



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation

Minutes

April 4, 2012

Members Attending

H. Russell Frisby (Chair)	Donald Elliot	Christy Walsh
Peter Robbins (for Cameron Kerry)	Patti Goldman (by phone)	Rick Osterman (by phone)
James Copley (by phone for Mark Cahn)	Mitch Plave (by phone for Julie Williams)	

ACUS Staff Attending

Paul Verkuil (Chairman of the Conference)	Jeffrey Lubbers (Research Director)	Reeve Bull (Staff Counsel)
Christopher Shannon (Intern)		

Invited Guests Attending

Curtis Copeland (Consultant)	Jamie Conrad (Conrad Law and Policy Counsel)
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The meeting commenced at 1pm and was held at the Administrative Conference's headquarters.

Meeting Opening

Chairman H. Russell Frisby opened the meeting and made introductory remarks. The committee then approved the minutes of the March 7 meeting. Chairman of the Administrative Conference Paul Verkuil thanked Consultant Curtis Copeland for his study of the regulatory analysis process and noted that he thought Mr. Copeland did a great job. Chairman Frisby then requested that Mr. Copeland provide an overview of his study on regulatory analysis.

Overview of Copeland Study

Mr. Copeland stated that his study focused primarily on "cross-cutting" regulatory analysis requirements and not on requirements that applied to only a single agency. He then provided some examples of the types of requirements he studied, including the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), the Regulatory Flexibility Act (RFA), and Executive Order (EO) 12866. Mr. Copeland stated that he reviewed the 100 "major rules" that agencies issued and published in 2010. He explained that he used the Congressional Review Act's (CRA) "major rule" definition. He stated that he found some



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overlap between the patchwork of statutes and executive orders and that some consolidation would be beneficial to the regulatory analysis process. He also noted that he could not empirically show that the regulatory analysis requirements he studied contributed to the ossification of the rulemaking process. Senior Fellow Donald Elliot noted that there were other ways to measure ossification besides calculating additional time spent on rulemaking. He stated that the additional resources devoted to a regulatory analysis could also be a type of ossification.

Chairman Frisby then began the discussion of the draft recommendation with recommendation 2.¹ Research Director Jeffrey Lubbers stated that Senior Fellow Peter Strauss had provided some edits and changes to the original draft recommendations for the committee's review.

Recommendation 2

Mr. Elliot suggested removing the last three sentences of recommendation 2 and replacing them with a sample chart demonstrating how agencies could provide explanations for why a given regulatory analysis requirement does not apply to the rule an agency is issuing. The committee also discussed changing the phrasing of the first sentence from "substantive rule" to "significant substantive rule" and changing the phrase "generally applicable regulatory analysis requirements" to simply "regulatory analysis requirements." The committee also agreed that the recommendation should apply to both proposed and final rules.

Recommendations 1, 5 and 6

Staff Counsel Reeve Bull stated that Mr. Strauss had proposed that recommendations 1, 5 and 6 be combined into a single recommendation. Therefore, the committee discussed these three recommendations simultaneously. Addressing recommendation 6, Mr. Elliot stated that the language "could be consolidated into a single executive order" should be changed to "could be consolidated." The committee agreed with this change. Also addressing recommendation 6, Mr. Lubbers suggested that "the President should" be changed to "the Office of Information and Regulatory Affairs (OIRA) should" because the other recommendations are targeted at OIRA and it would make more sense for OIRA to implement recommendation 6. Mr. Elliot noted that OIRA is a small agency and that it was impractical for them to figure out which executive orders should be consolidated; he suggested that the Conference should offer recommendations as to which EOs could be consolidated. Government Member Christy Walsh suggested changing the phrase "number of separate requirements" to "burden of separate requirements" in recommendation 6, which the committee adopted.

Recommendation 4

¹ The recommendation numbers used in these minutes are from the original draft recommendations for the April 4th meeting, available at <http://www.acus.gov/wp-content/uploads/downloads/2012/03/COR-Reg-Analysis-Draft-Recommendation-CIRCULATED-3-20-121.pdf>.



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Mr. Elliot noted that a footnote identifying the meaning of “type of rule” would be helpful. Chairman Frisby agreed, and Mr. Copeland said he could provide the “types” of rules he meant from his report. The committee also agreed to adopt a separate but related recommendation Mr. Strauss had proposed, that stated “Congress and the President should index any monetary thresholds for analysis to inflation.”

Recommendation 3

The committee agreed that the recommendation as written was too vague. The committee agreed that the focus of recommendation 3 was that many of the statutes and EOs were not working as they were originally envisioned. Specifically, the committee felt that Congress and the President should review statutes and EOs that accord agencies a high degree of discretion in determining whether an analysis requirement will apply, though they decided to take no position on whether these requirements should be eliminated or whether agency discretion should instead be curtailed.

Meeting Closing

Chairman Frisby closed the meeting and announced that the next committee meeting would take place on May 3.