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VIA ELECTRONIC MAIL:

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Office of Information and Regulatory Affairs
Records Management Center
Office of Management and Budget
Attn: Mabel Echols
Room 10102, NEOB
725 17th Street, NW
Washington, DC 20530

RE: Comments on New Executive Order on Federal Regulatory Review, *74 Federal Register* 8819, February 26, 2009

The American Petroleum Institute ("API") is pleased to present these comments to the U.S. Office of Management and Budget ("OMB" or "Office") on potential future changes to President Clinton's *Executive Order No. 12866, Regulatory Planning and Review* ("EO 12866"). API is the primary trade association of America's oil and natural gas industry and represents nearly 400 member companies involved in all aspects of the industry. Each year, API's members' facilities are subject to dozens of new regulations addressing environmental, economic, and security issues at a cost of billions of dollars. Therefore, the regulatory review framework of the U.S. has a direct and substantial impact on our members.

API supports and endorses the comments of the following entities: National Association of Manufacturers (NAM); U.S. Chamber of Commerce; Regulatory Improvement Council (RIC); and Coalition for Effective Environmental Information (CEEI). In addition to the comments of the above groups, API offers the below points for OMB's consideration as the Office produces a set of recommendations for a new Executive Order on federal regulatory review.

- Central review and coordination of federal agency regulatory activities by the Office of Information and Regulatory Affairs (OIRA) in OMB is an increasingly needed function of government in light of the ever-expanding administrative state and ever-increasing costs of federal regulations. As federal regulatory agencies expand in scope and size, the unavoidable result is an increase in regulatory activity. To illustrate, the OMB in its *Draft 2008 Report to Congress on the Benefits and Costs of*

Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities estimates that annual costs of major federal regulations range from \$46 billion to \$54 billion, an increase from the cost estimates reported in the Office's 2007 report.¹ Centralized review of federal regulations should continue in any modification to EO 12866.

- Additional resources should be allocated to OIRA to ensure necessary staffing levels to implement the nation's regulatory review system. As a significant portion of regulation focuses on human health and environment, OIRA should expand its human capital by hiring scientists to review such regulations, i.e., epidemiologists, toxicologists, industrial hygienists, etc.
- Benefit-Cost Analysis (BCA) should continue to be the underlying framework used to assess the value of federal regulations to society. The BCA methodology allows government to efficiently allocate resources. API recommends that agencies promulgating regulations with impacts of \$100 million or more per year – major rules – be required to conduct a formal uncertainty analysis that covers all key model parameters and addresses both benefits and costs. The BCA, including the underlying data and assumptions, should be made part of the public record in order to increase the transparency of the regulatory review process. Finally, the BCA framework should not be supplanted by the precautionary principle which fails to account for the costs of regulation.
- Advancements in regulatory analysis since EO 12866 was signed by President Clinton should be incorporated into any modification of EO 12866: Government-Wide Information Quality Guidelines; Information Quality Bulletin for Peer Review, Final Bulletin for Agency Good Guidance Practices; and Updated Principles for Risk Analysis. These initiatives maximize the quality of information disseminated by federal agencies, increase the transparency of federal regulatory activities, and increase the accountability of federal agencies to the public.
- API would like to highlight and expand upon the comments of the U.S. Chamber of Commerce with regard to the use of voluntary consensus standards under the National Technology Transfer and Advancement Act (NTTAA). The NTTAA requires federal agencies to adopt private sector standards, particularly those developed by consensus standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, governmental standards, and to participate in the standards development process. The NTTAA also directs the National Institute of Standards and Technology (NIST) to bring together federal agencies to achieve greater reliance on consensus standards and decreased dependence on in-house standards. In the past, when federal agencies discovered a need for a standard, the agency would create a unique,

¹ U.S. Office of Management and Budget. (September 15, 2008). *Draft 2008 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*. http://www.whitehouse.gov/omb/inforeg/costs_benefits/2008_draft_cb_report.pdf

proprietary standard when voluntary consensus standards already existed that effectively addressed those needs. The same result often still occurs in the regulatory context, where federal agencies promulgate regulations for activities that are already currently addressed by voluntary consensus standards. This can lead to significant problems, because competing regulations can be inconsistent with voluntary consensus standards, leading to confusion, additional unnecessary costs without commensurate benefits, and possible safety issues within the regulated community.

API is a leading SDO accredited by the American National Standards Institute (ANSI) and has developed over 500 voluntary standards. API adheres to the process required by ANSI for the development of standards, which includes an open, deliberative, and transparent process with an opportunity for public comment. API standards have been adopted by federal agencies in over 270 separate regulations, as well as by governments and organizations around the world. The adoption of API standards has led to more efficient and effective regulation by the federal government. A key benefit of standards developed through the ANSI process is the application of the highest level of expertise and knowledge to highly technical engineering, analytical, and scientific issues. OIRA should ensure that agencies understand the requirements of the NTTAA, that they work closely and collaboratively with NIST, and that voluntary, consensus standards are utilized in regulations whenever possible.

API thanks OMB for soliciting public comments on EO 12866, and we hope that the points above, in addition to the comments of NAM, U.S. Chamber of Commerce, RIC, and CEEI, are used by OMB in development of the Office's set of recommendations for a new Executive Order on federal regulatory review.

Sincerely,

A handwritten signature in blue ink, appearing to be "John J. F. ...", is written below the word "Sincerely,".