

Comments from Professor Peter Strauss on Copeland Report and Draft Recommendation
Submitted on April 1, 2012 for Consideration of Committee on Regulation at its April 4, 2012 Meeting

Dear Reeve,

I've just finished a quick read of Curtis Copeland's report that you will be discussing Wednesday. I am so sorry that my teaching obligations will keep me away from any contact with the meeting, and that I will be out of the country May 3, and send these thoughts in the hope they will prove helpful.

Reflecting his many years at GAO and CRS, his intelligence and his DC contacts built up over the years, Curtis's report is as good as ACUS ever gets. What a treasure-trove of information and analysis!

I was stunned to read early on in the report (p. 6) that "The Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) declined to participate in the study." March 20, as I suppose you know, OIRA issued a two-page directive requiring agencies to engage in a new form of analysis, of the cumulative impact of their rules. <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf>. This memo betrays no concern for the cumulative impact of analytic requirements, while asking agencies to take nine separate bullet-pointed steps in compliance with the new directive. "Cumulative burdens can create special challenges for small businesses and startups," the directive remarks; and also for agencies. ACUS has been reluctant to address itself to OIRA in the past; hopefully it will now, and OIRA will be willing to be engaged.

That said, I thought the brief preamble to the recommendation failed to reflect the richness of Curtis's study -- in particular, its recognition that that the principal analytic requirements do not map so well on one another.

For the recommendations themselves,

- 1) In my judgment, the first recommendation should not ask OIRA merely to list -- what Curtis has done so well -- but also to work with agencies to rationalize and consolidate them to the extent that can be done. This can be done by consolidation with 5 & 6, below.
- 2) I was a little surprised not to find "major" in Curtis's second recommendation (p. 76). Some such qualification belongs between "each" and "substantive" in the first line of the second recommendation, to avoid seeming to require this boilerplate for ALL rulemaking, no matter how trivial.

3) I suggest rewording the last words of p. 3 and first of p. 4 to something on the order of "requirements that, although broadly stated, in practice have proved rarely to be applicable." The following sentence, about inflation indexing, deserves statement in its own, separate recommendation.

4) Consistent with the recommendation for inflation indexing, recommendation 4 should not recite specific dollar amounts. So, "... impose high annual compliance costs, at an identified level indexed to inflation ... federal transfer payments by the indexed amount ... produce at least the indexed amount in annual revenues."

5 and 6) could be consolidated with 1, and urge OIRA to coordinate a study of this rationalization/consolidation. Better to address OIRA than the President, in my judgment, and "consider reviewing" ought to be, simply and directly, "review."

Peter

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