



Committee on Regulation

Minutes

May 3, 2012

Members Attending

H. Russell Frisby, Jr.
(Chair)

Susan E. Dudley

David Fredrickson
(by phone for Mark Cahn)

Philip Howard
(by phone)

Gillian Metzger
(by phone)

Peter Robbins
(for Cameron Kerry)

Jonathan Rose
(by phone)

Christy Walsh

ACUS Staff Attending

Paul R. Verkuil
(Chairman)

Jeffrey Lubbers
(Acting Research Director)

Reeve Bull
(Attorney Advisor)

Stephanie J. Tatham
(Attorney Advisor)

Invited Guests Attending

Curtis Copeland
(Consultant)

Kevin Neyland
(by video)

David Rostker
(SBA)

Rich Theroux
(by video for OIRA)

The meeting commenced at 1 pm in the Administrative Conference's headquarters.

Meeting Opening

Chairman Russell Frisby opened the meeting, made introductory remarks, and noted that the purpose of the meeting was to review proposed revisions to the Committee's draft recommendations on Regulatory Analysis Requirements. The Committee then unanimously approved the minutes of the April 4 meeting. Chairman Frisby requested that Mr. Bull begin by describing the proposed revisions.

Overview of Revisions to Report and Draft Recommendation

Mr. Bull began by directing the attendees to the documents at issue and describing the revisions made to the Preamble. The Preamble now included more substance from Mr.



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Copeland's report and no longer included material on ossification. The recommendations themselves underwent relatively minor revisions. The largest change to the recommendations was introducing an example chart to recommendation 5 that an agency could use when stating whether particular regulatory analysis requirements are applicable. Mr. Bull noted that Mr. Don Elliot and Mr. Peter Strauss, though not present, both approved the draft recommendations; however, Mr. Elliot's approval came with the caveat that the chart could be shorter.

Before discussing the manager's amendments of the recommendations, Chairman Frisby noted that the Committee agreed on the basic revisions. The manager's amendments were relatively minor, and an example of these revisions was clarifying that the Executive Office of the President and Congress would be responsible for particular issues rather than the Office of Management and Budget (OMB) or the Office of Information and Regulatory Affairs (OIRA) due to OMB and OIRA's possible lack of authority. In addition footnote 15, which discussed adjustments to monetary thresholds to account for inflation, was added to recommendation 7.

Committee Discussion of Draft Recommendation

The Committee consented to comments by public attendees and included them in the general discussion below.

Discussion of Recommendation 1

Ms. Dudley expressed concern over how many responsibilities OIRA would have under this recommendation. The Committee discussed these responsibilities, and Mr. Copeland noted that the resulting burden would be minimal. Chairman Frisby then noted that revisions were made to lessen OIRA's burden. The attendees, including members of OIRA, continued to discuss the burdens and the possibility that the Conference prepare the chart of analysis requirements discussed in recommendation 1, instead of OIRA, because of the Conference's expertise and availability. Chairman Frisby then stated that the Committee discussed the burden when it adopted the draft recommendation and that he did not feel comfortable revising the agreed upon language of the recommendation. The discussion ended with Ms. Dudley stating that she would retract her concerns if the Conference offered to detail a staff member to OIRA, and Chairman Frisby noted that he believed the Conference would assist OIRA in implementing this recommendation.

Discussion of Recommendation 2

The Committee did not make comments on recommendation 2.

Discussion of Recommendation 3

Ms. Dudley suggested that the second sentence of the recommendation reflect that OIRA should act on a case-by-case basis. The Committee agreed to textual changes to recommendation 3 to address this suggestion.

Discussion of Recommendation 4

The Committee proposed and discussed textual changes to make the recommendation less repetitive. Mr. Howard also suggested that the recommendation address ex post analyses during rulemaking, but Mr. Copeland noted that this subject was specifically excluded from the scope of this study. Chairman Frisby expressed concern with incorporating a recommendation on



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a topic excluded from the study and suggested that the Conference study this topic. Chairman Verkuil noted that suggestion.

Discussion of Recommendation 5

Mr. Rostker, a public attendee from the Small Business Administration, expressed concern with the recommendation's focus on analyses completed after decisions instead of a focus on analyses and public engagement conducted before decisions are made. Mr. Rostker suggested that the Conference support earlier analyses as a best practice. Chairman Frisby, Chairman Verkuil, and Mr. Lubbers discussed possible solutions and settled on citing the Conference's 1985 Recommendation 85-2, "Agency Procedures for Performing Regulatory Analysis of Rules" in the Preamble. The Committee agreed to include a reference and to alter the style of the chart to address these concerns and to clarify that it is simply an example.

Discussion of Recommendation 6

The Committee discussed the wording of the recommendation and the revisions that were made to address concerns with whether the Conference was taking a position on whether analytical requirements that are reexamined should be continued. The Committee then discussed the Conference's actual position and the Committee's intention when revising this recommendation to include a sentence that addressed the Conference's neutral stance. Chairman Frisby entrusted these small revisions to the Style Committee.

Discussion of Recommendation 7

The Committee extensively discussed the addition of footnote 15, which addressed adjustments for inflation. The Committee discussed the merits of inflation adjustment, the ease of the current one hundred million threshold, concerns with the footnote's implied suggestion that too many regulations undergo cost benefit analysis, and the reaffirmation of that number by Congress and the Presidents. Chairman Frisby agreed to circulate two versions of the recommendation, one including the footnote, to the committee for a vote on whether inflation adjustment should be discussed.

Discussion of Recommendation 8

Mr. Bull provided background on this recommendation, and Mr. Lubbers discussed the public comments made by the New York University Institute for Policy Integrity. Mr. Copeland proposed alternative language, and the Committee discussed his suggestions. Ms. Dudley expressed concerns with the examples provided by Mr. Copeland and the wording of those examples. The Committee discussed those concerns, including the analytical requirements in the context of grants and aid, and agreed to revise the examples to recognize the complexity of individual situations and to set aside the last sentence of the recommendation.

Meeting Closing

Chairman Frisby acknowledged that the Committee came to consensus on the major principles of each of the recommendations except recommendation 7. Mr. Bull stated that the Conference staff would circulate revisions to the recommendations early in the next week to allow for review and voting before the Council meeting. Chairman Frisby thanked the attendees and adjourned the meeting.