

Recommendations for a New Executive Order on Federal Regulatory Review

by

Arnold M. Kuzmack

[Arnold Kuzmack is a retired EPA employee who worked for over 30 years on the development of environmental regulations. He served as a Division Director in the Office of Drinking Water and as Senior Science Advisor to the Assistant Administrator for Water.]

I appreciate the opportunity to recommend improvements in the Federal regulatory process and particularly the role of OIRA. OIRA's main function is to encourage and foster the use of cost-benefit analysis in the development of Federal regulations, with a view toward making more efficient use of the social resources devoted to compliance with the regulations and, thereby, minimizing their economic burden on society. The values and limitations of cost-benefit analysis are a controversial issue which is discussed in depth by other commenters in this docket; I do not feel I can make a significant improvement on their discussions. Therefore, I will limit myself to ways of reducing the burdens that the Regulatory Review process imposes on the government while, hopefully, continuing to benefit from the insights derived from the process. I will also not be addressing other functions of OIRA, such as implementation of the Paperwork Reduction Act and maintenance of the regulatory calendar.

The main burden that OIRA imposes on the regulatory agencies is the necessity to submit both proposals and final rules to OIRA. OIRA has, in effect, a veto power over these, though it is somewhat limited by an unwillingness to have the limits of its power tested. This process can easily add six months to a year to the process of developing a regulation. My proposals are primarily designed to reduce the time delay which the review process entails.

My basic approach is that OIRA is a stakeholder among other stakeholders. Therefore, it should function under conditions similar to those faced by other stakeholders. In particular,

- (1) In the case of most rules, OIRA's main contribution should be made during the public comment period, both in writing and in oral testimony at public hearings.

- (2) Prior to the publication of an NPRM, OIRA staff would be able to meet with Agency offices in charge of developing the rule, as other stakeholders are able to do. In addition, of course, OIRA staff can attend public conferences sponsored by professional societies, trade associations, etc.
- (3) OIRA would not need to agree to publication of an NPRM.
- (4) When the Agency has decided on the shape of the final regulation, it should meet with OIRA staff, who would, of course, be able to argue for their point of view.
- (5) In the vast majority of cases, OIRA would not have a veto on the final regulation, and the Agency would proceed with finishing development and promulgation of the regulation. However, there may be a very small number of cases in which OIRA decides to elevate the issue. These would be cases of high economic impact and, in OIRA's view, a seriously wrong approach by the Agency. There should be no more than a dozen or so such cases per year government-wide.
- (6) Issues that are elevated would be decided jointly by the Agency head and the Director of OMB. Resolving these issues would take a substantial amount of time of these very senior officials, which will limit the use of this mechanism to the most important issues.

In addition to its role of fostering efficient regulation, OMB also has the role of resolving interagency disputes. Here, OMB's role is to be an honest broker. This does not preclude arguing for its own position, but these two functions are conceptually separate. In acting as an honest broker, OMB would be facilitating resolution of the issues rather than slowing them down. In most cases, the interagency disputes will have been going on for some time, so their final resolution will necessarily add to the regulation development time.

In summary, if OIRA's role is changed as proposed here, it will be transformed from a command-and-control regulator to a competitor in the intellectual market place of regulatory approaches.