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Comments on Final Report on Agency Economists

The report characterizes how agency regulatory economists are organized based on three types of structures: functional, divisional, or a hybrid of the two. The report should acknowledge that this is a (perhaps necessary) construct for the purpose of identifying pros and cons of each basic organization. In reality, the organization can be more complex and depends on the perspective of one who is examining how economic functions are organized. Cabinet agencies (including EPA) routinely have multiple divisions devoted to very different issues and very different types of rules. For example, OSHA is a division of the Department of Labor (DOL). At one time, the economics office reported directly to the head of OSHA, independent of any rule development office. This would be a divisional organization with respect to DOL but could be seen as a functional organization with respect to OSHA. Currently, OSHA economists are organized within the principal rule development directorate, but remain a separate economic analysis office within the directorate and do not report to program office directors responsible for developing rules. Thus, they could be said to have a functional organization within the directorate, but a divisional organization from outside the directorate. This organization also appears to be different from the “hybrid” organization described in the report, in which economists report to program offices and there is a central, independent review by a chief economist (see pp. 9-10 of the report). The report should acknowledge that there can be nuanced differences in how economists are organized and function within an agency and may not exactly fit the three organizational types described. It may help for agencies to focus on some key organizational issues rather than try to determine which of the three types of classification fit best. Some of these key issues may include 1) do the economists have a separate economic analysis office or are they dispersed throughout the regulatory development offices; 2) do the economists report to the rule developer or someone above the initial rule developers; 3) is there economic review of the economic analysis outside of the office or sub-agency that developed the analysis; and 4) how is the economic analysis reported to the senior decision makers.

There is a tendency in the first section of the report to refer to rule writers and developers as attorneys. In other places, the report does mention that rule writers and developers are commonly technical personnel of a variety of kinds—engineers, scientists, industrial hygienists, policy analysts—each of whom bring their own perspective to rules (e.g., footnote 3 on p. 7). To avoid any confusion, rule developers should be referred to consistently throughout.

With respect to the cons of a functional organization, more emphasis could be placed on the difficulty of having the appropriate expertise and fields of economics for the diversity of problems a department might address.

The discussion of hybrid organization treats central review or other forms of final review as only needed for divisional offices. There is much to be said for economic review independent of the office that produced the analysis no matter what the organization.

It might be helpful to indicate, for those agencies having a divisional organization (Table 1, p. 32) whether the economists report to a lead economist or to a supervisor within the program office (if this information is available).

Comments on Proposed Recommendations

Recommendations 6.b. 2 and 3 may not be feasible if the central review office is small or lacks the expertise to develop methods and conduct research on the diverse kinds of work of the division offices. In such cases, the central review function may be better devoted to general review for compliance with executive orders and associated guidance.

Recommendation 8 should recognize that some agencies already must develop a preliminary economic analysis of regulatory alternatives prior to issuing a proposed rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA).