

W. Kip Viscusi, Comments on Executive Order 12866, February 24, 2009

Overall, I think this executive order has held up pretty well. The comments below are suggested areas that might be changed as part of any revision. The more important target for revision might be the 2003 OMB guidance for economic analyses in RIAs. Below I provide some comments by page number in the Federal Register.

p. 51735

The first two paragraphs struck me as dated in that they are referring to reform relative to the Reagan era, which has long since passed.

I like the idea that we should “maximize net benefits” but think that it could be expressed in more user friendly language, such as “provide the greatest net benefits to society.”

p. 51736

This page, particularly items 4 and 7, strikes me as the place to indicate what scientific estimates should be presented. I favor the use of mean risk assessments rather than worst case or upper bound assumptions. Unless a provision is made for what risk information is presented, simply relaying on the “best reasonably obtainable scientific” information doesn’t carry the day.

Do we need item 11? If we are picking regulations based on maximizing net benefits to society, then we already know that these impose the least burden on society.

p. 51737

Sec. 3 Definitions will have to be updated to reflect the current titles and who you want to be involved in the review process.

p. 51738

Should the \$100 million cutoff be retained? Despite inflation since 1993, it is a nice round number.

Item 4. If agencies develop new proposals not discussed in the annual meeting in each year’s planning cycle, should they notify OIRA?

p. 51739, 51743

What will be the mechanism for the appeals process? Will it go through the Vice-President? Also, is it possible to have a meaningful Working Group along the lines of the Regulatory Analysis Review Group in the Carter Administration? Going to some such group might be the logical next step if the agency wants to appeal OIRA’s rejection of a regulation. That is not how the Carter process worked, but it could be how a new system is set up. In any event, this will be the most important component of whatever new executive order is developed.