March 31, 2009

Ms. Mabel Echols
Office of Management and Budget
Office of Information and Regulatory Affairs
Room 10102, NEOB
725 17th Street, NW
Washington, DC 20503

Re: Request for Comments – Executive Order on Federal Regulatory Review

Submitted via e-mail: oira_submission@omb.eop.gov

Dear Ms. Echols:

I appreciate the opportunity to submit comments for the OMB Director on how to improve the process and principles governing regulation. My recommendations are as follows:

1. In consultation with the agencies, OIRA should develop a checklist of good practices for cost-benefit analysis. Each RIA should be judged by this checklist. The list should include guidelines for assessing the quality of empirical studies. For example, the list could include simple diagnostics (such as comparison of means for treatment and control groups) of whether the study suffers from selection bias. Not all empirical studies are of equal credibility, so these quality differences should be assessed. Economists at the Council of Economic Advisers would be well-suited for establishing assessment criteria. The checklist should be applied to economic studies of benefit estimation, as well as to epidemiological studies of health risks. In my opinion, the latter studies are frequently prone to conflating analysis with advocacy, so policymaking would be improved by establishing a clear set of criteria for establishing methodological credibility.

2. I believe the reference dose concept is not a useful concept for decision-making. It is based on an estimation of dose that leads to a 5 percent change in the health outcome – an estimate that would vary depending on the functional form used. The functional form in turn, frequently involves un-supported claims about the nature of the dose-response function. Further, the reference dose does not provide information of incremental benefits of tightening standards, which is the key concept needed for cost-benefit analysis. Finally, the reference dose typically entails numerous conservative assumptions about risk, thus conflating the role of providing information through risk analysis with the role of making policy decisions through risk management.

3. Give greater consideration to more policy options. Many RIAs consider only one or two policy options, which is of limited use. Current practice involves very little time for OIRA review or for a public response to the RIAs. This results in RIAs that support policy decisions that have already been made, rather than being inputs to decision-making. A longer consideration period could also include formal peer review of key

elements of the RIAs. The peer reviewers can also assess the quality of the underlying empirical studies, consistent with the checklist discussed above.

4. Agencies currently have little incentives to comply with OIRA's assessment of their RIAs. There is very little that can be done about an agency that has a pre-determined policy goal, which then sends an RIA to OIRA after-the-fact. In order for the RIA to be an input into the decision-making, OIRA needs enforcement power (and a beefed up staff) in which to hold the agency RIAs accountable.

5 It is inherently difficult to estimate costs and benefits of regulations before they are enacted. To the extent possible, agencies (and/or OIRA) should conduct retrospective analyses. Of course, retrospective analyses are most useful if regulations can be conditional on the findings. That is, as evidence accumulates that a regulation was too lax (strict), then we would want to tighten (loosen) the regulation.

6. Similarly, the empirical problems can best be addressed if regulations were applied as pilot studies. Such pilot studies have been conducted for Unemployment Insurance provision and for welfare programs.

Thank you again for the opportunity to comment.

Sincerely,

Ted Gayer
Associate Professor of Public Policy
Georgetown University
[redacted]