

Regulatory Studies Center

THE GEORGE WASHINGTON UNIVERSITY

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I'm sorry I will not be able to attend the November 14 meeting in person, and offer a general comment on the project, as well as specific recommendations for the statement preamble and numbered proposals.

Curtis Copeland's report documents clearly the anomalous length of regulatory review pursuant to Executive Order 12866 between 2011 and 2013. For the Conference's statement concerning these lengthy reviews to be constructive, it is important to recognize that this period was an *anomaly*, and to focus on the causes and possible remedies for the unusual circumstances. The review procedures President Clinton established in 1993 have worked well for over 20 years (as evidenced by their continued use by Presidents of both parties) and I think the Conference should be careful to avoid jeopardizing those procedures or offering proposals unrelated to the unusual delays in regulatory review during a unique period.

Recommendations for Preamble

Footnote 14 should explain that the review statistics reflect a lag. I suggest something like: "It is important to note that conclusion of reviews for rules that have been underway for some time will be reflected as an *increase* in the average reported review times." (The changes to the text in subsequent paragraphs make this point, but I think it's important to include it when these statistics are presented.)

Footnote 15 references OIRA's statistics on actions "Currently Under Review," yet the text refers to "completed" reviews. I don't think the reference is the correct source of these data.

In the 1st full paragraph on p.4 (redline version), I'm confused as to why the last sentence uses overlapping time periods for comparison (September 2012-February 2013, and January 2013 – June 2013). I suggest replacing second window with March – August 2013.

I recommend deleting the 2nd paragraph on page 4 beginning "Senior agency employees." These perspectives (which are based on anonymous interviews with agency staff subject to E.O. 12866 review) do not distinguish between vague, long-standing objections to regulatory oversight and factors that might be the cause of the delays that led ACUS to issue this statement. For example, this paragraph suggests "lengthy coordinative reviews by other agencies and offices within the EOP," might be a source of the problem without recognizing that such interagency coordination has always been a purpose of E.O. 12866 review, or offering a suggestion as to what was unusual about coordination during this period. Nor does the paragraph explain why the review process

was any more complicated, regulations more complex, interagency coordination more important, or transparency and procedural requirements more demanding in 2011 than, say, 2009 (when average review time was 39 days), or more recently (when reviews are being concluded more expeditiously).

The preamble makes several references to the “transparency” of the review process, without clarifying that the focus of this statement is on the timing of review, and transparency related to that. The last sentence of this paragraph relies on Administrative Conference recommendations issued long before President Clinton issued E.O. 12866 (one from 1980 and the other from 1988) to imply that ACUS has encouraged greater transparency than is currently practiced. Given the increase in the transparency of the review process since the 1980s, I think referencing those old recommendations is misleading here and suggest deleting that sentence entirely, as well as other references to transparency that are not explicit as to what should be transparent.

Recommendations for Proposals

1. I question the value of this proposal. Asking the new OIRA administrator and his limited staff to issue a public document would take resources away from reviewing rules and continuing to reduce the backlog of regulations under review. If this proposal is retained, I recommend amending the last line to say “~~ensure that the measures of [improve] timeliness return to at least historical averages.~~” My concern is that a recommendation to “return to *at least* historical averages” implies that the Conference believes historical averages were too long, when I do not think members have reached that conclusion. Committee members agreed that reviews can be too short (1-2 days) as well as too long.

3. We’ve lost something important by removing the concept of coordinating reviews in the rephrasing of this proposal. At a minimum, it should speak to a “completed draft rulemaking package” with approval from the appropriate senior agency official.

4. I recommend removing the phrase “but in no event beyond 180 days after submission.” This is a very strong admonishment to include in a statement proposal, and seems arbitrary and inappropriate, particularly since the number is not supported by anything more than past averages, and committee members admitted they had no basis for selecting one particular number over another.

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