

# AN OVERVIEW OF THE U.S. REGULATORY SYSTEM

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1. My objective this afternoon is to provide a concise overview of the U.S. regulatory system, including some indication of recent regulatory reforms that we are implementing. Much of what I will say is based on the OMB year 2001 report on the Costs and Benefits of Regulation. You can obtain a copy of this report from our web site at: [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb). The report provides a summary of the regulatory philosophy of the Bush Administration and the reforms we have initiated.
2. Regulation, if not designed properly, can hurt the economy and cause the consumer to pay higher prices for goods and services. The average American household pays about \$6,000 out of its annual household budget because of Federal regulations. These costs are like an invisible tax because the consumer does not realize how regulation has impacted the costs of producing goods and services in the economy. Note that most of these costs are not surfaced during Federal budget reviews because the costs are imposed on State and local governments or on private businesses.
3. The responsibility of my office is to oversee and coordinate regulatory policy in our Federal government. The scope of our authority is broad, covering agriculture, energy, transportation, information technology, housing, manufacturing, immigration, food safety, health care, public health, occupational safety and health, environmental protection and criminal justice. The only regulators we do not oversee are those who are considered independent of the President. These independent regulators cover important issues such as the money supply, nuclear plant safety, and certain antitrust matters.
4. Before a new regulation in the U.S. is adopted, it must be:
  - a. published in the *Federal Register* in proposed form, with an opportunity for public comment and, in some cases, a formal public hearing,
  - b. published again in the *Federal Register* in final form, with written explanation of any important revisions that have been made and the official response to public comments.

If a proposed or final regulation is significant, it must be cleared by my office before it is published in the *Federal Register*.

5. Our Congress mandated the process of public comment in the Administrative Procedure Act. This process entails creation of a public docket of information that Federal judges can review if a regulation is challenged through litigation. Relevant studies and data used by the regulator are generally included in the public docket and cited in the *Federal Register*. At some Federal agencies, the process of building a record of evidence and comments is now performed electronically.

6. President Bush supports regulations that are sensible and based on sound science and economics. The President has instructed me to review each major regulatory proposal to make sure that it is supported by an adequate cost-benefit analysis and is consistent with Presidential policies and priorities and the laws enacted by Congress.

7. A cost-benefit review does not imply that a miserly fellow simply reduces the entire exercise to a crass, monetary numbers game. The benefits of many regulations, such as some addressing health, safety, and environmental protection, cannot be readily quantified and therefore must be analyzed qualitatively. My office is authorized to consider equity and fairness arguments as well as economic efficiency. Even in cases of qualitative regulatory analysis, my office looks to see whether the regulator has considered a reasonable number of regulatory alternatives and made a reasoned judgment. If the regulatory analysis is inadequate or poorly explained, it is returned to the agency for further improvement.

8. There are 4,500 new final regulatory actions taken each year by the Federal government. I am happy to report that we are not expected to review all of them. We review only 600 significant proposed and final rules per year, with emphasis on the 100 or so that are judged to have the largest impact on the American economy. In conducting these reviews, I am supported by a staff of 25 career public servants with expertise in economics, policy analysis, statistics, law and information technology. We are currently adding several scientists and engineers to our team in order to perform more rigorous reviews of agency proposals.

9. With regard to existing regulations, President Bush does not support across-the-board deregulation because many rules now in place provide important benefits to the American people. Under a recent law passed by the U.S. Congress, my office has asked for public nominations of existing rules that should be reformed to reduce costs or increase effectiveness. We have suggested 23 of the 71 nominated rules for priority review, and decisions about how to proceed are now in the hands of the responsible agencies. The Bush Administration supports this targeted, public-generated process of reviewing existing rules.

10. Our regulatory reviews are guided by principles in a Presidential Executive Order, by the laws of Congress, and by formal technical guidance from my office on how to conduct a good regulatory analysis. We periodically update this guidance, and copies are available on our web site. Congress has also required that our reviews give special attention to the impacts on small businesses and State and local governments.

11. The regulatory review process under President Bush is somewhat different than it was under President Clinton. In the last three years of the Clinton Administration, there were exactly zero rules returned to agencies because of poor quality analysis. In the last six months alone, I have returned 16 significant proposals to agencies for further consideration. The technical and policy reasons for each return are explained in public letters that can be viewed on our web site.

12. We are also committed to promoting new regulatory actions where they are needed. I am not simply referring to the various homeland security rules proposed since September 11<sup>th</sup>, those dealing with aviation security, food safety and immigration control. We have also devised a modest tool called the "prompt letter" that enables my office to publicly suggest a new regulatory priority to a Federal agency. Our first four prompt letters have identified potential lifesaving opportunities at the Food and Drug Administration, the Occupational Safety and Health Administration, the National Highway Traffic Safety Administration, and the Environmental Protection Agency. Copies of these letters are also available on our web site. Unlike the more definitive Presidential directive, the prompt letter is a public request that is intended to stimulate agency and public deliberation. Final decisions about priorities remain with the agencies and my office will review any resulting proposals.

13. Sometimes two or more agencies find themselves in disagreement about a new regulatory initiative. For example, our Environmental Protection Agency and Department of Energy are now expressing different views about how new clean air laws and regulations might affect the energy industry and the economy. My office has a responsibility to assist in the resolution of these disputes so that the process of governance can proceed.

14. Looking further down the road, we are taking long-term steps to enhance the quality of analysis supporting regulatory proposals. First, in a memorandum to the President's Management Council, my office has established some general criteria for competent and credible peer review. We have recommended that agencies subject their major regulatory proposals, including key supporting studies, to formal, independent external peer review by qualified experts in the relevant fields of science. These peer reviews should be rigorous and open to public scrutiny, and peer reviewers should be asked to disclose their sources of personal and institutional income in order to address conflict-of-interest concerns. Second, my office has issued government-wide guidelines to enhance the quality of data that agencies use in decision-making and disseminate to the public. The guidelines require, with limited exceptions, that technical information used to support major policy decisions be reproducible, preferably through public access to research design, data, assumptions, and statistical methods. These guidelines apply to governmental information but also to private-sector information submitted to -- and relied upon by -- government to support important policy decisions. A distinctive feature of these guidelines is a new opportunity for the public to challenge the quality of information disseminated by agencies. If the information is shown to be of poor quality, the agency must promptly acknowledge the problem and make any necessary corrections on web sites, reports, and in rulemaking notices.

15. I would like to conclude by explaining what my office means by the words transparency and openness. When a proposed or final rule is submitted by a regulator to my office for review, only I or my designee is permitted to communicate with outside parties interested in the rule. If a meeting with outside parties is held, a representative of the affected agency must be invited to attend. Copies of any distributed materials must be placed in OIRA's public docket and forwarded to the affected agency. Basic information about meetings, substantive phone calls, and correspondence -- that is, date, topic, names of participants and organizations, and in the case of pertinent correspondence, a copy -- must be promptly placed in our public docket. Once a rulemaking is completed, relevant written communications between my office and participating agencies as well as drafts of the rule, including the draft submitted for review, are accessible to anyone who requests them. These specific disclosure rules, described in detail on our web site, are designed to facilitate congressional and public oversight of our office.

16. We support and practice this extraordinary degree of openness because it helps boost public understanding of and confidence in the process of cost-benefit review. If instead our office were to operate in secrecy, questions would be raised about whether nefarious political deals were being made in ways that favor certain interest groups at the expense of the public interest.

17. In summary, the Bush Administration is developing a smarter and more open regulatory process. We are adopting new rules when market choices fail to serve the public interest, modifying existing rules to make them less costly and more effective, and rescinding outmoded rules whose benefits no longer justify costs. In the long run, we are building a regulatory process based on higher quality information. The resulting rules, though possibly fewer in number, will be more competent, less vulnerable to political and judicial attack, and worthy of stronger public support.

18. Thank you for the opportunity to provide these remarks. I look forward to the opportunity to answer questions and engage in a broader discussion.