

MICHAEL P. WALLS
VICE PRESIDENT
REGULATORY & TECHNICAL AFFAIRS



March 16, 2009

Mr. Kevin Neyland
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503
Via Email to: oir_submission@omb.eop.gov

RE: Federal Regulatory Review, 74 Fed.Reg 8819, Feb. 26, 2009

Dear Mr. Neyland:

The American Chemistry Council (ACC) is pleased to provide these brief comments on recommendations for a new Executive Order on Federal Regulatory Review. In ACC's view, President Clinton's Executive Order 12866 has provided an important and effective framework for oversight of the federal regulatory process. While elements of that framework could be enhanced, we believe the essential structure of Executive Order 12866 should be retained.

ACC represents the leading companies engaged in the business of chemistry. ACC and its members are committed to improved environmental, health and safety performance through our Responsible Care[®] program, common sense advocacy, and health and environmental research and testing. Executive Order 12866 in general, and the practices of the Office of Information and Regulatory Affairs (OIRA) in implementing the Order in particular, affect many of the federal regulatory proposals that apply to chemical manufacturing in the United States.

We respond below to the specific request of the Office of Management and Budget (OMB) on several issues relevant to regulatory review under Executive Order 12866.

Relationship between OIRA and the Federal Agencies

OIRA plays an important role in coordinating policy developed by the federal agencies, particularly in rationalizing potential overlaps in the regulatory responsibilities of the various agencies. ACC believes the importance of that role is likely to increase as important national policy issues – such as climate change – are addressed by agencies with varying responsibilities and jurisdiction.

In addition, OIRA's regulatory review process provides a mechanism to identify and address concerns over the impact of federal agency actions, especially for the regulated community. ACC believes that the overriding value of OMB regulatory review is that it brings a level of objectivity to evaluation of agency rulemaking. The Executive Order on regulatory review should incorporate the following elements:



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- OMB use of prompt and return letters should be codified in the Executive Order.
- The overarching goal of the Order ought to be on maximizing net benefits.
- The Executive Order should require a 90-day period for OMB review. Where agency plans or other constraints (e.g., judicially-imposed deadlines) do not permit a 90-day review, OMB should be briefed at least 90 days before the agency action is expected to be published to allow ample time for evaluation.

ACC encourages OMB to continue the practice of OIRA review of agency guidance documents, as suggested in Director Orszag's memorandum to Agency heads dated March 4, 2009. OMB's investment in guidance review has helped increase transparency and agency accountability, while improving the utility of those documents to the regulated community.

Disclosure and Transparency

While agency officials should have the ability to deliberate internally (and among agencies) without a disclosure requirement, disclosure is critical in assuring transparency in third-party communications with federal agencies regarding regulations and regulatory proposals.

Stakeholders outside the federal agencies have information that, if used by regulatory agencies, can increase the net benefits of regulation. The identification of reasonable regulatory (and non-regulatory) alternatives is not solely a technical exercise. Stakeholders are often a source of practical alternatives. Stakeholders also can help regulatory agencies identify and collect the best available information for use in economic analysis. ACC's experience indicates that in many cases, the economic analysis in support of chemical regulation contains errors about the baseline scenario because the issuing agency used outdated or factually incorrect information. These errors might have been detected had the regulatory agency consulted with industry experts during development of the economic analysis.

ACC applauds OMB's long-standing efforts to promote transparency in the regulatory decision-making process. Less than a decade ago, OIRA took steps to improve implementation of the public disclosure provisions of Executive Order 12866, increased the amount of information available on its website, adopted an open-door approach to meetings with outside parties, and initiated electronic submission of comments on certain policies and reports. ACC believes that additional measures to leverage modern communications technologies (e.g., even earlier disclosure of materials in agency dockets, particularly supporting materials such as regulatory analysis) would encourage a healthy public debate on regulatory approaches. We also believe additional steps can be taken to identify and discuss regulatory alternatives and the potential consequences of regulatory action (including unintended consequences). For example, Section 6(a)(1) of the current Executive Order does not make specific how the "involvement" of stakeholders should be sought. In ACC's view, stakeholder involvement could be enhanced if electronic dockets were prepared and opened for public review well in advance of actual regulatory proposals, so that important supporting documents could be reviewed as they were prepared.

Risk Assessment

OMB's guidance on risk assessment practices in the federal agencies demonstrates the value of transparency. ACC has long maintained that the practice of federal agency risk assessment can and should reflect the best science and practices in risk assessment. OMB has outlined the goals and general principles for risk assessment, intended to enhance scientific objectivity, and promote efficiency and consistency government-wide. This approach is reflected the recommendations of the National Research Council. The approach has advanced the technical quality and objectivity of federal risk assessments,

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particularly by promoting more transparency in what science was being considered and leveraged in federal decision-making. In ACC's view, even more can be done to make ensure that advanced risk assessment approaches are employed by the agencies, particularly by assuring that potential risks are objectively portrayed. ACC has made several recommendations on such an approach in the context of the Environmental Protection Agency's Integrated Risk Information System (IRIS), where we believe that IRIS – and those who use that system – would benefit from assurances that the most up-to-date, reliable, and high quality science has informed the program.

Cost-Benefit Analysis

ACC and its members are convinced that cost-benefit analysis has played, and should continue to play, an important role in federal regulatory review. In the current economic environment, for example, cost-benefit analysis has a critical role in understanding the impacts of proposed regulations on jobs, investment, economic and technological growth, and the competitiveness of U.S. industry in the global market. OIRA should continue to conduct cost-benefit analyses to assure that the advantages and disadvantages of federal regulations are considered in decision-making. The Administration may wish to consider establishing a presumption that where costs exceed benefits the regulation will not move forward absent other justification.

ACC member companies operate in an intensely competitive global market. Domestic regulation has the potential to drastically impact that competitive position, as well as the industry's ability to provide solutions to many of the Nation's health and environmental problems. Efficient and effective regulatory review dictates that, insofar as possible, cost-benefit analysis will inform agency decision-making.

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ACC notes that it supports the separate comments filed by the National Association of Manufacturers (NAM) and the Coalition for Effective Environmental Information (CEEI) on OMB's request.

If you have any comments regarding ACC's comments, please feel free to contact me.

Sincerely,



Michael P. Walls
Vice-President
Regulatory & Technical Affairs