" are also attached. These issues could be raised at Tuesday's meeting.

If you have questions concerning this report, please contact Keith Laughlin of my staff at 66550. If you have questions about Tuesday's meeting, please contact the NPR at 632-0150.

PROPOSED MEETING SCHEDULE
3/6/95

Mar 8
3:00P
274

March 7 (Tues) 5:45-6:30 Ceremonial Office	Environment (Follow-up)	OEP
March 8 (Wed) 4:00 Ceremonial Office	Prebriefing on Regulation of Science, Technology and IT	OSTP
March 14 (Tues)	Healthcare	DPC
March 16 (Thurs)	Workplace Safety and Labor	DPC
March 21 (Tues)	Workplace Safety and Labor (cont) Regulation of Science, Technology and IT	DPC OSTP
March 23 (Thurs)	Customer Service and IT issues summary	OVP
March 28 (Tues)	Reprise	

TO INSERT: DOT/Coast Guard
Agriculture
Energy/Natural Resources

NPR will update and circulate revised schedules as appropriate.

ADDITIONAL REINVENTION IDEAS

There are a number of additional possibilities for reinventing environmental regulation which would reduce costs, reduce and streamline compliance requirements, and increase state and local participation in environmental decisionmaking without compromising environmental objectives. These possibilities involve changes in existing regulation and legislative changes focused primarily on the Resource Conservation and Recovery Act (RCRA). The emphasis is on the major "regulatory engines" within EPA's various programs. These and other reforms would be buttressed by a greater general role for benefit-cost analysis in lieu of technology-driven standards where not expressly prohibited by statute.

Solid Waste: A variety of surgical legislative changes to RCRA to make its costs commensurate with its benefits, including setting land disposal restrictions based on risk versus technology standards; deferral to other regulatory programs (EPA, DOT, and OSHA) to avoid pyramiding of regulatory requirements; greater reliance on risk-reductions tailored to site characteristics, with emphasis on off-site damages that affect the population at large; reductions of unnecessary burdens on materials recycling; reduced paperwork requirements; and flexibility for states to adapt national standards to their own circumstances through regulatory negotiation. A complementary administrative remedy would tighten listing requirements to focus on discarded versus reused or recycled materials.

Water: Administrative changes include reduction of unnecessary burdens in stormwater control program, with greater consideration of economic factors in developing cost-effective management plans; greater use of rulemaking flexibility in water effluent guidelines to target cost-effective options with the greatest expected ambient water quality benefits; and aggressive development and initiation of watershed-level effluent trading programs. Complementary legislative actions include deletion of requirement for annual review of water effluent guidelines, shifting emphasis to the ambient water quality standards themselves; and authorization for effluent trading below source effluent standards provided water quality standards are satisfied.

Air: A variety of administrative changes (minor new source review under Title V, increased flexibility in I/M and stationary source monitoring requirements) would reduce compliance burdens and expand partnerships with states, localities, and the private sector without compromising air quality. Reinterpretation of the maximum available control technology (MACT) requirements for hazardous pollutant under the 1990 Clean Air Act (allowing an emissions reduction floor of 88% versus 94%) could have the potential to substantially reduce costs without adding greatly to emissions (tighter standards could be retained where cost-effective). The cost-effectiveness of the "open markets" trading program currently being developed by EPA will be enhanced if rules do not unduly limit trading possibilities by discounting traded emission credits or imposing undue certification requirements. Other changes that could improve the performance of the Clean Air Act would require legislative action (relaxation of the prohibition on considering cost in setting ambient air quality standards, institution of additional incentive-based mobile source emission reduction options).



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416



OFFICE OF GENERAL COUNSEL

*Podenke to Poter
copy to Lane
Pat G -*

MEMORANDUM FOR THE PRESIDENT

FROM: John T. Spotila *[Signature]*
DATE: February 28, 1995
SUBJECT: Regulatory Reform

In addition to its process-based recommendations, the interagency Small Business Forum has helped us identify a number of specific regulations which should be eliminated or substantially revised. It also has alerted us to a collection of proposed regulations which should not be finalized (as now drafted). A list of each set of regulatory measures is attached.

Although action with respect to these measures would help us build credibility, it should be coupled with highly visible changes in the enforcement area. The following steps could be taken quickly, by administrative action:

- (1) Require that penalties not be disproportionate to a person's size, ability to pay, and wrongful intent;
- (2) Give individuals and small entities notice of violations and a reasonable opportunity to cure before assessing penalties (at least absent imminent threats to health, safety or the environment);
- (3) Announce an expedited procedure (using the Vice-President's Office or the NEC) for resolving conflicting regulatory requirements, with a stay of enforcement pending such resolution; and
- (4) Offer the use of arbitration or other alternative dispute resolution (ADR) procedures (with costs borne by the losing party) to any person challenging a compliance order or violation notice.

Attachment

EXISTING REGULATIONS (needing substantial revision or elimination)

- (EPCRA), Section 313 - Toxic Release Inventory (TRI)

Recommendation: EPA should further streamline the reporting requirements of toxic releases by small sources by raising the small source exemption level, perhaps to 5,000 pounds annually, for most substances. Such releases account for only one percent of releases, but sixty percent of the TRI paperwork.

- OSHA's Hazard Communication Standard (29 CFR 1200)

DOL's Hazard Communication Standard requires employers to communicate information to employees about chemical hazards to which they might be exposed. The standard has certain deficiencies which should be addressed: the overly broad coverage of consumer products, the lack of a de minimis exemption for insignificant exposures, and the paperwork burden associated with the provision and maintenance of material safety data sheets.

Recommendation: Review the entire HazCom Standard. Create a one-page, plain language form so employees can understand the information presented, eliminate unnecessary consumer items and utilize electronic technology to create an electronic repository of sample forms. Employers would satisfy the MSDS requirement by having electronic access available to workers at all times.

- Clean Air Act - Title V Operating Permits

These rules specify the minimum federal requirements for state programs providing state operating permits to major sources. The rules are complicated and burdensome and often duplicate effective state programs.

Recommendation: EPA could consider a new approach that is more productive and less burdensome, removing all requirements not specifically mandated by the legislation. This streamlined approach would be consistent with the programs of states having effective operating permit programs.

- RCRA - Definition of Solid Waste

The regulated community cannot understand the current requirements. Many of the regulations are inappropriate because they do not properly address the degree of hazard.

Recommendation: The current regulatory scheme addressing recycling of hazardous wastes needs to be replaced. EPA should exempt some recycled hazardous wastes, or employ less stringent standards.

- RCRA - Hazardous Waste Identification Rule

Many wastes currently designated as hazardous are not and should not be regulated.

Recommendation: EPA should reduce the scope of currently regulated wastes.

- Clean Air Act - Accidental Release Reporting Requirements (section 112(r))

These regulations for chemical plants specify the requirements for chemical plants to prevent accidental chemical releases and for emergency planning and response. EPA currently requires facilities to analyze unrealistic "worst case" accident scenarios, which can unnecessarily frighten the nearby community and diverts time and attention from true emergency planning.

Recommendation: EPA should revise the definition of "worst case" to mean a scenario that could reasonably occur, rather than one that will not occur, and include the more plausible scenario in the formulation of emergency plans.

- DOT - Pre-Employment Alcohol Testing

DOT recently promulgated regulations under the 1991 Omnibus Transportation Employee Testing Act which prescribe testing of transportation workers for illegal alcohol and drug use. Some of the testing, recordkeeping and reporting requirements are unnecessarily burdensome. Particularly burdensome is the across-the-board requirement for all motor carriers to prepare an annual report summarizing testing results, when only 600 randomly selected companies will actually be required to submit the report to DOT.

Recommendation: The requirement for preparing reports should be replaced with DOT audits of testing records either during their on-site inspections or otherwise

upon demand. DOT should at least eliminate preemployment alcohol testing. Because alcohol is a legal substance which can be detected in blood only a short time (and certain alcohol abuse is evident without testing), the requirement is ineffective.

- DOT - Identification of hypothetical alcohol testing locations (49 CFR 382.303(b)(2))

DOT does not allow blood alcohol testing. However, it requires businesses to maintain records regarding occasions when blood alcohol testing could have been done. Motor carriers must keep track of locations of testing facilities they are not allowed to use, and figure out if they could have completed blood testing at those sites within eight hours.

Recommendation: If DOT wants such data, it should work with a sample of carriers, not require 553,000 companies to keep track of hypotheticals.

- OSHA - Training requirements for persons responding to releases and spills of hazardous materials which conflict with DOT regulations (29 CFR 1910.120-(6)(iii))

OSHA requires various levels of training for persons responding to uncontrolled releases and spills of hazardous materials or wastes. These regulations duplicate and conflict with DOT regulations covering the safe handling and transportation of hazardous materials, including training requirements. For example, must a truck driver have 24 hours of training before he or she can repair a leak in a diesel fuel line?

Recommendation: OSHA should clarify these conflicts with DOT and revise the standard, where necessary, so that it does not conflict with common sense..

- DOT - Federal Motor Vehicle Safety Standard 108 (14 pages devoted to headlights)

This regulation has 14 pages full of bulb design standards, but does not actually require the headlamps to illuminate a certain section of road. If this rule were eliminated, would truckers stop using safe headlights? Would manufacturers start producing inferior bulbs?

Recommendation: Replace 14 pages with performance standards.

PROPOSED REGULATIONS TO BE RECONSIDERED

- OSHA's Indoor Air Quality Standard

OSHA's Indoor Air Quality Proposal would require employers to monitor and control the air quality in all workplaces. The standard as proposed is not grounded in sound economics because of the erroneous assumptions that the costs associated with compliance are imposed on a per square foot or per employee basis, and it contains numerous technical requirements outside the scope of knowledge of most small business owners. The industries that will be hardest hit by this proposal are dominated by small firms.

Recommendation: Withdraw the proposal. As an alternative, the standard should be modified to address the disproportionate impact on small firms.

- OSHA's Ergonomics Standard

OSHA is planning to issue a regulation imposing ergonomic standards in the workplace. Ergonomics is a multi-disciplinary science that applies principles, based on the physical and psychological capabilities of people, to the design of jobs, equipment, products and workplaces. There is great concern over any potential regulation in this area because of conflicting scientific data on the causes and prevention of injuries.

Recommendation: Do not issue the proposal.

- OSHA's Respiratory Protection Standard

OSHA recently issued a proposal to update its standard for respiratory protection. The underlying economic analysis is flawed because miscalculates the number of entities affected by the rule in the calculation of costs and benefits, and it relies on research prepared almost a decade ago. Furthermore, the proposal would impose numerous costs and recordkeeping requirements on any business that uses respirators.

Recommendation: The proposal should be recalled and reevaluated to assess more accurately the impact on small firms and consider less costly alternatives.

- Clean Water Act - Storm Water Phases I and II

Under Phase I of the storm water program, EPA has proposed that 11 categories of industrial sources submit pollution prevention plans for limiting discharges into storm water.

The proposal also would require special and expensive monitoring of chemicals and would impose additional requirements on TRI reporters. Phase I essentially establishes best management pollution prevention practices. All other pollution sources fall under Phase II, including retail and service businesses.

Recommendation: The chemical monitoring and additional TRI requirements for Phase I facilities should be eliminated because they provide no additional environmental protection. A strong case can be made that Phase II is not needed since the Phase II sources are not significant sources of storm water contamination. EPA could narrowly define the sources subject to Phase II, allowing state agencies flexibility to require permits on a case-by-case basis.

- Clean Air Act - Enhanced Monitoring

EPA is currently developing special requirements for monitoring and reporting emissions from major sources of air pollution, which will generally require continuous monitoring of compliance with existing emissions standards. It will require additional expensive equipment to comply with such continuous monitoring.

Recommendation: EPA should seek to reduce the cost of the monitoring and the scope of the sources subject to the rule. Each industry monitoring protocol should be determined in an individual rulemaking, so that notice and comment procedures can be utilized.

- Toxic Substances Control Act - Chemical Use Inventory

Under the Toxic Substances Control Act, EPA requires manufacturers to report the names and quantities of chemicals manufactured every four years (Inventory Update Rule). EPA currently plans to add a requirement to report on the generic and consumer end uses of these chemicals. The collection of this information is potentially burdensome, may include trade secret information, and is not likely to yield useful data.

Recommendation: EPA should drop this initiative because the potential benefit is minimal compared to the costs.

- Safe Drinking Water Act - Radon in Water

EPA has proposed a rule requiring water supply systems to eliminate radon from water. This could be a very expensive rule. Not only would it affect water companies, but it presents a huge unfunded mandate problem. Radon in water presents a very limited danger to the public, compared to radon in the air. It is when radon is released in the air that it becomes dangerous, and it is much less expensive to remediate in the air. It has been suggested that local authorities should shift their resources to combatting the problem in the air. This presents EPA with the opportunity to review this proposal to significantly reduce the burdens on state, local and private water companies.

Recommendation: EPA should concentrate on radon reduction in the air, rather than in the water.

February 20, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN T. SPOTILA
SUBJECT: WINNING THE REGULATORY REFORM BATTLE

For the past 17 months, one of my primary objectives has been to promote regulatory reform as a means of building up your credibility with small business owners and other middle-class Americans. This endeavor is important to the American people and could be critical to your reelection prospects. Given the battle lines now being drawn, I wanted to pass along some observations.

1) The key distinction between your Administration and the opposition is that you stand for "good government", while they have given up and just want to tear things down. Our approach makes more sense, but will only succeed if we demonstrate a commitment to fundamental change. The problem of regulatory burdens is real. Establishing credibility with the American public begins by telling them that we understand that fact.

2) It seems to me that too many people in your Administration care more about preserving the ability of federal agencies to regulate than they do about your reelection. Their focus is short-term and they do not understand what the American people are trying to tell them. They are now so keyed up about fighting the Contract proposals that they may inadvertently cause you to be tagged as a defender of the regulatory status quo. That would be a disaster.

3) This issue should be ours. We have been working seriously to develop sound reform measures for at least a year and a half. Your Executive Order laid out a blueprint; NPR has made tangible progress; the SBA/OIRA Small Business Forum has been an unprecedented interagency (EPA, IRS, OSHA, DOT, FDA, and DOJ) effort, with participation by 150 small business people and 80 agency personnel. Vice-President Gore's current initiative is generating solid ideas. We understand the need to balance streamlining with preservation of the public interest. But none of this will matter if we lose the battle of public perception.

4) Respectfully, you need to set a clear direction here. The Vice-President's role is enormously important, but he cannot substitute for your own commitment to meaningful change.

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