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REGULATORY REFORM

Implementation of the Regulatory Review Executive Order

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Regulatory Reform: Implementation of the Regulatory Review Executive Order

Executive Order 12866 was intended to improve regulatory planning and coordination and is administered by OMB's Office of Information and Regulatory Affairs (OIRA). At the Committee's request, GAO examined three issues: (1) implementation of the order's cost-benefit analysis requirements, (2) OIRA changes to agencies' proposed regulations, and (3) agencies' efforts to eliminate and revise regulations. GAO did not attempt to assess the quality of the cost-benefit analyses or their effect on rules, the quality of the regulatory reviews OIRA conducted, or the ultimate value of the administration's regulatory reform effort.

The executive order states that agencies should submit detailed cost-benefit analyses to OIRA for all economically significant regulatory actions, and GAO found such analyses at OIRA for 28 of the 29 such final rules issued in 1995. OIRA said the other such rule did not need a full cost-benefit analysis because it was implementing a statutory requirement. The order also states that all regulatory actions that are significant for noneconomic reasons should have an "assessment of costs and benefits." GAO found that 14 of the 23 significant rules that it examined did not have such an assessment, and OIRA said these rules did not need an assessment because of particular circumstances in each case.

Although aggregate statistics indicate that the proportion of regulations that changed while under OIRA review has increased, the source of those changes is not clear. GAO examined OIRA and agency files for the Environmental Protection Agency (EPA) and Department of Transportation (DOT) regulations that the aggregate data indicated had changed. It appeared that most of these rules were changed at least in part because of suggestions or recommendations by OIRA, and most of the changes appeared significant. However, in about a third of the cases it was unclear whether any OIRA-recommended changes had been made. In contrast to the executive order's requirement, only a few of the files clearly indicated what changes had been made to the rules because of OIRA.

GAO found that EPA and DOT reports on the number of pages of regulations they had eliminated were generally accurate. However, because new regulations are being added at the same time that regulations are being eliminated, the total number of pages of regulations may actually increase in some agencies. Page eliminations are often being done because the rules are obsolete or duplicative; revisions are often intended to clarify or update rules. GAO's analysis indicated that many of the page eliminations did not appear to reduce regulatory burden, but GAO could not determine

whether burden was likely to be reduced as a result of most of the revisions.

Regulatory Reform: Implementation of the Regulatory Review Executive Order

Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss the implementation of Executive Order 12866, "Regulatory Planning and Review." Issued on September 30, 1993, the order was designed to, among other things, "enhance planning and coordination with respect to both new and existing regulations." It outlines the administration's regulatory philosophy and principles, describes the organization of the federal regulatory system, and initiated a process to review and revise or eliminate certain existing regulations. That review process ultimately became part of the administration's overall regulatory reform effort.[1] The order also allocates responsibilities to both federal agencies and the Office of Management and Budget (OMB) in a centralized regulatory review process, and recognizes OMB's Office of Information and Regulatory Affairs (OIRA) as the repository of expertise on regulatory issues.[2]

As the Chairman and Ranking Member of this Subcommittee requested, we focused our review on three issues: (1) the extent to which agencies are adhering to and OIRA is applying the executive order's cost-benefit analysis requirements; (2) whether OIRA is significantly changing agencies' proposed regulations during its review process; and (3) whether agencies are eliminating regulations and, if so, whether the elimination and revision of regulations are reducing regulatory burden. The methodology we used concerning each issue will be discussed in detail later, but in general we met with OIRA and agency officials and reviewed OIRA and agency files regarding specific regulations.

It is also important that I also describe what we did not do. We did not reach any overall conclusions regarding the quality of the regulatory reviews OIRA conducted or the ultimate value of the administration's regulatory reform effort. Neither did we attempt to assess the quality of the cost-benefit analyses that agencies conducted or how those analyses affected agencies' decisionmaking. However, another GAO review currently underway is examining qualitative aspects of selected cost-benefit analyses prepared by the Environmental Protection Agency (EPA), including the extent to which common assumptions are used in preparing

[1]Regulatory reform is one element of the administration's "reinventing government" initiative. For a discussion of the reform proposals, see Regulatory Reform: How Can Congress Assess the Administration's Initiatives? (GAO/T-GGD-95-206, July 18, 1995).

[2]OIRA was created by the Paperwork Reduction Act of 1980. It oversees agency activity in three areas: regulation, collection of information, and information resources management. Regulation and information collection review staff currently include a deputy administrator, 3 branch chiefs, 3 administrative support assistants, and 20 analysts.

such analyses, regulatory alternatives are being evaluated, and potential benefits are monetized. Our review focused on the three issues I mentioned, and as I will describe later, data limitations prevented us from fully addressing some of those issues.

Cost-Benefit Analysis Requirements

Agencies' responsibilities in the executive order to assess the costs and benefits of their proposed regulations vary depending on whether the regulatory action involved is "significant" or "economically significant."[3] A significant regulatory action is defined in the order as any action "that is likely to result in a rule that may

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

Any regulatory action that meets the first of these criteria is considered "economically significant." If the action does not meet the first criterion but meets any of the other three criteria, it is considered "significant for noneconomic reasons."

OIRA's Interpretation of the Order's Cost-Benefit Requirements

For each significant regulatory action, the executive order requires the issuing agency to provide OIRA with "an assessment of the potential costs and benefits of the regulatory action."[4] OIRA officials told us that the degree to which agencies should assess regulatory cost and benefits varies depending on the nature of the regulatory action at issue. However, they

[3]According to the executive order, a "regulatory action" is any substantive action by an agency, normally published in the Federal Register, that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

[4]The executive order permits the OIRA Administrator to waive review of any significant regulatory action, in which case the agency need not comply with the order's cost-benefit requirements.

said that agencies should, at a minimum, include a statement in the preamble to proposed significant regulations indicating that they considered the potential costs and benefits of the regulations during their development.

For economically significant actions, the order requires agencies to provide to OIRA

> "(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
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> (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
>
> (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives."

OIRA officials told us that these provisions mean that agencies should provide OIRA with a copy of a cost-benefit analysis when economically significant proposed regulations are submitted to OIRA for review. However, they also said that, in practice, agencies do not do cost-benefit analyses for all economically significant proposed rules. For example, they said that it would not be worth the time and effort required for an agency to do a cost-benefit analysis for economically significant crop price support regulations based on legislated formula.

As interpreted and administered by OIRA, the cost-benefit requirements in Executive Order 12866 are similar to the requirements in the order it replaced. Executive Order 12291, issued by President Reagan in 1981, required agencies to submit a "regulatory impact analysis" with every "major rule." A major rule was defined as one that was likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major

increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the international competitiveness of U.S. enterprises—criteria similar to those used to describe "economically significant" rules in Executive Order 12866. Like the cost-benefit requirements in the Clinton executive order, the Reagan order said regulatory impact analyses should contain descriptions of the potential costs and benefits of the rule and of the costs and benefits of alternative approaches.

Implementation of Cost-Benefit Requirements for Economically Significant Rules

To determine the extent to which agencies provide a copy of a cost-benefit analysis for each economically significant rule, we asked the Regulatory Information Service Center (RISC) to provide us with a listing of all such rules that were published in the Federal Register as final rules during calendar year 1995.[5] RISC provided us with a listing of 39 rules that it said met those criteria.[6] However, we discovered that 10 of these 39 rules were not economically significant and/or were not final rules, and therefore should not have been part of our analysis.[7]

Of the remaining 29 rules, the largest number were from the Department of Agriculture (13 rules), followed by the Department of Transportation (DOT) (5 rules), and EPA (4 rules). The subject matter of the rules ranged widely, including

- agricultural regulations (e.g., rice acreage reduction; wheat, feed grain, and oilseed programs; and crop sugarcane and sugar beet price support loan rates);
- standards for the use of double hull tankers carrying oil in bulk;
- migratory bird hunting regulations;
- National Emission Standards for Hazardous Air Pollutants for petroleum refineries; and

[5]RISC works closely with OMB to provide information to the president, Congress, and the public about federal regulatory policies. Its primary role is to coordinate the development of the Unified Agenda of Federal Regulatory and Deregulatory Actions, a comprehensive listing of proposed and final regulations.

[6]In this review, we did not attempt to determine whether other rules should have been classified as "economically significant" or "significant."

[7]OIRA staff told us that 8 of the 10 rules were not economically significant, and the text of some of the rules also indicated that they were not economically significant. One rule was a proposed rule, not a final rule, and another rule was neither economically significant nor final. None of the files for these 10 rules contained a cost-benefit analysis.

- regulations on the payment of covered outpatient drugs under rebate agreements with manufacturers.

We reviewed OIRA's files for each of these rules to see if they contained a cost-benefit analysis. If we could not locate the analysis in OIRA's files, we asked OIRA staff for a copy of the analysis. For 28 of the 29 economically significant rules, a cost-benefit analysis document was either in OIRA's files or was provided by OIRA staff. Although we did not attempt to assess the quality of the analyses conducted, the analyses for 26 of the 28 rules appeared to have all three of the elements the executive order requires—assessments of costs, benefits, and the costs and benefits of alternative approaches. One analysis covering two rules (the early- and late-season migratory bird hunting rules) appeared to lack a discussion of the costs and benefits of alternative approaches.

The one economically significant final rule for which we could not find a cost-benefit analysis was issued by the Department of Veterans Affairs (VA) in response to a Supreme Court decision interpreting a statutory requirement that VA provide compensation for disability or death resulting from VA hospitalization, medical or surgical treatment, or examination. The file for the rule did contain a discussion of the rule's "costs and budgetary impact" that centered on how to calculate the overall cost of the payments. OIRA officials said that the file contained no discussion of the benefits of the payments or alternative approaches because the payments were statutorily required, and therefore the cost discussion alone met the requirements of the executive order.

Implementation of Cost-Benefit Requirements for Rules Significant for Noneconomic Reasons

We also asked RISC to provide us with a list of all final rules issued in 1995 that were significant for noneconomic reasons. RISC provided a list of 259 such rules, from which we randomly selected a 10 percent sample (26 rules). Although the size of this sample prevents us from generalizing our findings to all 259 rules, the sample can demonstrate the kinds of cost-benefit "assessments" OIRA said satisfied the executive order's requirement.

We determined that three of the 26 significant rules were proposed, not final, rules and therefore should not have been part of our review.[8] Of the remaining 23 rules, 4 had a separate cost-benefit analysis document in the OIRA files, and 5 other rules contained language discussing the costs and

[8]All three of the proposed rules had either cost-benefit analyses or language discussing the costs and benefits of the regulatory action.

benefits of the regulatory action. The remaining 14 rules contained neither a cost-benefit analysis nor language in the rule discussing the rules' costs or benefits.

OIRA officials said a cost-benefit assessment was not prepared for these 14 rules because of particular circumstances in each case. They said that some of the rules were simply implementing a detailed statutory or procedural requirement, some were essentially administrative in nature (e.g., harmonizing two existing programs in different agencies), one eliminated an outdated requirement, and one was significant only because of its relation to a larger rule. In such cases, OIRA officials said they do not recommend that agencies conduct a cost-benefit assessment because it would not contribute substantially to decisionmaking. In essence, they said, a blanket requirement that agencies conduct a cost-benefit assessment would not pass a cost-benefit test.

OIRA Changes to Regulations

The second major issue we were asked to address was whether OIRA is significantly changing agencies' proposed regulations during the review process. Although we found evidence of some OIRA involvement in all of the regulations we investigated, the data available did not provide sufficient evidence to conclusively determine whether OIRA-recommended changes were made to all of the regulations. Aggregate data compiled by RISC indicate that the proportion of regulations that were changed during the time period they were under OIRA review increased substantially between 1981 and 1996, but the data do not reveal the source of those changes. OIRA and agency files and interviews with OIRA staff indicated that most of the rules that the aggregate data indicated had changed while at OIRA were changed at least in part because of suggestions or recommendations by OIRA, and most of those changes appeared significant. However, in many other cases it was unclear what changes had been made to the rules during the review process or whether OIRA had recommended those changes. Despite this lack of documentation, OIRA and agency officials said OIRA does affect the development of regulations through discussions that occur before and during the rulemaking process or simply by its presence in that process.

OIRA Regulatory Review Process

OIRA has been responsible for reviewing proposed rules since its creation in 1981. Under Executive Order 12291, OIRA reviewed both major and nonmajor rules (on average, about 2,300 regulatory actions at proposed and final rulemaking per year) from all federal agencies except

independent regulatory agencies. The order authorized OMB to review any preliminary or final regulatory impact analysis, notice of proposed rulemaking, or final rule "based on the requirements of this Order."[9] OIRA's reviews under this executive order were highly controversial, with critics contending that OIRA exerted too much control over the development of rules and that decisions were being made without appropriate public scrutiny.

Executive Order 12866 requires the OIRA Administrator to "provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency." As was the case under Executive Order 12291, the current order does not authorize OIRA to review rules from independent agencies. However, instead of reviewing both major and nonmajor regulations, OIRA's reviews are currently limited to significant regulatory actions (about 800 per year at proposed and final rulemaking). OIRA conducts those reviews before the publication of the rule in the Federal Register as a notice of proposed rulemaking and before its publication as a final rule. OIRA also sometimes reviews rules prior to the proposed rulemaking stage. In general, OIRA must complete its review with an agency within 90 days of receiving the rule.

One of the stated objectives of Executive Order 12866 is "to make the process more accessible and open to the public." In conjunction with that objective, the order requires agencies to "[i]dentify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA" after the action has been published in the Federal Register. The OIRA Administrator pointed out that requirement in guidance that was sent to the heads of departments and agencies in October 1993.

Another objective of the executive order is to "reaffirm the primacy of federal agencies in the regulatory decisionmaking process." In a May 1994 report to the President on the first 6 months of the executive order, the OIRA Administrator said the relationship between OIRA and the agencies had "vastly improved" and that "rule writers and rule reviewers were learning to work together as partners rather than as adversaries." Agency officials we spoke with at both EPA and DOT confirmed this perception. OIRA officials told us that, during this administration, they work with the agencies before

[9]For a description of and statistics relating to OIRA's review process under Executive Order 12291, see Regulatory Review: Information on OMB's Review Process (GAO/GGD-89-101FS, July 14, 1989).

the formal submission of the rules. Because of the often informal nature of this process, the OIRA Administrator suggested in her May 1994 report to the President that the order's requirement that agencies document OIRA changes "may warrant further consideration" because "changes that result from regulatory review are the product of collegial discussions" often involving multiple agencies. She said that after such an extended process, "it is not clear that identifying changes made at the suggestion of OIRA is accurate...or meaningful."

EPA and DOT officials told us that regulations are frequently developed and changed as a result of meetings and telephone calls between agency and OIRA staff at various stages of the rulemaking process. They also said that OIRA frequently affects the development of rules in ways that may not be reflected in their or OIRA's files. For example, DOT officials said that they will not even propose certain regulatory provisions because they know that OIRA will not find them acceptable.

Aggregate Statistics Indicate Rules Change While at OIRA, but Source of Changes Is Unclear

At the conclusion of each stage of the review process, OIRA staff complete a regulatory review worksheet that indicates whether the proposed rule was (1) "consistent (with the executive order) without change," (2) "consistent with change," (3) "withdrawn" by the agency, (4) "returned" by OIRA for further consideration, (5) required to be issued under a statutory or judicial deadline (thereby attenuating OIRA's review), or (6) whether some other action was taken.[10] OIRA does not have the authority under the executive order to disapprove regulatory actions.

At our request, RISC provided data on the disposition of all rules submitted to OIRA from 1981 through June 1996.[11] During this period, an average of 92 percent of the regulatory actions were coded as either "consistent with change" or "consistent without change." Relatively few actions were withdrawn by the agencies (an average of less than 3 percent per year), and even fewer were returned or fell into some other status category. The proportion of rules returned by OIRA for further consideration appears somewhat less under Executive Order 12866 than under Executive Order 12291. Between 1981 and September 30, 1993, OIRA returned an average of about 1.3 percent of the rules it reviewed. Between October 1, 1993, and

[10]The proportion of regulatory actions with mandated deadlines has increased between 1985 and 1992. See Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations (GAO/PEMD-95-18BR, Mar. 8, 1995).

[11]Up to October 1, 1993, OIRA reviews were done under Executive Order 12291. Subsequently, the reviews were done under Executive Order 12866.

June 30, 1996, OIRA returned 0.2 percent (5 out of 2,366) of the rules it reviewed.

The percentage of actions that fell into the "consistent with change" or "without change" categories has varied dramatically over time. For example, in 1981, 87 percent of the regulatory actions were coded "consistent without change," and only 5 percent were coded as having been changed. However, by the first half of 1996, a greater percentage of regulatory actions were "changed" (48 percent) than were described as "consistent without change" (45 percent). Some of the difference in the degree to which rules were changed was probably due to the change in the number and type of rules that OIRA reviewed. Under Executive Order 12291, OIRA reviewed about 2,300 major and nonmajor rules per year; under Executive Order 12866, OIRA has reviewed fewer than 800 significant rules per year.

However, these data do not necessarily mean that OIRA is more likely to recommend changes to proposed rules than it did in the past. OIRA staff told us that they code regulatory actions as "consistent with change" if any changes are made to the actions while under review at OIRA, regardless of their source. They said that a regulatory action could be coded as "consistent with change" even if the changes were solely at the initiative of the agency promulgating the rule. Therefore, it is unclear whether the increased rate of "changes" over time means that OIRA is increasingly asking for changes in agencies' rules or whether agencies are more likely to submit rules as "works in progress," making further changes to the rules while they are under review at OIRA.

OIRA and Selected Agencies' Files Often Did Not Clearly Indicate OIRA's Effect

To better understand the nature of the changes being made to these rules, we asked RISC to provide a list of all rules that were initially submitted to OIRA for review during calendar year 1994.[12] RISC provided a list of 319 such rules and the action taken with respect to each rule (e.g., "consistent with change" or "consistent without change") at each stage of the rulemaking process (prerule, notice of proposed rulemaking, and final rulemaking) between their submission to OIRA in 1994 and the time we began our review in July 1996.

The RISC data indicated that, at some point in the rulemaking process, nearly 55 percent of the rules had changed while at OIRA. About 38 percent

[12]We focused on 1994 rules to allow time for OIRA to review the rules at both the proposed and final rule stages.

of the rules were coded "consistent without change" throughout the process, and about 7 percent had some other type of disposition (e.g., judicial deadline, withdrawn, or returned). Major differences existed in the number of rules that changed across the agencies. For example, 40 of the 54 EPA rules submitted to OIRA in 1994 (about 74 percent) were coded "consistent with change" in at least one stage of the rulemaking process.[13] In contrast, only 9 (30 percent) of the 30 DOT rules were coded "consistent with change" at some stage of the rulemaking process.[14] OIRA officials said that some of the differences in the number of changes made to rules are attributable to the level of centralized review at the agencies. They said that well-developed review processes in agencies reduce the need for OIRA-suggested changes to rules.

Of the 84 combined EPA and DOT rules, the RISC data indicated that 49 had changed while at OIRA, 21 were "consistent with no change," and 14 had some other disposition. We then focused our review on the 49 rules that the aggregate data indicated had changed. We first reviewed OIRA files and interviewed OIRA staff regarding each of the rules to determine the nature of the changes made and whether the changes were made at the suggestion or recommendation of OIRA. We also reviewed EPA and DOT files for these rules to determine whether agencies had identified for the public the changes that were made at the suggestion or recommendation of OIRA.

OIRA or agency files indicated that OIRA suggested changes that were made to 29 of the 49 combined EPA and DOT rules, and OIRA staff said that they had suggested changes that were made to 3 other rules. The file for one rule indicated OIRA had no suggested changes. For the remaining 16 rules, though, it was unclear whether OIRA had recommended any changes that were made to the rules.

The OIRA and DOT files frequently did not indicate what changes were made to the rules or, if they did, whether the changes were made at the suggestion or recommendation of OIRA. The EPA files were usually more complete and often indicated substantial discussions between agency and OIRA representatives. They also sometimes contained copies of drafts of the rules indicating the changes that had been made during the review process. However, some of the EPA files did not have this type of documentation, and even those that did frequently did not clearly indicate

[13]Only 1 rule was "consistent without change" throughout the process, and the remaining 13 rules were deadline cases, withdrawn, or returned or had one of those codes in conjunction with a "consistent with change" or "consistent without change" code.

[14]Twenty of the 30 DOT rules were "consistent without change" throughout the process, and 1 rule was withdrawn.

whether OIRA had recommended those changes. For example, the EPA file for one of the 16 rules for which we could not determine OIRA changes contained more than two dozen faxes, letters, memos, or other forms of communication between the EPA and OIRA officials. Many of those documents referred to changes that had been made to the rule, but it was not clear whether the changes had been suggested by OIRA.

For those 29 files that we determined resulted in OIRA-suggested changes, we sometimes made those determinations by accumulating evidence from different sources or by reading notes written in the margins of documents. None of the DOT files and only a few of the EPA files contained a memo clearly documenting for the public that changes were made to the rules at the suggestion or recommendation of OIRA. Therefore, we do not believe that either EPA or DOT has closely adhered to the executive order's requirement to document changes made at the suggestion or recommendation of OIRA. As a result, the public would frequently find it difficult to determine what changes were made to regulatory actions because of OIRA.

Most OIRA Changes Appeared Substantive

In 21 of the 32 rules for which evidence existed of OIRA-suggested changes, the changes made to the rules appeared to be substantive in nature. For example:

- One EPA file indicated that EPA decided to make four "significant changes" to the rule's compliance criteria because of OMB's comments. The changes included limiting the technical and scientific information the rule required to be submitted and reducing the list of conditions that must be monitored from seven to three.
- Another EPA file indicated that OMB's comments resulted in the elimination of recordkeeping requirements from the rule and that language was added to the rule allowing waiver of certain requirements to avoid conflicts with requirements from another agency.
- An OIRA file indicated that DOT redrafted a rule's implementation schedule in response to an OMB request, allowing a more gradual implementation of the rule for certain elements of the regulated community.

In the other 11 rules, the changes appeared relatively minor. For example, one of the EPA files stated that the only changes made during the OMB review were "minor deletions of preamble language" and that "[n]o substantive changes to the proposal were suggested or recommended by OMB."

The lack of documentation of OIRA changes to the rules or documentation that reflects only a relatively minor change does not necessarily mean that OIRA did not play a significant role in the development of the rules in question. As I mentioned earlier, OIRA officials told us that during this administration they work with the agencies before rules are formally submitted. These kinds of discussions may not be reflected in documents at either the agencies or OIRA.

Elimination and Revision of Regulations

The third major issue we were asked to address was whether agencies were eliminating the regulations that the administration claimed were being eliminated, and whether the eliminations and revisions of rules were reducing regulatory burden. We found that EPA and DOT reports on the number of pages of regulations they had eliminated were generally accurate. However, because new regulations are being added at the same time that regulations are being eliminated and revised, the total number of pages of regulations may actually increase in some agencies. Available data indicate a variety of reasons why the regulations are being eliminated (e.g., because rules are outdated or are duplicative of other requirements) and revised (e.g., to clarify or update rules or to establish new procedures). Most of the page eliminations did not appear to reduce regulatory burden, but it was often unclear whether the regulatory revisions would do so.

Order's Requirement for Review Leads to Page Elimination and Revision Goals

Section 5 of Executive Order 12866 required each agency to submit a program to OIRA by December 31, 1993, under which it would periodically review its existing significant regulations to determine whether any should be modified or eliminated. According to the order, the purpose of the review was to make the agency's regulatory program more effective, less burdensome, or better aligned with the President's priorities and the principles in the order.

There had been several previous requirements that federal agencies review their existing regulations. For example, Executive Order 12044 ("Improving Government Regulations"), issued by President Carter in 1979, required agencies to review their existing rules "periodically." The Regulatory Flexibility Act of 1980 required agencies to publish in the Federal Register a plan for the periodic review of rules that "have or will have a significant economic impact upon a substantial number of small

entities."[15] In 1992, President Bush sent a memorandum to all federal departments and agencies calling for a 90-day moratorium on new proposed or final rules during which agencies were "to evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth."

In an October 1993 memo to the heads of federal departments and agencies, the Administrator of OIRA noted that previous administrations had undertaken similar review efforts but said that some of those efforts had been "so broad in scope that necessary analytic focus has been diffused, or needed followup has not occurred." She said the effort under the new executive order should be more productive because, among other things, "it focuses only on significant regulations and the legislation that mandates them." In its report on the first year of implementation of the order, OIRA further clarified the intent of this effort.

> "It is important to emphasize what the lookback effort is and is not. It is not directed at a simple elimination or expunging of specific regulations from the Code of Federal Regulations. Nor does it envision tinkering with regulatory provisions to consolidate or update provisions. Most of this type of change has already been accomplished, and the additional dividends are unlikely to be significant. Rather, the lookback provided for in the Executive Order speaks to a fundamental reengineering of entire regulatory systems...."

On March 4, 1995, the President sent a memorandum to the heads of departments and agencies describing plans for changing the federal regulatory system because "not all agencies have taken the steps necessary to implement regulatory reform." Among other things, the President directed each agency to conduct a page-by-page review of all its regulations in force and eliminate or revise those that were outdated or in need of reform. In June 1995, 28 agencies provided reports to the President describing the status of their regulatory reform efforts, often noting the number of pages of federal regulations that would be eliminated or revised. On June 12, 1995, the President told participants at the White House Conference on Small Business that the page-by-page review effort had resulted in commitments to eliminate 16,000 pages of regulations from the 140,000 page Code of Federal Regulations (CFR), and another 31,000 pages would be modified either through administrative or legislative means.

[15]See 5 U.S.C. 601, 610. In Regulatory Flexibility Act: Status of Agencies' Compliance (GAO/GGD-94-105, Apr. 27, 1994), we reported the results of a study by the Small Business Administration that indicated many agencies had not planned for or conducted a review of their rules.

Since that time, agencies have periodically reported to OIRA on their progress in eliminating and revising rules. As of June 30, 1996, the agencies reported that 11,569 pages of the CFR had been eliminated (72 percent of the 16,000-page goal) and another 1,421 pages (9 percent) had been proposed for elimination. The agencies also indicated that 13,216 pages of the CFR had been "reinvented" (43 percent of the 31,000-page goal), and another 5,271 pages (17 percent) had been proposed for reinvention.

Page Elimination Totals Appear Generally Accurate, but Methodology Differs

Any analysis of the effect of reductions in the number of pages of regulatory text must recognize that one sentence of a regulation can impose more burden than 100 pages of regulations that are administrative in nature.[16] Thus, the number of pages eliminated in the CFR is, at best, an indirect measure of burden reduction. Nonetheless, it is one of the measures that the administration is using to gauge its own efforts.

To determine whether agencies were actually eliminating the number of pages of regulations that they claimed in their reports to OIRA, we obtained details of two agencies' page elimination efforts—EPA's and DOT's.[17] Specifically, the agencies provided us with Federal Register citations for actions related to the pages that they claimed to have eliminated as of June 30, 1996. We then reviewed those citations, confirmed that the actions were final or interim final rules, noted what CFR parts or sections they eliminated, and then counted the eliminated pages in the CFR that were designated for removal.

Our analysis indicated that these agencies' page elimination claims were generally valid. EPA claimed to have eliminated 1,292 pages from the CFR (89 percent of the 1,457 pages it had promised in its 1995 report to the President), and we counted a total of 1,230 pages that had been removed. DOT claimed to have eliminated 1,247 pages (102 percent of the 1,221 pages it had promised), and we counted 1,232 pages that had been removed.

OIRA officials said that they had not provided guidance to the agencies in how to carry out the CFR page elimination and revision exercise. Perhaps as a consequence, the agencies we visited differed in the manner in which they counted the pages being eliminated and revised. EPA officials said

[16]See Regulatory Reform: How Can Congress Assess the Administration's Initiatives? (GAO/T-GGD-95-206, July 18, 1995) for a more complete discussion of this issue.

[17]We selected these agencies because we were already examining the changes made to their regulations in another part of this review. We did not attempt to verify the number of pages being revised because of the difficulty involved in making that determination. Elimination of pages seemed more straightforward and, therefore, verifiable.

they only counted CFR changes that occurred in 1995 (primarily after their June report to the President) or 1996. However, DOT officials said they counted any regulatory elimination or revision since the start of the Clinton administration in coming up with their tally of CFR pages eliminated or revised. Officials in both agencies also said there were differences within each of the agencies in the manner in which CFR pages were counted. For example, an EPA official said that some units within EPA simply "eyeballed" the pages being eliminated, whereas other units used more sophisticated methods of measuring the number of CFR pages being removed.

Page Elimination Effort Does Not Count Pages Added

OIRA officials said that the administration's goal was to eliminate 16,000 pages from the CFR as it existed at the start of the reinvention effort. They said the page elimination total does not take into account any pages that were added to the CFR during that effort, and therefore the CFR may not have 16,000 fewer pages than at the start of the administration's effort. However, they added that many of the pages being added to the CFR are statutorily mandated regulations, not new rules developed at the initiative of regulatory agencies.

The effect of pages being added to the CFR at the same time they were being eliminated can be seen at one of the agencies included in our review. An EPA official said that the agency had 14,384 pages of regulations in the CFR as of July 1, 1995. As of July 1, 1996, EPA said it had eliminated 1,292 pages in the CFR, but an EPA official told us in August 1996 that the number of pages of EPA regulations had expanded to 14,690 pages—a growth of more than 300 pages. The official said this growth was primarily driven by statutory requirements to develop new Clean Air Act regulations.

Governmentwide data on changes in the number of regulatory pages are incomplete, but the data that are available suggest that, despite the contemporaneous addition of new regulations, the page elimination effort is having some effect on the size of the CFR. According to the Office of the Federal Register (OFR), the total number of pages in the CFR increased from 105,935 pages in 1985 to 138,186 in 1995. Data on the number of pages in the entire CFR for 1996 will not be available until the spring of 1997. However, an OFR official said that 1996 data for about half of the CFR volumes (titles 1 through 27) that have been revised indicate that the number of pages in those sections dropped from 68,282 in 1995 to 64,802 in 1996—a decline of 3,480 pages (about 5 percent). Those titles include regulations involving such topics as agriculture, banks and banking,

energy, commerce and foreign trade, employees' benefits, food and drugs, highways, and housing and urban development.

Reasons for CFR Page Eliminations and Revisions

We also attempted to assess the reasons why the page eliminations and revisions were undertaken and whether those actions appeared to reduce substantive regulatory burden. To do so, we analyzed the Unified Agenda of Federal Regulatory and Deregulatory Actions, which provides uniform reporting of data on regulatory activities under development throughout the federal government.[18] The October 1995 and April 1996 editions of the Unified Agenda contained a "reinventing government" data element that indicated whether the regulatory action was part of the administration's reinventing government effort and, if so, whether the result would be elimination of CFR text or revision of CFR text. In those entries, brief abstracts were usually included describing the action or proposed action. We discovered during our review that at least one agency (EPA) did not list all of its page elimination and revision efforts in the Unified Agenda. Nevertheless, the Unified Agenda is the most complete governmentwide compendium of those activities available.

Of the 5,354 separate entries in the October 1995 and April 1996 editions of the Unified Agenda, a total of 1,562 entries had a "reinventing government" data element. Of these, 211 entries indicated that the action involved the elimination of text in the CFR, and 1,351 entries said that the action would revise text. The agencies with the most reinvention entries were DOT (212 entries), the Department of the Interior (171 entries), and the Department of Health and Human Services (165 entries). Of the 211 rule elimination entries in the Unified Agenda, only 1 was considered economically significant, and 22 were classified as significant for noneconomic reasons. Forty-three of the 1,351 revisions were considered economically significant, and 386 were considered significant for noneconomic reasons.

Twenty-nine of the 211 page elimination entries did not contain an abstract describing the elimination effort. In about half of the remaining 182 entries, the abstracts indicated that the pages were being eliminated because the regulations were obsolete. In some cases, the agencies

[18]The Regulatory Flexibility Act (5 U.S.C. 601-612) requires that agencies publish semiannual regulatory agendas describing regulatory actions that they are developing. Executive Order 12866 and OMB memorandums implementing section 4 of the order establish minimum standards for agencies' agendas. The Office of Federal Procurement Policy Act Amendments of 1988 (41 U.S.C. 421[g]) require the development and semiannual publication of a report on procurement regulations. The Unified Agenda helps agencies fulfill all of these requirements.

indicated that the regulations had not been enforced for some time. For example:

- VA said it was eliminating a regulation providing lump-sum payments to veterans involved in an incident in Texas in 1906.
- The Department of Energy said it was removing regulations "related to defunct programs of financial assistance for electric and hybrid vehicle research and methane transportation research."
- A proposed Department of Agriculture rule would eliminate the import licensing system for sugar exempted from an import licensing fee, which the Department said had been suspended in 1985 and eliminated on January 1, 1995.
- Another Department of Agriculture action removed its regulation pertaining to the Special Agricultural Workers program because "the program expired on December 1, 1988."
- FDA said it was proposing to eliminate certain regulations "that refer to substances no longer used in product formulations or to products that are no longer marketed."

The abstracts also frequently indicated that CFR text was being eliminated because the requirements were duplicative of other requirements that remained in the CFR (about 28 percent of the rule elimination abstracts).

The remaining 1,351 "Reinventing Government" entries indicated they would revise text in the CFR "to reduce burden or duplication, or streamline requirements." Of these, 287 did not contain an abstract describing the nature of the reinvention effort. Of the 1,064 entries that did have an abstract, the most common reason given for the action being taken was to clarify a regulatory requirement (about 28 percent of the entries). For example:

- The Department of the Interior said it was rewriting its civil penalty procedures "in plain English."
- The Occupational Safety and Health Administration said it was proposing to revise its regulations on confined spaces "to state more clearly the employer's duty to ensure effective rescue capability."
- The Department of the Treasury said revisions to one of its rules would "provide greater clarity by defining previously undefined terms."
- The Department of Justice proposed an amendment to "clarify the requirement for installation of curb ramps at existing pedestrian walkways" in response to "public concerns about the unique and significant capital expense" of such ramps.

- The Department of Labor said it was giving guidance to employers on the information they must keep to determine compliance with the Fair Labor Standards Act "to ensure that applicable standards are easily understandable and reasonable."

Other commonly cited reasons for the revisions were to update requirements to reflect current statutes, science, or conditions (about 26 percent); to establish new regulatory procedures or standards (about 18 percent); and to change a regulation found to be overly burdensome to industry, state or local governments, or federal agencies (about 14 percent).[19] In 110 of the entries (about 10 percent), the changes appeared to be implementing statutory requirements. For example, one of the Department of the Treasury entries indicated that its Office of Thrift Supervision had issued an interim final rule that revised its risk-based capital standards "as required by Sections 208 and 350 of the Riegle Community Development and Regulatory Improvement Act of 1994." In these and other cases, the revisions appeared less like "reinventions" than part of the standard rulemaking process.

Page Eliminations Appear Unlikely to Reduce Burden, but Effect of Revisions Is Unclear

We also examined the Unified Agenda abstracts to determine whether the actions being announced appeared to reduce substantive regulatory burden. We defined the term "regulatory burden" broadly to include the cost of compliance, any lack of flexibility allowed by the rule, and related paperwork requirements. We also said the regulatory burden could be on industry, state or local governments, or the federal government. Although we attempted to determine as objectively as possible whether the actions described in the abstracts were likely to decrease regulatory burden, our results should be viewed as informed opinions rather than the result of rigorous analysis because (1) no commonly agreed-upon way to measure regulatory burden exists, (2) the determination of whether burden is increased or decreased by a related action is an inherently subjective process, and (3) the abstracts in the Unified Agenda sometimes provided only cursory information about the regulatory action at issue.

Nevertheless, in more than 60 percent of the page elimination entries, it did not appear that the CFR pages being eliminated would reduce substantive regulatory burden. As noted previously, most of these actions were being taken because the regulations being eliminated were obsolete, and many of these did not appear to have been enforced for some time.

[19]The most common beneficiary of the burden reduction efforts appeared to be private industry, followed by state and local governments and then federal agencies.

Therefore, for these entries there did not appear to be any reduction in substantive regulatory burden. In some cases, the agencies themselves indicated that the page eliminations would not alter existing regulatory requirements, as shown in the following examples:

- The Department of Justice said one of its actions to eliminate obsolete sections was "editorial and non-substantive in nature and ...[has] no impact on governmental or nongovernmental entities."
- The Department of Commerce said that although an entire part within the CFR was being removed, "(t)his final rule does not make substantive changes to the existing regulations."
- The Department of Housing and Urban Development (HUD) said it was eliminating provisions that were unnecessary because they were redundant of the Mortgagee Review Board (MRB) statute, and would "not change the substantive requirements of the MRB regulations." HUD also said it was eliminating provisions that were redundant of the Community Development Block Grant's regulations without substantively changing the requirements.
- Another HUD rule removed "nearly identical provisions" in various parts of the CFR, but again HUD said it did not change the substance of the provisions.

Officials from both EPA and DOT told us that at least one of the goals of their rule elimination effort was to remove "dead wood" and that no substantive regulatory burden was being eliminated in many instances. One EPA official said that no substantive regulatory burden would be eliminated by any of EPA's rule elimination efforts.

In about a quarter of the cases, the Unified Agenda abstracts did not provide enough information to allow us to determine whether the rule elimination action would reduce burden. However, 19 of the rule elimination actions (about 10 percent) appeared to reduce substantive regulatory burden. For example:

- The Food Safety Inspection Service proposed removal of a requirement that it approve facilities and equipment before they are used in official establishments. The agency also proposed amending its prior approval of most voluntary, plant-operated partial quality control programs.
- The Department of Health and Human Services issued a proposed rule to "revoke the requirement for increased frequency reports to FDA for postmarketing adverse experience reporting."

- DOT proposed rescinding its standards regarding the location, identification, and illumination of motor vehicle controls and displays, relying on market forces instead of regulatory requirements to ensure proper markings.

We could not clearly determine whether substantive regulatory burden would be reduced for more than half of the 1,064 CFR revisions for which there was an abstract. In about 26 percent, the revisions did not appear to reduce burden, and in about 21 percent, the action did appear to reduce burden. Actions that did not appear to reduce substantive regulatory burden include the following:

- A proposal by the Bureau of Alcohol, Tobacco, and Firearms to permit the use of the word "unaged" as an alternative to "immature" to describe grape brandy that has not been stored in oak containers.
- A National Park Service proposal to "recognize an official United States Park Police insignia, provide for its future protection, and prevent the unauthorized use of the insignia."
- A VA action to "update various cross-references and authority citations and to make other nonsubstantive changes."
- An OSHA action to extend a general industry rule on preventing suffocation and explosions in confined spaces to the construction industry.
- A DOT action to correct obsolete references in field office addresses and terminology.
- A DOT plan to remove an appendix to a rule, which was described by the Department as an administrative action that "has no impact on the marine industry as it does not change any requirements imposed upon them."
- A DOT plan to change a regulation on state matching of planning and administration costs from a regulation to an "agency directive."
- DOT's plan to remove a regulation that implemented a statutory provision for which funds have not been authorized since 1994.
- An EPA action implementing the Asbestos School Hazard Abatement Reauthorization Act extending training and accreditation requirements and increasing the number of training hours required, which EPA said "will increase regulatory costs" for the owners and managers of public and commercial buildings.

Entries that appeared to reduce substantive regulatory burden include the following:

- A proposal by the Department of the Treasury to exempt depository institutions from currency transaction reporting obligations with respect to transactions with certain businesses.
- A Department of Justice proposal to waive a requirement for registration and allow the use of records required to be kept under FDA regulations instead of maintaining separate records for the Drug Enforcement Administration.
- A DOT rule permitting official filing of international air carrier rules tariffs in an electronic format.
- An EPA proposal to exempt certain pesticides from registration requirements and another proposal to remove isopropyl alcohol from the list of chemicals for which reporting is required under the Emergency Planning and Community Right-to-Know Act.
- An EPA proposal to allow the use of a financial test rather than more expensive mechanisms such as surety bonds or letters of credit to ensure that adequate funds are available to cover certain closure costs. EPA estimated this change would save owners and operators of municipal solid waste landfills about $45 million annually. Another EPA proposal in this area would reportedly save local governments $138 million annually.

Again, I would like to emphasize that our characterizations of actions that appear to reduce substantive regulatory burden and those that do not appear to reduce burden are based on a review of what was, at times, very limited information. Also, even though an action to eliminate or revise a regulation may not reduce the substantive regulatory burden imposed by that regulation, it may result in a reduction in other types of burden by making the regulation clearer or easier to find. Some of the proposed changes may also make the regulatory process more effective or results oriented, even though their effect on regulatory burden may be unclear or negligible. A final verdict regarding the value of these initiatives will have to await the reaction of the regulated community.

Mr. Chairman, this completes my prepared statement. We would be pleased to answer any questions.

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