

Reg Review: Background on
Process

PHOTOCOPY
PRESERVATION

THE WHITE HOUSE

WASHINGTON

March 4, 1995

— bring up when

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: Regulatory Reinvention Initiative

Last week, I announced this Administration's plans for further reform of the Federal regulatory system. This is a central part of reinventing our Government. All Americans want the benefits of effective regulation: clean water, safe workplaces, wholesome food, sound financial institutions. But, too often the rules are drafted with such detailed lists of dos and don'ts that the objectives they seek to achieve are undermined. Clear goals and cooperation would work better. Too often, businesses, especially small ones, face a profusion of overlapping and sometimes conflicting rules.

We have already made real progress in reforming regulation. This memorandum will build on the regulatory philosophy set forth in Executive Order No. 12866 of September 30, 1993, "Regulatory Planning and Review," which is premised on the recognition of the legitimate role of government to govern, but to do so in a focused, tailored, and sensible way.

In the year and a half since that order was signed, we have opened the rulemaking process to the public, we have increased cooperation and coordination among the Federal agencies, and we have seen good processes produce good decisions.

However, not all agencies have taken the steps necessary to implement regulatory reform. To reaffirm and implement the principles of Executive Order No. 12866, regulatory reform must be a top priority.

Accordingly, I direct you to focus on the following four steps, which are an integral part of our ongoing Regulatory Reform Initiative.

FIRST: CUT OBSOLETE REGULATIONS

I direct you to conduct a page-by-page review of all of your agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. Your review should include careful consideration of at least the following issues:

- o Is this regulation obsolete?
- o Could its intended goal be achieved in more efficient, less intrusive ways?
- o Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- o Could private business, setting its own standards and being subject to public accountability, do the job as well?
- o Could the States or local governments do the job, making Federal regulation unnecessary?

This review should build on the work already being done by your agencies under section 5 of Executive Order No. 12866.

Your regulatory review task force should be headed by one of your appointees who should be given your full support and should, to the extent practicable, be freed of other duties.

I further direct you to deliver to me by June 1 a list of regulations that you plan to eliminate or modify with a copy of the report sent to Sally Katzen, Administrator of the Office of Information and Regulatory Affairs (OIRA). The list should distinguish between the regulations that can be modified or eliminated administratively and those that require legislative authority for modification or elimination.

SECOND: REWARD RESULTS, NOT RED TAPE

I direct you to change the way you measure the performance of both your agency and your frontline regulators so as to focus on results, not process and punishment. For example, Occupational Safety and Health Administration (OSHA) inspectors should not be evaluated by the number of citations they write, nor should officials of the Consumer Product Safety Commission be judged by the number of boxes of consumer goods that are detained in shipment. This change in measurement should involve a two-step process.

First, you should identify appropriate performance measures and prepare a draft in clear, understandable terms, of the results you are seeking to achieve through your regulatory program. The draft should be circulated to frontline regulators for review and comment. This is the same work needed to meet the requirements of the Government Performance and Results Act of 1993.

Second, you should evaluate and reward employees based on the realization of those measures/goals.

By no later than June 1, I direct you to (a) eliminate all internal personnel performance measures based on process (number of visits made, etc.) and punishment (number of violations found, amount of fines levied, etc.), and (b) provide to the National Performance Review (NPR) staff a catalogue of the changes that you are making in existing internal performance evaluations to reward employees. You should also provide material describing shifts in resource allocation from enforcement to compliance.

THIRD: GET OUT OF WASHINGTON AND CREATE GRASSROOTS PARTNERSHIPS

I direct you to promptly convene groups consisting of frontline regulators and the people affected by their regulations. These conversations should take place around the country -- at our cleanup sites, our factories, our ports.

I further direct you to submit a schedule of your planned meetings to the NPR staff by March 30 and work with NPR in following through on those meetings.

FOURTH: NEGOTIATE, DON'T DICTATE

It is time to move from a process where lawyers and bureaucrats write volumes of regulations to one where people work in partnership to issue sensible regulations that impose the least burden without sacrificing rational and necessary protections. In September 1993, I asked each of you to identify at least one rule that could be conducted through negotiated rulemaking (or to explain why such could not be done) in order to promote consensual rulemaking as opposed to the more traditional rulemaking that has dominated the regulatory arena.

I now direct you to expand substantially your efforts to promote consensual rulemaking. To this end, you should submit to OIRA, no later than March 30, a list of upcoming rulemakings that can be converted into negotiated rulemakings. I have directed Sally Katzen to review your lists with a view toward making clear to the regulated community that we want to work together productively on even the most difficult subjects.

To facilitate our ability to learn from those affected by regulation, I will amend Executive Order No. 12838 (which requires agencies to reduce the number of advisory committees that they use and to limit the future use of such committees) to allow for advisory committees established for negotiated rulemakings.

I also intend to take additional steps to increase our ability to learn from those affected by regulation. While many laws and rules that limit the ability of regulators to talk with those being regulated were imposed to curb abuse, they now often serve as a barrier to meaningful communication between the regulators and the regulated. To address this problem, and to promote consensus building and a less adversarial environment, I direct you to review all of your administrative *ex parte* rules and eliminate any that restrict communication prior to the publication of a proposed rule -- other than rules requiring the simple disclosure of the time, place, purpose, and participants of meetings (as in Executive Order No. 12866). We will also begin drafting legislation that will carve out exemptions to the Federal Advisory Committee Act to promote a better understanding of the issues, such as exemptions for meetings with State/local/tribal governments and with scientific or technical advisors.

I also ask you to think about other ways to promote better communication, consensus building, and a less adversarial environment. Please send your ideas to the Office of the Vice President.

As I said on Tuesday, February 21, 1995, you are to make regulatory reform a top priority. Good government demands it and your full cooperation is crucial.

William J. Clinton

Additionally, Joe Stiglitz (CEA) presented his office's regulatory options including, performance-based standards, bubbles, emissions allowance trading, and revised monitoring systems. Joe's presentation prompted a discussion in which the Vice-President indicated that he would prefer a standard setting system in which the optimum health standard was identified first and then costs and benefits were overlaid to determine a regulatory standard. Joe, on the other hand, insisted that it is very difficult to determine an optimum health standard, whereas costs and benefits of standards generally are not as difficult to determine.

Although originally requested, neither EPA nor DOI offered a list or suggestion of "low hanging fruit." The VP concluded/requested the following:

- . OEP is charged with drafting a comprehensive environmental regulatory reform package for presentation to the Vice-President by February 8;
- . Regulatory reform participants should present the Vice-President with approximately 20 "rifleshot" proposals for improving the Resource Conservation and Recovery Act (i.e. "low hanging fruit");
- . The Vice-President will take comment on whether the Administration should support or oppose making any legislative changes to the Clean Air Act;
- . Administration policy established at the end of the 103rd Congress with regard to Superfund, the Clean Water Act, and the Safe Drinking Water Act should not be revised at this time.

Attached is a proposal for a set of government-wide initiatives for regulatory reform that we could propose almost immediately. This list would be greatly improved if you would look it over, comment on the ideas that seem either (a) insanely great or (b) dumb as frogs [please clarify in your comments which is which...]

More important, please look at these ideas as a starting point for additional initiatives of like kind: that is, government-wide changes that would make life easier for the regulated communities while holding to the standards that have been adopted in the past.

Sadly, I need your comments by COB Thursday to be of most use; suggestions made before noon on Friday will be included only if time permits, and are likely to be garbled (note the truth in advertising).

It would be more than satisfactory to send comments back to me via e-mail. That's what it's all about!

Bob Knisely, kniz@tmn.com, and 632-0150 x170

Proposal for Government-Wide Regulatory Reform Initiatives

I. ENFORCEMENT & COMPLIANCE

(A) By (date), the Federal government will offer any small business found in violation of a regulation (other than those presenting imminent safety or health hazards) an opportunity to correct the violation within (days) and not be subject to further action.

(B) By (date), the Federal government will instruct every regulatory agency that it may waive up to 100% of any fine collected from a facility if the same sum will be used in correcting the situation leading to the fine.

(C) On (date), the Federal government will have a "Customer Service Stand-down Day," upon which there will be no non-emergency inspections. Inspectors will be given instruction in a more "customer-friendly" approach to their work, and new performance standards will be put in place and explained.

(D) By (date), each Federal regulatory agency will report to the White House on its efforts to develop multi-level "tiering" of enforcement and other requirements, varying them as appropriate to the size of business, etc.

(E) By (date), each Federal regulatory agency will report to the White House on how it plans to change its inspection/enforcement strategy to focus resources on that small percentage of its clientele that has not responded to regulation.

(F) By (date), the Federal regulatory agencies will assure that their regulated communities have ready access to sources of all information needed for an "open book" inspection process. Ready access will usually mean automated access via the Internet or bulletin board systems.

II. LISTENING TO THE CUSTOMERS

(A) By (date), each Federal regulatory agency will have completed at least one survey of a statistically valid sample of their customers, forwarding the results to their Administrator/Cabinet officer. OIRA and NPR will make available proposed questions.

(B) By (date), each Federal regulatory agency will have an "electronic ombudsman" project up and running.

III. REPORTING REQUIREMENTS

(A) By (date), every reporting period in the Federal government will be doubled (i.e., from quarterly to semi-annually reporting, from semi-annual to annual, etc.), absent action by the agency head determining that this doubling would not be in the best interests of the government.

(B) By (date), all regulated industries will be offered the opportunity to file all reports electronically. For each report, the government agency will also provide (by a later date) a spreadsheet "template" so that each report will be internally consistent (i.e., columns and rows will add), minimizing the need for further communication concerning the report.

IV. INTERAGENCY COORDINATION

(A) By (date), (between 10 and 50) facilities will begin showing the Federal government how to destroy Washington's "stovepipe" approach to regulation. Each of the facilities chosen will have a resident Federal Ombudsman, and all ombudsmen will be linked with each other, the NPR, and with the regulating agencies via the Internet. The ombudsmen will be responsible for getting answers to any questions raised at their facilities with respect to any aspect of Federal regulation. Their "lessons learned" will inform the deregulation process in many agencies simultaneously.

(B) By (date), the Federal government will field no fewer than 100 enforcement staff who will be cross-trained to be able to review all health and safety record keeping and reporting at major facilities, irrespective of their home agencies. The cross-trained enforcement staff will have automated decision aids available to them.

(C) By (date), each Federal agency will have begun coordinating its regulatory inspection schedules with those other agencies affecting the facilities/businesses they both regulate (i.e., EPA & OSHA, OSHA & FDA, etc.).

V. UNRESOLVED SCIENTIFIC & TECHNICAL ISSUES

(A) By (date), the Federal regulatory agencies together will have identified a list of "top ten" unresolved scientific and/or technical issues related to regulation, and will have negotiated appropriate activities at the National Academy of Sciences/National Academy of Engineering to jump-start work on these issues (to include risk assessment, cost/benefit, etc.).

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REGULATORY REVIEW GROUPS

- General Regulatory and Cross-Cutting Regulatory Issues
- Information Technology and Regulation
- Risk, Takings, and Unfunded Mandates
- Environmental, energy, and other Natural Resources
- Small Business Regulation
- Financial Institutions
- Workplace Safety and Labor Issues
- Education
- Transportation
- Health Industry and Food and Drugs
- Consumer Product Safety
- Agriculture
- Technology Regulation
- Equal Employment Opportunity
- Science Regulation

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ► 1

To	Rob Rodriguez	From	Mike Schmidt
Dept./Agency	DOE	Phone #	456-5567
Fax #	219 9216	Fax #	456-7028

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

THE WHITE HOUSE
WASHINGTON

January 5, 1995

MEMORANDUM FOR THE VICE PRESIDENT

FROM: CAROL RASCO 
SUBJECT: **Regulatory Reform Initiative**

The purpose of this memorandum is to update on the status of the three DPC-led working groups of your regulatory review initiative. Prior to the Christmas break, I appointed the chairs of the three groups:

1. Education -- Bill Galston, Gaynor McCown
2. Workplace Safety -- Michael Waldman, Michael Schmidt
3. Health Industry Regulation/
Food and Drug Regulation -- Chris Jennings, Jennifer Klein

The working groups are off to a fast start and the chairs have convened several meetings with the appropriate agency representatives.

Because of the urgency of this initiative, I wanted to provide you with an outline of our proposed presentation from the three working groups. All three groups are planning, within the two hours allotted with you, to do the following:

1. Provide you with two to four major areas of reforms with pros and cons on both bold and moderate options. All three working groups believe it is necessary to focus on a few areas that offer the best chance for regulatory improvement (low-hanging fruit).
2. Each group will try to bring a customer-service perspective to the presentation. For example, the education working group is looking at regulations through the viewpoint of a principal and a college president. The other two working groups will follow a similar approach.
3. Each group will provide case studies of certain regulatory areas to provide a context of real life experiences.
4. Each group will try to focus on why past regulatory choices were made and what implications we can draw from them.

5. Each group will explore a vision of a different future.

Prior to the presentation, we would like to circulate the materials at least 24 hours in advance. In addition, I am planning to have a dry run of the presentations made to me before the meetings with you.

Please advise me if this plan of action meets with your approval.

DECISION

Approve

Discuss Further

F-11 New Schedule Part

PROPOSED MEETING SCHEDULE
1/5/95

*	December 21 (Wed.)	Cross-cutting issues & general approaches	OIRA
[1.]	January 3 (Tues.)	No meeting	[]
2.	January 5 (Thurs.)	Takings, remaining cross-cutting issues, and, as time allows, customer service & use of information technology in regulation	OIRA; OVP
3.	January 10 (Tues.)	Customer service & use of info. tech. in regulation	OVP
4.	January 12 (Thurs.)	Financial institutions	NEC & CEA
5.	January 17 (Tues.)	Environment, energy, and other natural resources	OEP
[6.]	January 19 (Thurs.)	TBA	[]
7.	January 24 (Tues.)	Small business	OIRA
[8.]	January 26 (Thurs.)	TBA	[]
9.	January 31 (Tues.)	Food and drugs, and consumer product safety	DPC/CEA (?)
10.	February 2 (Thurs.)	Health industry regulation	DPC
11.	February 7 (Tues.)	Workplace safety, education, and labor issues	DPC
12.	February 9 (Thurs.)	Equal employment opportunity	WH Counsel
13.	February 14 (Tues.)	Regulation of science, technology, and info.tech.	OSTP
[14.]	February 16 (Thurs.)	TBA	[]
15.	February 21 (Tues.)	Customer and info.tech. issues summary	OVP
[16.]	February 23 (Thurs.)	TBA	[]
[17.]	February 28 (Tues.)	TBA	[]
18.	March 1 (Wed.)	Reprise	[]

December 2, 1994

MEMORANDUM FOR CAROL RASCO

FROM: Paul Weinstein
Brian Burke

SUBJECT: **Regulatory Review Initiative**

Per your request from this week's DPC staff meeting, the following are our recommendations for how we should proceed to accomplish this enormous undertaking. Our suggestions are discussed below.

Goals

At the meeting of regulatory advisers, the Vice President described the purpose of this exercise as an attempt to reform, not roll-back regulations. Nevertheless, it is clear that one of the purposes of this process is to reduce regulatory burdens on individuals, the private sector, and state, local, and tribal governments.

In the past, attempts to eliminate regulations have focused on line-by-line review of the Code of Federal Regulations (CFR). The Reagan, Bush, and Clinton Administrations have all done such reviews -- and while they have been partially successful in improving the regulatory scheme and in reducing the number of duplicative and unnecessary regulations, the fundamental problems inherent in regulatory philosophy remain. (e.g. EPA has a Water office, an Air office, a Waste office, a Drinking water office, and other offices which have overlapping responsibilities but are not designed to coordinate, often leading to duplicative and self-defeating regulations.) In order for this review to be successful in reducing the number of regulations, the working groups should focus on regulatory philosophy and systems. More specifically, the working groups should develop recommendations for moving to market incentives such as tradeable permits, voluntary regulatory structures, multi-media regulation, streamlining agency responsibilities, increasing waiver authority, fostering regulatory simplicity including one-stop shopping and single forms for a series of regulations, and establishing a presumption against issuing new regulations. In the end, however, what is really needed, is a review of conflicting statutory requirements, that are driving the creation of unnecessary regulations, and a legislative proposal from the Administration that would reduce such requirements.

Next Steps

Below you will find a list of DPC staff who we recommend to serve as chairs or on the other working groups. If you approve of the list of staff assignments, we will convene a meeting next week with the DPC chairs of the regulatory working groups as well as DPC staff who will serve on the other working groups, to discuss the following: 1) The objectives

of this exercise; 2) a methodology for reviewing regulations; and 3) what the final product should look like. Other possible issues to discuss at the meeting include timelines for the chairs to complete their tasks, and procedures for interaction with the executive branch departments and possibly outside organizations. A discussion memorandum would be prepared for you from this group that reflects our conclusions. Shortly thereafter, we would convene a meeting for DPC chairs and staffers to meet with Elaine Kamarck to discuss how we can fully utilize NPR's resources in this project.

Procedures For Chairs

We recommend that each chair set up an interagency working group of the relevant agencies and EOP offices. Prior to setting up the working groups however, we suggest you send a memorandum to the relevant agency heads to ask for their assistance in this endeavor. In addition, we suggest that one NPR staffer be dedicated to work with each co-chair (with regards to Workplace safety and labor group, Mike Schmidt has indicated that he will work closely with Ellen Seidman of NEC). The first task for each chair should be to provide you with a schedule of timetables that will insure the working groups meet the Vice President's deadline.

One issue you should raise with Jack Quinn is Chris Jennings's proposal to merge the Food and Drug group into the Health Industry Regulation group. We concur with Chris' recommendation.

Suggested Staff Assignments

DPC Chairs

Health Industry Regulation/Food and Drug -- Chris Jennings
Workplace Safety and Labor Issues -- Mike Schmidt
Education -- Bill Galston (Gaynor McCown)

DPC Staff On Non-DPC Working Groups

Unfunded Mandates, Takings, Risk -- Paul Weinstein, Brian Burke
General Regulatory and Cross-cutting Regulatory Issues -- Paul Weinstein
Environment, Energy, and other Natural Resources -- Brian Burke
Financial Institutions -- Paul Weinstein
Business Regulation -- Paul Weinstein
Information Technology -- Jose Cerda *OSTP Mark Schaffer*
Customer Service in the regulatory environment -- Paul Weinstein
Transportation -- Mike Schmidt *- Michael Deich*
Equal Opportunity -- Steve Warnath
Agriculture -- Brian Burke
Biotechnology -- Mickey Levitan
Research -- Mickey Levitan
Consumer Products and Safety -- Lynn Margherio or Gaynor McCown

cc: Bill Galston
Bruce Reed

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

19-Dec-1994 11:29am

TO: (See Below)

FROM: Paul J. Weinstein, Jr
Domestic Policy Council

SUBJECT: Vice President's Regulatory Review Initiative

Today, you will receive the following information regarding the Vice President's regulatory review initiative:

1. Three excerpts on regulatory policy. a) A chapter from Carol Tucker Foreman's book (traditional regulatory perspective); b) A chapter from reinventing government (New Democrat approach); c) A chapter from "Mandate for Leadership III" from the Heritage Foundation (conservative perspective).
2. A draft of the Cross-Cutting Issues and General Regulatory Approaches working group's paper on proposed process and substance changes to regulatory policy and procedures.

A tentative schedule of when the chairs of the various working groups will make their presentation to the Vice President. At the scheduling meeting, I asked that the DPC presentations be moved back in the schedule. As it stands right now, the Education and Workplace/Labor Issues groups were supposed to make their presentation on January 17; and Health industry and Food and Drugs were scheduled for February 2 and January 24 respectively. I advised Elaine that we needed more preparation time for all of those presentations. However, DPC and OEP will make the takings working group presentation to the Vice President on January 3rd.

The working groups should be prepared to provide the Vice President with a set of options for reinventing regulations in your subject areas ranging from bold to minimalist. The options should include pros and cons.

Distribution:

TO: Christopher C. Jennings
TO: Michael T. Schmidt
TO: William A. Galston
TO: Gaynor R. McCown
TO: Kimberly J. O'Neill
TO: Jennifer L. Klein
TO: Jose Cerda, III

TO: Stephen C. Warnath
TO: Brian E. Burke
TO: Michael Levitan
TO: Jeremy D. Benami

CC: Carol H. Rasco
CC: Bruce N. Reed
CC: Kamarck, Elaine C.

Mon Thursday - sign-up

PROPOSED REVIEW SESSIONS ON REGULATORY REFORM

- Risk, takings, and unfunded mandates (mid - December)
- General regulatory and cross-cutting regulatory issues -- OIRA
- Revolution - include HUD
- Environment, energy and other natural resources -- OEP
- Financial institutions -- NEC and CEA
include HUD
- Small business regulation -- ~~CEA~~ OIRA

• Information technology -- OSTP MS

- Customer service in the regulatory environment -- OVP
- Food and drug -- DPC
- Health industry regulation -- DPC
- Transportation -- NEC
- Equal opportunity -- White House Counsel MS

• Workplace safety and labor issues -- DPC →

- you should coordinate w/ Ellen Seidman, NEC, who has taken the lead on OSHA issues

• Agriculture -- NEC

• BIOTECHNOLOGY -- OSTP

• RESEARCH -- OSTP

• EDUCATION -- ~~CEA~~ ? DPC MS

• CPSC -- CEA
which states most problematic

Sunset regs?
Systems-based approach

industry / locale-based regs
outcomes-based regs



OFFICE OF THE VICE PRESIDENT
WASHINGTON

November 17, 1994

MEMORANDUM FOR THE REGULATORY POLICY ADVISORS TO THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: REGULATORY REFORM

In the months since the President charged us with implementing his Executive Order on regulatory planning and review, we have made great progress in bringing a new sense of accountability and order to the regulatory review process. It is now time to take the next steps and develop for the President options for further reforms in the regulatory area.

Set forth below is a process by which I suggest we undertake to develop these various options. The process will focus on a series of "regulatory policy reviews" in which we can explore innovative approaches to achieve regulatory objectives in cost-effective and reasonable manners. These reviews will examine -- with the help of innovative and interesting thinkers and experts -- a variety of sectoral and cross-cutting issues so to enable us to make well-considered recommendations to the President early next year.

In addition, there are several issues closely related to the regulatory issues noted below which, as you know, have already been the object of excellent work by several White House offices. I refer to risk, takings and unfunded mandates. These issues should be considered in a coordinated, but expedited, manner by the same group that will look at the broader regulatory agenda. To that end, I propose that the Regulatory Policy Advisors also coordinate (through an inter-office process) the development of options to address these issues. Specifically, I propose that, over the next three weeks, the DPC and OEP lead a review of the takings issue, OIRA and OSTP take the lead on risk, and the DPC coordinate the development of a proposed response to the unfunded mandates issue. Ideally, these offices would prepare recommendations to be considered by the Regulatory Advisors on or before December 12, 1994. We would then forward a decision memorandum to the President.

For the remaining regulatory-related issues, I suggest the following schedule:

November - December 1994

During this period, we will discuss with affected agency heads and each other the format and process for regulatory policy reviews. We will also finalize a schedule for the policy review sessions.

December 1994 - February 1995

During this period, we will conduct the review sessions. Each review session will be organized by the relevant White House office. I will co-chair the sessions with the head of the office that organizes the session. My office will coordinate the overall schedule of the sessions and provide additional assistance as necessary.

Subject to our further discussion, suggested topics and leaders for the review sessions would include:

- General regulatory and cross-cutting regulatory issues -- OIRA
- Environment, energy and other natural resources -- OEP
- Financial institutions -- NEC and CEA
- Small business regulation -- CEA
- Information technology -- OSTP
- Customer service in the regulatory environment -- OVP
- Food and drug -- DPC
- Health industry regulation -- DPC
- Transportation -- NEC
- Equal opportunity -- White House Counsel
- Workplace safety and labor issues -- DPC
- Agriculture -- NEC

February - March 1995

At the end of the review process, the Regulatory Advisors will hold a series of meetings to determine (after appropriate consultation with affected agency heads) which of the options developed during the first phase should be presented to the President. The proposals chosen will then be drafted by the relevant policy office. These drafts will form the basis of the options memorandum to the President.

March 1995

Present options memorandum to the President.

* * *

Please review these proposed assignments (which I assume we will need to modify) and schedule and be prepared to discuss it at a meeting on the Regulatory Policy Advisors, which we will convene shortly.

Please feel free to contact Jack Quinn if you have any questions regarding the process outlined above or the meeting itself.

Distribution: The Director of the Office of Management and Budget
The Chair of the Council of Economic Advisors
The Assistant to the President for Science and Technology
The Assistant to the President and Chief of Staff to the Vice President
The Assistant to the President and Counsel
The Assistant to the President for Domestic Policy
The Assistant to the President for Intergovernmental Affairs
The Assistant to the President for Economic Policy
The Assistant to the President for National Security
The Assistant to the President and Staff Secretary
The Deputy Assistant to the President and Director of the Office of Environmental Policy
The Administrator of the Office of Information and Regulatory Affairs

THE FIRST YEAR OF EXECUTIVE ORDER NO. 12866

I. INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. IMPLEMENTATION OF THE PROCESSES SET FORTH IN THE ORDER

Regulatory Planning

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

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

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

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

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

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

Cooperation and Coordination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Openness: Public Involvement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Integrity of OIRA Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and complexity of the information collection requirements from employers.

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

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

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

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

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

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

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

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

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

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

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

IV. IMPLEMENTATION OF THE LOOKBACK PROVISIONS OF THE EXECUTIVE ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

TABLE 1

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

TABLE 2

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

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

Executive Order 12866—Regulatory Planning and Review

September 30, 1993

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

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

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

Section 1. Statement of Regulatory Philosophy and Principles. (a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets

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

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

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

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

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

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

(5) When an agency determines that a regulation is the best available method of achiev-

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

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

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

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

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

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

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, tak-

ing into account, among other things, and to the extent practicable, the costs of cumulative regulations.

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

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

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

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

dent and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

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

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

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

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

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

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import

or export of non-defense articles and services;

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

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

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

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

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

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

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

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

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

coordinate regulatory efforts to be accomplished in the upcoming year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Reg-

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

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

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applica-

ble law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

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

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

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

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should,

where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

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

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

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

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

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

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

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

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

(iii) An assessment, including the underlying analysis, of costs and benefits of poten-

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proving the current regulation and reason-
ably viable nonregulatory actions), and an ex-
planation why the planned regulatory action
is preferable to the identified potential alter-
natives.

(D) In emergency situations or when an
agency is obligated by law to act more quickly
than normal review procedures allow, the
agency shall notify OIRA as soon as possible
and, to the extent practicable, comply with
subsections (a)(3)(B) and (C) of this section.
For those regulatory actions that are gov-
erned by a statutory or court-imposed dead-
line, the agency shall, to the extent prac-
ticable, schedule rulemaking proceedings so
as to permit sufficient time for OIRA to con-
duct its review, as set forth below in sub-
section (b)(2) through (4) of this section.

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

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

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

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

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

(b) *OIRA Responsibilities.* The Adminis-
trator of OIRA shall provide meaningful
guidance and oversight so that each agency's
regulatory actions are consistent with appli-
cable law, the President's priorities, and the
principles set forth in this Executive order
and do not conflict with the policies or ac-
tions of another agency. OIRA shall, to the
extent permitted by law, adhere to the fol-
lowing guidelines:

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

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

(A) For any notices of inquiry, advance no-
tices of proposed rulemaking, or other pre-
liminary regulatory actions prior to a Notice
of Proposed Rulemaking, within 10 working
days after the date of submission of the draft
action to OIRA;

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

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

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

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

(A) Only the Administrator of OIRA (or
a particular designee) shall receive oral com-
munications initiated by persons not em-
ployed by the executive branch of the Fed-
eral Government regarding the substance of
a regulatory action under OIRA review;

(B) All substantive communications be-
tween OIRA personnel and persons not em-
ployed by the executive branch of the Fed-
eral Government regarding a regulatory ac-
tion under review shall be governed by the
following guidelines: (i) A representative

from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

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

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

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

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

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

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

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

Sec. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

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

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

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

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

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

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

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

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

William J. Clinton

The White House,
September 30, 1993.

[Filed with the Office of the Federal Register,
12:12 p.m. October 1, 1993]

NOTE: This Executive order was published in the *Federal Register* on October 4.

Memorandum on Agency Rulemaking

September 30, 1993

Memorandum for Heads of Departments and Agencies

Subject: Agency Rulemaking Procedures

Today, I issued an Executive order setting forth the Administration's regulatory philosophy; defining a more effective and accountable role for the Executive Office of the President in regulatory planning and review; and establishing the procedures to be followed by agencies and the Office of Information and Regulatory Affairs ("OIRA") in promulgating and reviewing regulations. One primary objective of this order is to streamline the regulatory review process, thus reducing the delay in the developing and promulgating rules.

We cannot, however, reduce delay in the rulemaking process without reforms within the agencies themselves. The National Performance Review team examining the issue found that many agencies require numerous clearances within the agency before a rule is submitted to OIRA for review. (Indeed, one agency found that its internal review process could only be described by using an 18-foot flow chart.) The team also learned that too often agencies use the same internal review procedures for all rules—regardless of their complexity or significance.

In order to streamline the entire rule-making process, agencies must, consistent with any applicable laws, utilize internally the most efficient method of developing and reviewing regulations. Accordingly, I direct the head of each agency and department to examine its internal review procedures to determine whether, and if so, how those procedures can be improved and streamlined. In conducting this examination, the agency or

JAN 18 1995

Memorandum for the Vice President

CC: Chief of Staff
Date: January 18, 1995
Through: Elaine Kamarck
From: NPR Staff
Subject: **Alternative to "How" Regulations Are Implemented**

Last week's meeting of the regulatory reform working group looked at customer service. In the meeting, we tried to emphasize two things.

First, much, if not most, of what bothers those being regulated is how we go about implementing existing regulations. The current approach is based on mistrust — like our systems for managing federal workers. And we keep score of regulatory success in terms of citations, fines, and civil filings.

Second, there is a great deal of experience to show that a trust-based, partnership approach produces compliance results that meet or beat those achieved with our current enforcement style. The partnership approach uses the same ideas as our customer service model. To demonstrate success with this approach among regulators, we talked about Customs-Miami, OSHA's consultation programs, EPA's 33/50 program, and the consultative approach taken in Sweden, Germany, France, the UK, and elsewhere.

We have outlined a program that seeks to make partnership the basic approach to how we implement regulations — in a real hurry. To get this new approach in place we think we need a blitz at four levels, completed by March 1, 1995.

- **Agency heads** — you and the President would talk to all of them at once in Room 450 with a basic message that we need to make a major change in a hurry or face loss of much of what has been built — "fear of extinction message". Added one-on-one time with the heads of EPA, OSHA and EEOC could help deal with their central role.
- **Washington Senior Staff** — we would put together an "SES to SES" session with the same message that the agency heads received.
- **Field Supervisors** — for the people that manage inspectors day-in and day-out, we would need a kickoff session and a continuing training program. Kickoff could be done with FEBs. We might line things up to focus on EPA/OSHA regions. We'd do a video, covering at least the Customs-Miami model, plus some session guidelines. We'd include customers in the first sessions to get the new approach started. We'd attend as many as we could, enlisting Lynn Gordon from Customs and others with the new experience to help.

- **Front-line Staff** — for the people in touch with customers, we'd do a national, two day stand-down of inspection activities, during which agencies would do retraining in the new approach. This would be modeled on the Navy's stand-down for safety training. Activities that deal with imminent, serious hazards to health, safety and property would be managed so that no added risk is created.

To support this, we think we need the following ingredients.

- **An Executive Order** — it would reject the current approach based on mistrust of the majority; explain that the new emphasis is on creating compliance and verifying it, not on enforcement; direct agencies to put the Miami model in place; set down the basic steps in that model (see Attachment 1); and set some deadlines for training and reporting on new performance measures. The level of detail would be like that of the customer service executive order.
- **New Agency Specific Mission Statements** — agencies would need to retool these. We can draft some examples.
- **Agency Specific Customer Service Standards** — customers need a basis for judging what to expect from agencies under the new approach. If we don't set some expectations, the customers will set their own.
- **New Agency Specific Performance Measures** — these will focus everyone on outcomes and customer satisfaction, dropping fines, citations and legal referrals.
- **Revised Budgets** — Revise current year spending so that more money is allocated to consultative efforts than to command and control efforts. Prepare plans to increase the consultative percentage in outyears.

We could add actions from the list at Attachment 2 to increase the impact of our program.

Alternatives to the Moratorium.

With the actions outlined here, we would address the big issue of how regulations are implemented, and be in position to point out that the moratorium proposal misses this central issue entirely. You and the President would have at least two choices.

- **Reject the Moratorium, and Announce Our Program:** The message would be that the moratorium is harmful and doesn't even address the biggest problem.
- **Seek a Delay in the Moratorium Based on Our Program:** The message would be let's try this new approach first, building on it to use partnership in dealing with our other regulatory issues.

Discussion of these ideas is scheduled first on the agenda for the January 19, 1995 meeting of your regulatory reform working group.

Attachment 1
Miami Model Actions

- Local agency management will hold regular meetings among federal agencies, state agencies, local agencies, regulated entities, and the affected public. Local organizations, like the Chamber of Commerce, will be engaged to facilitate this dialog.
- Information technology links will be set up to support doing business with the regulated entities.
- Agencies will judge the performance of field operations based on compliance, not on citations, fines or prosecutions. All agency management reports will be revised to track compliance and outcomes.
- Training and consultation will be provided to regulated entities so they know how to comply. Agencies would create manuals for self-assessment, clear enough so that regulated entities would know what to expect.
- Enforcement priority will be put on the worst problems and no time will be spent on other problems until the big issues are dealt with.
- Sunset dates will be set for all internal rules. Only rules specifically justified will be put back in place after the sunset date.

Attachment 2
Other Impact Actions

- Assign our high impact players to high impact positions. Hammer award winners and other managers who have demonstrated success with the partnership approach should be reassigned to top positions in agencies drawing the greatest fire.
- Arrange Vice Presidential visits to agencies to collect the worst in current operating rules and regulations. Agencies would team up with customers to identify rules, paperwork and regulations that upset customers and add little value. These teams would be given hammers for solutions that simplify or dispose of the offending items.
- Create an electronic, on-line "department of business." Here, in FedWorld for example, individual companies would find regulatory assistance, trade assistance, financial assistance, and a technical ombudsman to help them succeed.

THE WHITE HOUSE
WASHINGTON

December 20, 1994

MEMORANDUM FOR CAROL RASCO

FROM: Mike Schmidt

SUBJECT: Status report on Regulatory Reform Working Group on Workplace Safety and Labor

This memorandum provides a brief update on the progress of the Regulatory Reform Working Group on Workforce Safety and Labor. I have also attached a copy of a memo that went out to Assistant Secretary of Labor for Policy Tim Barnicle, which outlines an agenda and timetable for action.

Progress to Date

- I have gathered and met with a small group of EOP staffers from OMB, CEA, NEC, and NPR to assist me in the coordination of the Working Group. This group has already met and come up with a tentative timeline and agenda for action for the group (see below).
- I have contacted Tim Barnicle, Assistant Secretary of Labor for Policy (through Kitty Higgins, Chief of Staff) and briefed him on the mission of the regulatory review initiative. On Friday, December 16, I sent him a letter briefing him in greater detail on the initiative and asked him to get me a list of DOL staff who will serve on the Working Group.
- Because of the holidays, the full working group will not meet until after the new year. However, after consultation and review of the EOP members of the Working Group, I have sent a memo to Tim Barnicle and the DOL Working Group members outlining a draft set of goals and issues to discuss at our first meeting. I have attached a copy of this memo for your review. The memo also asks them to do some work over the holidays and come prepared with a good deal of materials for the first meeting so that we can hit the ground running.

If you have any questions on any of this, I can be reached in Michigan at (810) 984-5360 (Theresa's parents house).