

Generally, these analyses have focused on broad economic issues and market effects of the approach selected by DOE. They have not adequately considered alternate approaches or alternative enforcement mechanisms. As one company stated, "we have seen no examination of the economics of alternate approaches. Economic impact statements have been prepared for major decontrol actions but there has been no examination of the economics of new regulations."

Final analyses or notices of their availability are seldom published along with the final regulations. For example, for the coal conversion program, a preliminary regulatory analysis was made available last November for the first portion of the total package of regulations. A summary of one portion of the package has been published since then. In other cases, issuance of draft regulatory analyses has been so delayed that the public could not use the analysis to evaluate the regulatory proposal. A regulatory analysis was to be available when the recently announced retail gasoline price rules would be made final. A two-week reduction in the comment period precluded this.

Staff assigned to prepare regulatory analyses has been inadequate. Recently, a Regulatory Analysis Review Committee was established to ensure that high priority analyses are assigned enough resources, well-prepared and contribute to regulatory policymaking. DOE indicates that the initial focus on the committee will be on the building performance standards in CSA, propane and natural gasoline decontrol in ERA, and sequential bidding regulations in resource applications. This committee plans to turn these analyses into models for use by the Department. This committee is also considering obtaining additional staff from the DOE national laboratories to help in drafting regulatory analyses.

NATURE OF SUNSET REVIEW

DOE plans systematically to review and, as appropriate, to republish all regulations which were published before the Executive Order. DOE also plans to establish a five-year review cycle for all new regulations.

Until now, understandably, DOE has focused more on the implementation of new regulations rather than the review of existing ones. Except for phased-in deregulation, DOE has done little such review.

However, through deregulation, DOE has, or will, reduce regulatory burdens on refiners and other sellers. So far, DOE has lifted price controls for such products as middle distillate fuels, aviation gas, residual fuel oil, kerosene, and certain other petroleum products. Price controls on crude oil are planned to be phased out by October 1, 1981. The end of these controls will terminate the complex entitlements program and reduce the need for mandatory crude oil allocation regulations.

Because it was difficult to begin effective "sunset" review at the same time it was implementing new energy statutes, DOE undertook a variation of this requirement. On May 1, 1978, it announced 15 regulatory reform initiatives. When it published its final implementation procedures, it announced 16 additional reform initiatives added as a result of public comments. On August 14, DOE published a status report on the existing 31 initiatives and gave notice of 11 more for the remainder of 1979. These have included such items as simplification of enforcement audit policy for small firms, and the introduction of an element-by-element data review procedure to prevent unnecessary reporting burdens on the public. Changes in enforcement audit policy reduced the regulatory burden on small firms by reducing record-keeping requirements and liability periods for nonwillful violations of the regulations. The data review procedures eliminated five of 14 forms and helped establish procedures for report consolidation.

Despite these efforts, the public still points out the need for DOE to update and restructure the existing regulations. There is a lack of structure and continuity; definitions and regulatory standards applicable to particular categories of activity are spread throughout the regulation; "there is no understandable and logical arrangement of rules."

According to one regional association, DOE "regulations are not drafted in a comprehensible outline with any continuity which makes individual rules understandable within the context of the total regulatory framework."

PLAIN ENGLISH

DOE has made the preambles to regulations more understandable. Grant program regulations have been carefully written to assure that an educated lay person could understand them. A special effort was made to assure that the Building Energy Performance Standards were easily understandable.

Regulations setting price standards and allocation priorities are drafted in more precise, legalistic, technical language, but these regulations are primarily used by specialists. An effort is made to draft preambles to these regulations that are understandable to non-specialists.

To improve the clarity of existing regulations, the Economic Regulatory Administration published a notice in the Federal Register seeking public comment to identify regulations that are unclear or difficult to understand. Among the comments received by ERA were statements that the pricing and allocation regulations (while understandable to corporate counsel) are confusing to the company engineers who must implement those regulations on a day-to-day basis. Problems cited include "overly long sentences, ambiguous words, confusing references to other provisions, and too much legalese." Others stated that the "ERA Federal Register material has improved tremendously in clarity and the usefulness of the information. FERC notices, on the other hand, seem to have improved much less."

The emergency situation at DOE has created problems of editorial errors, inadvertent omissions, and miscitations. According to the Federal Register, "ERA's frequent standby rules and special rules are not written so they amend the Code of Federal Regulations but rather are simply added to it, sometimes creating three and four levels of regulations that present the public with a hopeless tangle of pricing and allocation rules." This has caused the Federal Register to assign special staff temporarily to work on problems concerning DOE documents.

Two companies complained that recent final regulations, largely those of ERA, have been published "with substantive omissions, mistakes, or discrepancies between the preambles and the regulations." One activation order required a subsequent "guideline" to clarify it; however, the preamble to the guideline "suggests one thing but the amended regulations mandate something else."

CONCLUSION

In conclusion, DOE efforts to implement the Order can be improved.

DOE's weakest area department-wide has been in the quality of its regulatory analyses. DOE itself has recognized this problem and has initiated efforts to correct it. We believe

high level support for use of these analyses as a decision tool, and a conscious effort to focus on alternative approaches and enforcement mechanisms, are critical.

The most visible problem has been with emergency rulemakings by the Economic Regulatory Administration. The waiver provisions of the Executive Order, properly used, are necessary to afford flexibility and to permit rapid responses to emergencies. But, the waiver provisions can undermine the purpose of the Order if they are misused.

The Department should also improve on the advance planning that is done to meet future energy emergencies. It can be expected that emergencies will arise again and may require prompt regulatory action. It is of course not possible to anticipate and cure all future problems. But improvements could be made in the procedures to permit prompt issuance of necessary regulations, with adequate analysis and public participation.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

The Department of Health, Education, and Welfare (HEW) is not only the largest federal agency in budget dollars--it also has one of the most pervasive Federal regulatory impacts. HEW's programs and regulations affect practically every American.

The Department is divided into six principal operating components, each of which regulates major sectors of the economy and institutional groups. HEW publishes more than 900 proposed or final regulations each year, about 75 percent of which are related to its health programs. Its responsibilities are diverse and include administering medicare and medicaid, regulating the manufacture and distribution of food and drugs, determining social security eligibility, and enforcing civil rights laws.

On September 12, 1977, anticipating Executive Order 12044, the Department established a program to improve its regulations development process and review all existing regulations. This regulation improvement program was designed to ensure that rules developed at HEW are "short, clear and concise;" that they "are not written if they are not necessary;" that Secretarial review begin "early in the drafting process to provide policy direction;" that HEW "reach out more aggressively for public participation" and that the drafting of regulations be accelerated to "provide more timely program guidance to the public." Operation Common Sense was established to revise and recodify all of HEW's regulations. A public announcement of this program appeared in the Federal Register on November 18, 1977, and stated the Department's goal of analyzing over 6,000 pages in the Code of Federal Regulations within five years.

Accordingly, HEW had a head start on most other agencies, publishing its draft procedures for implementing the Executive Order on August 30, 1978. However, HEW's final implementation plan was not submitted for OMB approval until December 22, 1978. This delay was in part because of HEW's initial reluctance to adapt existing procedures to the Order's requirements. Even though HEW ultimately adapted these procedures, and received OMB approval on January 8, 1979, the final plan has yet to be published in the Federal Register.

POLICY OVERSIGHT

The Department's plan to improve regulations is based upon the premise that "the basic responsibility...will rest with the heads of the principal operating components and they will be

accountable...." A high-level regulations review panel has been established in all components to review each regulatory proposal at an early date. A work plan is prepared for each regulation and submitted to the regulations review panel. The work plans provide basic information about the regulation, including a schedule, the name of the program manager responsible, a statement of the groups affected, and an indication whether an issue paper outlining the key policy considerations will be submitted to the Secretary/Under Secretary. The panels review each work plan, coordinate departmental efforts, facilitate broad discussion of the major issues, and determine what Secretarial involvement is required.

After this review, regulatory proposals are submitted to the Executive Secretary. Controversial or major regulations are then submitted to the Secretary or the Under Secretary for early review. This procedure applies to all units of HEW, except the Food and Drug Administration (FDA), which under a delegation of authority to the Commissioner of Foods and Drugs operates its own regulatory program.

Policy oversight is working reasonably well at HEW. Procedures are in place; high level attention is being given to regulatory matters throughout the Department; and both the Secretary and the Under Secretary have been personally involved in a number of key issues (e.g., age discrimination and the System for Hospital Uniform Reporting). The Secretary approves all regulations issued by the Department and personally reviews the Department's regulatory agenda. Although HEW is committed to regulatory improvement, policy oversight in a number of operating components has been uneven.

PUBLIC PARTICIPATION

Public participation is the area of greatest change at HEW. In the past, HEW frequently was accused of allowing inadequate time to respond to notices of proposed rulemaking. HEW now adheres to the Executive Order's 60-day requirement for significant regulations. In recent instances where a 60-day comment period was not offered, requests to extend the comment period have been honored by HEW.

As an example of HEW's commitment to increase public participation, the Department has frequently published advance notices of proposed rulemaking, allowing for very early public participation in the rulemaking process. Numerous public

hearings and meetings were conducted around the country on important rulemakings (approximately 3,100 persons have participated in such hearings and in special meetings during the past year). Special mailings were undertaken in connection with many significant regulations (approximately 110,000 letters were mailed during the past 12 months, excluding FDA). HEW also held a comprehensive round of meetings with interested segments of the day care community in the development of day care regulations.

As an innovative technique to obtain public input to its proposed food labeling regulations, the Food and Drug Administration sent 40,000 letters and distributed over 500,000 pieces of literature to interested individuals and organizations and used an experimental television survey in Columbus, Ohio, to obtain consumer feedback on aspects of the proposal. Over 10,000 public comments were received as a result of FDA's outreach effort. These comments are now being analyzed.

For new education regulations, public meetings are being held at the times and places most convenient for those affected by the regulations. Accommodation will be made to allow certain groups to participate in the meetings that might not be able to otherwise.

Another innovative method of increasing public participation was used in developing recently proposed adult education rules. The Office of Education conducted four workshops and 10 meetings across the country after a Notice of Intent to Develop Regulations was published. The workshops and meetings helped identify and resolve major issues that were considered in developing the proposed rules.

Finally, in response to the President's specific concern about the impact of Federal regulations on small business, the Food and Drug Administration is attempting to give special assistance to small businesses in their attempt to decipher the various government regulations with which they must comply. The FDA will begin two initiatives into the simplification of regulations.

A pilot program of service desks will be opened in four regions to answer questions from manufacturers about FDA regulations. The desks, located in East Orange, New Jersey; Chicago, Illinois; Atlanta, Georgia; and Santa Ana, California will respond to questions dealing with problems such as how to fill out applications and other government forms, what regulations must be followed to market a new product, and how FDA regulations affect manufacturers' products or manufacturing processes.

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The second step the FDA is taking will be to appoint an official to the Commissioner's staff to "help assure a consistent agency-wide policy for small business."

Public participation has affected the rulemakings themselves. Of the 13 final regulations promulgated by two of HEW's principal operating components during a recent two-month period, 12 were changed, many to a significant degree, as a result of public response.

Because of the vast number of regulations HEW issues, its regulatory agenda provides important information that may lead to increased public participation. HEW's first regulatory agenda was published on January 17, 1979. (It had been scheduled for publication on December 1, 1978. No notice of postponement was published.) This document exceeded the requirements of the E.O. by identifying not only "significant" regulations but all regulations under development or consideration at the Department. Over 400 regulations are presented in the agenda. Because each operating component develops its own agenda, the overall quality of the Department's agenda is uneven. HEW's first agenda did not comply fully with every requirement. HEW's second agenda was not published on the scheduled date and again HEW did not issue any notice of postponement. HEW's second agenda was published on August 16; it complied more fully with E.O. requirements.

Several members of the public indicated that they find the agenda "eliminates surprises" and is "generally helpful but too voluminous and unwieldy (over 150 pages) to work from." They suggested that including a tentative timetable for development of each significant regulation would make a real improvement. The Department was criticized for not issuing its agenda on the specified date. Several organizations indicated that "grass roots participation" in the rulemaking process is not well-served by the lack of predictability in publication of HEW's agenda.

More generally, public reaction to the Department's efforts to involve the public is mixed. Several commentators indicated this to be the area of "most change" or "most improvement" and that HEW is "listening." One commentator indicated that "HEW treats the 60-day comment period as a maximum rather than the Executive Order minimum, and several said that "60 days are not sufficient to review 'major' regulations." However, most agreed that the extension of the comment period at HEW to 60 days is a significant positive step. Several commentators were concerned with the "declining use of advance

notices and notices of intent," and the increasing tendency to issue only a notice of decision to regulate, which "seldom gives any substantive discussion of the issues being considered." Several comments indicated a strong desire for expanded information with notices of intent, and others suggested a second public comment period for revisions to proposed rules.

Commentors feel that FDA is doing the best job of involving the public in its regulatory activities. The Health Care Financing Administration (HCFA) was criticized for "not following the letter and the spirit of the Executive Order" in several major rulemakings. For example, HCFA's malpractice reimbursement regulation allowed only 45 days for comment initially, but was later extended to 60 days after "considerable external pressure."

REGULATORY ANALYSIS

Several commentors felt there was a lack of HEW commitment to or understanding of this requirement. Of the 425 regulations listed in the February 1979 agenda, HEW stated it was preparing regulatory analyses for only two proposals and considering analyses for four others. HEW's second agenda does not commit the Department to conducting any regulatory analyses not previously announced.

HEW does not classify regulations into categories of significance in either its notices of proposed rulemaking or its final rule. Since the Department generally does not provide even an acknowledgement that it has reviewed the regulation for economic impact, it has been difficult to judge compliance with this provision. To make it easier to assess compliance with the regulatory analysis provision of the E.O., HEW is considering requiring all components to develop a "regulatory analysis assessment statement" to accompany each significant proposed rule. This process, already in place at FDA ensures that economic effects are considered, and provides the public with a written justification why a regulatory analysis is not required. HEW is also considering other alternatives for improving compliance with this provision of the Executive Order.

A good example of regulatory analysis may be found in the proposed HEW day care regulations. Over the last few years, HEW thoughtfully designed and conducted several data collection efforts to address the major policy issues in day care. With the results of these efforts in hand, HEW was able to prepare a thorough analysis of the costs of the proposed alternative standards.

Generally, however, economic analysis is regarded by commentators as the weakest element in terms of Executive Order compliance. Although FDA was commended for doing a "credible job and developing good analytical staff capability," significant improvement is needed in most of the other HEW components. Commentors feel more effort should be devoted to methodology and the development of uniform standards, particularly in the area of quantification of cost considerations. There also is a general suspicion that the Executive Order criteria are being side-stepped by justifying compliance costs slightly below the threshold level in the Order.

Several groups have pushed unsuccessfully for a regulatory analysis for the System for Uniform Hospital Reporting (SHUR) and malpractice reimbursement decisions, both of which are considered to have a substantial economic impact (the latter to shift an estimated \$310 million in Federal payments to hospitals and private insurers). Commentors were concerned that the Hill-Burton rulemaking (setting conditions for health care providers that have received Federal funds) was proposed without a regulatory analysis or any documentation supporting the decision. After considerable external pressure, HEW determined that a regulatory analysis was required. However, the regulatory analysis was published with the final rule, obviating the impact of public comment.

HEW is developing proposals to improve its review of the economic impact of specific regulations. HEW maintains that these proposals will be operational during the fall of 1979 and correct past weaknesses in HEW's regulatory analysis procedures.

REVIEW OF EXISTING REGULATIONS

Operation Common Sense was designed as a five-year review of all 6,000 pages of HEW rules in the Code of Federal Regulations. To date, 2,814 pages have been reviewed; 1,596 were found not in need of revision; 719 were deleted as obsolete or unnecessary; and 499 were rewritten to improve clarity and update. However, public commentators believe that many of the operating components have been reluctant to tackle the most complex and controversial regulations first. The public views the review process as primarily an exercise in recodification that neglects to give adequate attention to the more important policy considerations such as need for the regulation and burden imposed on the public.

Specific examples of important "sunset" activities at HEW include:

- A plan to review and recodify regulations on applications, eligibility determination, assistance payments and fair hearings in social security, medicaid, and aid to families with dependent children programs;

- Consideration of the adoption of more flexible, less costly, but equally effective system hospitals can use to meet fire safety standards;

- A revision of conditions of participation in the medicare and medicaid programs for skilled nursing facilities and intermediate care facilities.

Final actions on each of these is expected within the next twelve months.

In addition to these activities, and at the request of the President and OMB, the Health Care Financing Administration is undertaking a review of all Federal regulations that impose significant costs on hospitals, nursing homes, and health maintenance organizations. This activity, which also is part of the President's program to reduce health care costs, is designed to identify and revise or eliminate regulations which are contradictory, unnecessary, ineffective or excessively burdensome or costly.

PLAIN ENGLISH

As already mentioned, Operation Common Sense has resulted in the revision of a large body of regulation in the Code of Federal Regulations. In addition, HEW has developed a number of models of clear writing including:

- Rules describing evidence needed to establish social security eligibility;

- Rules governing the application for assistance under social security.

Although models have been established, most recent HEW regulations do not equal these in simplicity and clarity. Improvement is evident, however, particularly in the Education Division and Social Security Administration. For example, some regulations promulgated by the Education Division in the past year have been particularly lucid. Many have adopted a

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question and answer format that makes the rules not only comprehensible but also easy to read. The Education Division has hired a full-time employee to edit rules.

The proposed HEW child day care regulations are also examples of clarity and readability. HEW laid out options for each standard, including training, nutrition, health and safety of children in care, social services, parent involvement, and group composition.

HEW also has trained several hundred regulations writers in plain English over the past three years. The Department cites the lack of public complaints on newly issued regulations as evidence that improvement has occurred.

Several private organizations feel progress has been made in improving the clarity of recent regulations. Preambles were cited as "more lucid and helpful" and "more clearly and simply written." Members of the education community, however, commented that interpreting many regulations was difficult because of numerous cross-references. One major organization stated:

"Generally, the proposed rules recently published by the Education Division are shorter not because they eliminate any requirements but because the requirements are now spread among many documents. The policy of "incorporating by reference" will save a lot of pages in the Code of Federal Regulations, but it will increase the work and confusion of school administrators who apply for and implement these programs."

OTHER REGULATORY IMPROVEMENT ACTIONS

HEW has significantly reduced the time it takes to draft and issue regulations. Within the past year, HEW has completed action on over 250 regulations stalled in the Department for several years, including the elimination of more than 50 proposed regulatory actions that were determined to be unneeded. Eliminating this backlog was accomplished by establishment of a Secretarial level monitoring system involving setting action deadlines, bi-weekly meetings to oversee progress, and computerizing information to assist in tracking.

CONCLUSION

On balance, HEW's compliance with Executive Order 12044 is good. The Department has excelled in certain areas, and is working to correct deficiencies in others. For example,

Operation Common Sense is progressing on schedule and a review of all Federal regulations imposing significant costs on institutional health care providers is now underway at the Health Care Financing Administration. However, with the exception of FDA's performance, regulatory analysis is the weakest element of HEW's compliance with the Executive Order. The Department is working to rectify problems in this area.

PART II

IMPROVING GOVERNMENT REGULATIONS

A Progress Report



SEPTEMBER 1979

VOLUME II

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Department of Housing and Urban Development (HUD) is not generally thought of as a major regulatory agency. However, it does issue a large number of regulations dealing with grants, subsidies, housing standards, insurance, mortgage loans, and related matters.

On May 25, 1978, HUD proposed procedures to implement the Executive Order. These procedures were revised in response to comments received from the public. The final procedures were published in the Federal Register on January 5, 1979. Part of the delay in issuing the final procedures was caused by a new legislated requirement for Congressional review of certain HUD regulations. This requirement is contained in the Housing and Community Development Amendments of 1978, which became law on October 31, 1978. Implementing procedures for that law had to be meshed with the draft plan for implementing E.O. 12044. In addition, the law severely limits HUD's authority to issue regulations during a Congressional recess. The Department must get a specific waiver to issue rules from the Senate and House Banking Committee Chairmen and Ranking Minority Members. From mid-November 1978 to January 20, 1979, the Department prepared and submitted requests for 43 waivers.

POLICY OVERSIGHT

As late as May, the Department had yet to establish a system to assure active Secretarial level oversight of all facets of the Department's regulations. Work plans were not being provided, and there was no evidence of Secretarial level involvement in the early stages of the regulatory process. However, Secretarial approval of all proposed and final rules has been required since HUD was established.

Since May, HUD appears to be making substantial progress. On May 20 the Department completed a 4-5 day training session on the rulemaking process. Use of the Department's revised Rulemaking Handbook also began on that date.

The regulatory process is monitored by the Office of the General Counsel. Approximately 25 work plans have been returned to the originating offices by the General Counsel--either for further information or reconsideration. The General Counsel sends all reviewed work plans, with comments from other HUD offices, to the Secretary for approval. Actual preparation of regulations begins with Secretarial/Under Secretarial concurrence. The General Counsel also prepares the semiannual

agendas submitted to the Congress, required by the Housing and Community Development Amendments of 1978, the semiannual agenda required by E.O. 12044, and the Regulatory Council's Calendar materials.

On February 1, 1979, the Department published its first semi-annual agenda of significant regulations under development and review. The agenda included 55 regulations (some of which have since been transferred by reorganization to the Federal Emergency Management Agency). For each regulation listed in the agenda, HUD indicated the need and legal basis for the action and gave the name and telephone number of a knowledgeable HUD official. The agenda did not provide information about whether regulatory analyses were to be prepared, but did indicate that subsequent agendas would contain that information. HUD's second agenda was published August 1, 1979. That agenda listed 16 regulations not on the February agenda and gave the status of those included in the February listing. Neither agenda distinguished between regulations under review and those under development. The August agenda did indicate those rules on which the Department planned to prepare a regulatory analysis. However, for most items listed, HUD indicated that it was not yet known whether such an analysis would be needed. Final determination of the need for analyses of these regulations is being made by the Department.

According to the Department, review of the agenda by the Secretary/Under Secretary has proven to be a useful intra-departmental oversight mechanism. The second semiannual agenda, published August 1, was held up by the Under Secretary for resolution of questions raised on several issues.

In the past six months, more intensive oversight has prompted Secretarial intervention in the development of rules that for example involve: (1) the transfer of assets from nonprofit to profit-motivated sponsors; (2) the implementation of E.O. 11988 and E.O. 11990, concerning protection of floodplains and wetlands; and (3) procedures to initiate a demonstration program for livable cities and neighborhood self help under the 1978 Housing and Community Development Amendments. These rules were returned by the Secretary to the program office for clarification and simplification of their provisions or for complete reconsideration of portions of the regulations.

PUBLIC PARTICIPATION

The Department has one of the best records in government in this area. For example, it is now:

- using advance notices of proposed rulemaking;
- publishing Federal Register notices indicating which proposed and final rules have been sent for Congressional review as required by the Housing and Community Development Amendments of 1978;
- extending 30-day comment periods to 60 days;
- holding public meetings on a number of proposed regulatory changes;
- mailing information, including ANPRMs and NPRMs to those members of the public (including State and local government officials and organizations interested in HUD activities) that have asked to be on HUD's mailing lists; and
- announcing regulatory actions in publications specifically targeted to "special" groups that might be affected by the proposal.

The outreach mailing list includes the names of about 78,000 individuals.

The Department has held a number of public meetings. Some were under the auspices of the program office proposing a regulatory change. Others were conducted by the Office of the Assistant Secretary for Neighborhoods, Voluntary Association and Consumer Protection (NVACP). These include such things as the urban homesteading program, tenant participation in low and moderate income housing projects and provisions for condominium mortgage insurance.

Program offices are also encouraged to hold public meetings and forums to inform consumers about HUD programs and to solicit their views. For example, 10 meetings sponsored by program offices were held around the country to explain and receive questions and suggestions on a proposal dealing with architectural barriers to the handicapped. Others were held on such topics as energy conservation procedures for multi-family housing and interstate sales of undeveloped lands.

In the past, HUD had a widespread public reputation for allowing insufficient time for public comments. Until recently, the 60-day comment period requirement of the Order had made only marginal improvements. This situation appears to be clearing up, but more work is needed. Until May 1979, published reasons for allowing less than 60 days comment

were almost nonexistent. Now the Department is at least providing a reason for allowing a shorter comment period.

Several industry groups have indicated that the extension of comment periods from 30 to 60 days has been an important step toward permitting more public participation in HUD's regulatory process. In addition, according to HUD, publication of the first agenda did bring evidence of State and local government intent to participate in the regulatory process at an early stage. However, a commentator, who agreed that HUD had improved its general outreach, told us that the Department had a problem in this area. In the past, it frequently shared early versions of draft, unpublished regulations with the public. This practice, which the commentator applauded, had stopped because of potential legal problems stemming from the Federal Advisory Committee Act (FACA). The commentator indicated her belief that there should be some approach that would permit resumption of the previous practice without involving the agency in the morass of legal actions.

Since the effective date of E.O. 12044, the Department has published five advance notices of proposed rulemaking. Industry groups have told OMB that these are very useful, along with the agendas, as an "early warning" on HUD regulatory intentions. Considering the volume of HUD regulatory activities it appears probable that it should have published more ANPRMs than it has. Recently HUD decided to publish ANPRMs on all significant regulatory proposals unless there is a special and compelling program reason approved by the Secretary.

REGULATORY ANALYSES

Progress on regulatory analysis has been slow. To date, HUD has not initiated any regulatory analyses. Preliminary commitments have been made for regulatory analysis in one area--building energy standards.

Beginning July 1979, a single office was given responsibility for reviewing work plans to assess the need for a regulatory analysis. At the work plan stage, the program office must make an initial determination of whether or not a regulatory analysis is required. According to the Department, more than a dozen work plans have been returned to the originating office for additional review of the need for a regulatory analysis. The Department's procedures provide that a regulatory analysis will be prepared for any rule that meets certain defined

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threshold dollar values and any rule which "is determined by the Secretary/Under Secretary to require such an analysis for any reason". To date, there has been no indication that this latter criterion has been applied.

In the future, the Secretary/Under Secretary will get an abstract of each regulation, including an explanation of the regulatory analysis determination, before the issuance of the final rule. This procedure should prevent any regulations from being published unless the appropriate regulatory analysis determination has been made. Also, the Under Secretary has recently issued a memorandum to all primary organization heads in HUD stressing the need for and importance of regulatory analysis.

REVIEW OF EXISTING REGULATIONS

HUD has selected good candidates for sunset review and has made concrete progress on a few.

On April 10, 1979, HUD issued a final revised rule on interstate land registration procedures. Since then, HUD has published notices of proposed rulemaking for 60-day comment on a number of agenda items, including tax exemptions of obligations of public housing agencies and the Section 8 housing assistance payments program for new construction. A number of other rules are actively being worked on. For example, a draft of the proposed revision of Section 8 rules on "State agencies" is being reviewed within the Department and is expected to be issued as an NPRM before January 1, 1980. These rules establish policies and procedures applicable to the Section 8 housing assistance payments program for housing finance and development agencies established by State governments. A revision of the Privacy Act rules is being prepared.

In addition, the Department has just established a task force to review all HUD regulations for possible sunset reviews. However, HUD has not published target dates for sunset review activities and should do so.

PLAIN ENGLISH

In April 1979, the Department's Office of the Assistant Secretary for Neighborhoods, Voluntary Association and Consumer Protection (NVAP) completed a section for the HUD handbook on plain English. This new instructional material, which contains examples of what to say and what not to say, has only been in operation since April 1979.

HUD has completed one major plain English rewrite. The revised interstate land sale registration procedures, issued on April 10, 1979, were rewritten by a consulting firm. This rewrite was at least partly undertaken because HUD had received complaints that the public did not understand the regulation. The result has received mixed reviews. The regulations are easier to read. They are also about 20 percent longer--a fact that has already drawn some criticism.

Since May 1979, there has been an improvement in the preambles to regulations and in other HUD Federal Register publications (e.g., Targeted Jobs Demonstration Programs). However, the Department needs to make further improvements by adding a section to the preamble of proposed and final regulations explaining whether the Department considered the regulation to be routine or significant and indicating either that a regulatory analysis was not done and why or summarizing that analysis.

CONCLUSION

Although the Department has been slow in getting its regulatory reform program started, recent initiatives appear promising. New procedures for regulatory analysis will be closely monitored to ensure that a range of alternatives are considered. HUD is also working to increase the use of Advance Notices of Proposed Rulemaking to stimulate more public involvement early in its rulemakings.

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DEPARTMENT OF THE INTERIOR

The Department of Interior's (DOI) regulatory activities range from protecting endangered species to managing 450 million acres of public domain, 20% of the Nation's total land base.

On paper, the Department of Interior has one of the best regulatory reform programs. The purpose of the Order is clearly linked to well defined criteria for determining if a rule is significant and if a regulatory analysis is required. However, results are mixed and inconclusive.

On May 25, 1978, the Department published for 60 day public comment proposed procedures for implementation of the Executive Order. The resulting revised procedures were submitted to OMB for approval on September 14 and published on December 13, 1978, as final rules to be effective January 26, 1979.

POLICY OVERSIGHT

Regulations are usually developed by the services, offices, and bureaus who decide whether a rule is significant and whether a regulatory analysis is required. These decisions must be approved by the Assistant Secretary having jurisdiction over the program. Work plans for significant proposed rules are forwarded to the Secretary for approval. When the Secretary approves a workplan, he indicates whether he wishes to exercise final approval of the rule before it is published in the Federal Register.

The Secretary is given a bi-weekly status report on approved workplans in the Department's Critical Issues Management System. This system, implemented in December 1978, is maintained by the Department's Management Group (Secretary, Under Secretary, Solicitor, and Assistant Secretaries).

The Department held a concerted round of Executive Order conferences with Secretarial Officials and bureau heads and issued general public participation guidance. In addition, bureaus such as the Fish and Wildlife Service are conducting seminars on the development of regulations as required by Executive Order requirements. The bureaus are being encouraged to develop internal directives to supplement the Department's. For example, the Office of Surface Mining is considering a directive that defines workplans as "A comprehensive management plan which describes the resources and processes to be used...in the development and issuance of a significant rule, including the identification of milestones and target completion dates. In addition to plans for public participation and concurrence by other agencies, the workplan should address the need for the following associated analyses. Regulatory Analysis, Urban

and Community Impact Analysis; and Environmental Impact Statement."

Some industry representatives believe that there may be a general lack of knowledge about the Order on the part of some key staff assistants. One stated that he "had to prove to Assistant Secretary staff assistants that rules likely to have a substantial economic effect on individual industries or levels of government are 'significant' rules in terms of the Department's published criteria." However the Office of the Solicitor assures us that all key assistants were briefed on all procedures.

Industry representatives have also criticized the Department's procedures because they believe there is no assurance that a bureau's decision that a regulation is not significant will be reviewed objectively by others outside the program manager.

PUBLIC PARTICIPATION

The Department as a whole employs a wide variety of public participation techniques including: workshops, hearings, regional meetings, distribution of draft rules, press releases, and notices of intent.

Semiannual agendas of regulations were published on February 9, 1979, and July 20, 1979. In addition to the 118 items included in these agendas, another 55 were listed in the May 25, 1978, Federal Register as proposed for review. The agenda listed 39 rules to be developed, 48 requiring amendment due to changes in legislation and 31 under review. Ten rules were determined to be significant, and four indicated that a regulatory analysis would be prepared. One criticism of the Department's agendas is that prior knowledge of either legislation or regulation is needed to understand the subject matter and significance of the proposed action. This can and should be improved.

One association observed that there is "an appearance of openness" but some have felt that all "important decisions are made prior to public comment." One company executive commented that DOI is "failing to seek conceptual impact on rulemaking early enough to correctly identify issues." Another industry representative observed that DOI "sees comment as a criticism and reacts with a defensive posture" which results in..."operative experience having no influence on regulations".

Despite these criticisms, there are examples of good public involvement.

--As a result of early public participation, the Heritage Conservation and Recreation Service reduced the number of eligibility criteria for Urban Park and Recreation Recovery grants mandated in its interim regulations from approximately 100 to 6.

--As the result of an advance notice of proposed rulemaking on management of the new Alaska National Monuments, the Department expanded the scope of its proposed rules to deal with previously unaddressed issues such as cabins and access across Monument lands. The comments showed these provisions to be necessary to avoid totally foreclosing traditional uses by local citizens.

--Public comment in response to a proposed rights-of-way application to be issued shortly by the Bureau of Land Management will reduce the number of mandatory items to be included in applications from over 20 to 5.

--The original surface mining regulations specified design standards to govern the dumping of overburden at the head of mountain hollows. Modification of this provision for ensuring the stability of fills has, in effect, resulted in a performance standard.

The Department is seeking to improve its public participation efforts and ensure that the public's involvement is most useful. For example, it has found that notices of intent for technical or complex rules do not produce substantive, useful comment. This view is supported by one industry commentator who observed, "Notices of intent give a phony appearance of public participation--technical rules need specifics. If they don't hang it all out, you can't comment."

EFFECTIVE REGULATORY ANALYSIS

To date, one regulatory analysis has been completed and three are being developed. However, the extent, quality, and effect of the Department's analyses are unclear because there is no Department-wide method for tracking and evaluating the development of all rules. Steps being taken to close this gap include assignment of staff by the Office of the Solicitor to evaluate bureau decisions on when a rule is significant. This evaluation should be completed in October.

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The Department's agendas indicate plans for regulatory impact analyses of regulations governing Urban Park and Recreation Recovery Program; Surface Protection Wilderness; and Surface Management of Unpatented Mining Claims in the California Desert Conservation Area.

On the other hand, rules not slated for analysis in the published regulatory agendas include: Coal Mining Operations, Geological and Geophysical Exploration of the Outer Continental Shelf; Oil and Gas and Sulfur Operations in the Outer Continental Shelf; Coal Leasing; Prime Farmland; and Geothermal Resources Operations.

Because it was unclear why the Department had classified these rules as insignificant and had indicated no plans for analysis, we took a look at the documentation supporting the development of these and several other rules. Although the Department has completed only one of its four formally identified regulatory analyses, it appears that more analyses are being conducted and Executive Order procedures are having more effect than is reflected in Department-level records. With the possible exception of the Prime Farmland regulations, we found that: all procedures had been followed; that significant analysis had been made of the rules for coal leasing and coal mining; an economic analysis had been performed for the geothermal resources rules; and the remaining two Geological Survey rules involved technical perfection of existing regulations or relaxed previous restrictions. We are exploring with the Department and other agencies whether lessening regulatory burdens is sufficient reason for not doing a regulatory analysis. If no analysis is done, the public and the agency are denied information upon which to choose the best regulatory decision.

Examples of how regulatory analysis is having an impact on Department of the Interior's rulemaking include:

--In June, the Office of Surface Mining (OSM) prepared a workplan for a rule to establish standards governing State use of Federal grants for abandoned mine land reclamation. The issuance of no regulations was among the analysis. On the basis of this analysis, the Assistant Secretary for Policy, Budget and Administration recommended and the Secretary decided in favor of the no rule option. He stated, "I prefer guidelines to additional OSM rulemaking. Guidelines will accord flexibility to the responsible State and Federal officials to employ innovative

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measures in conducting abandoned mine land reclamation work and still provide general direction to the program." Accordingly, a detailed notice of decision to develop guidelines was published.

Coal management rules, classified as insignificant, were estimated by the DOI to have a potential 1990 annualized cost of \$2.4 billion. The Department was facing a mandate to commence leasing by January 1, 1980 (leasing having been suspended since 1971). However, the Secretary agreed to a comprehensive analysis of major provisions for maximum economic recovery (MER) and criteria for unsuitability of land for mining. In the view of some government economists, the DOI did an excellent analysis of the MER issue. However, there is disagreement respecting the number and significance of issues deserving analysis.

A regulatory analysis was completed on the Permanent Regulatory Program for Surface Mining Control and Reclamation. The analysis provided detailed cost estimates on alternative methods of regulation. The Office of Surface Mining states that, with few exceptions, it elected to adopt the least cost alternative in areas where they had discretion. However, the RARG was disappointed that the DOI analysis was limited to the discretionary aspects of the law.

Although some commentators believe that the Department's initial regulatory analyses were "less than satisfactory" and "conceptually off the mark," they believe that the quality is improving. One commentator noted that "when it (Executive Order) first came out it was encouraging. It broadened the Inflationary Impact Statement. Economic analysis was not what it should be. Industry was having to make its own analysis only to find that industry numbers and agency numbers were not the same. Truth was, they (DOI) didn't have the data to make an analysis--it was incomplete--inconsistent." He believes it is too early to draw conclusions about the Order's effect in Interior.

Another member of industry in commenting on DOI procedures noted that the E.O.'s concept of "analyses is a lovely idea. It's great for playing games. Regulatory analysis needs objective oversight."

REVIEW OF EXISTING REGULATIONS

The Department is committed to a five-year review of all regulations. However, no dates have been published for the completion of sunset reviews. Those listed include:

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regulations governing the National Wildlife Refuge System; boating, business operations and other activities in the National Parks; loans to Indians; oil and gas operations on Federal and Indian lands; and regulations affecting the siting of geothermal, electric generating facilities. Although the Department perceives that the review of existing rules requires the same analytical discipline as that needed for new rules, it notes that its Bureaus have assigned higher priority to applying E.O. procedures to new regulations. It anticipates that in the future, a more balanced approach will be forthcoming.

PLAIN ENGLISH

As in many Departments, the resulting Interior Department efforts to write rules in clear, understandable English are mixed. The responsibility for ensuring the clarity of regulations falls on each bureau. Some limited training may be provided to the bureau staff. Complex rules such as those for Surface Mining benefitted by direct participation of Federal Register staff in their drafting. Attention to rewriting existing regulations in clearer, simpler English is also needed.

CONCLUSION

Before this evaluation, no systematic effort had been made by the Department of Interior to assemble anecdotal information on, much less evaluate the effects of, public participation and regulatory analysis. Although many of its regulations affect less important matters, such as the opening and closing dates for duck hunting, some of its rules such as those affecting the mining of coal and oil on the outer continental shelf, are highly significant to the Nation's prosperity and security. Because the Department lacks a central source of information which can be used to offset criticisms of its procedures, it appears that identifying and encouraging successful regulatory practices are of low priority within the Department. To correct this situation, the Office of the Secretary will need to integrate and more adequately support the Department's regulatory monitoring and analytical activities.

DEPARTMENT OF JUSTICE

Although regulation is not a major activity of the Department of Justice, important regulations on trade in narcotics and dangerous drugs, immigration, and civil rights are issued and enforced by the Department. Because Justice considers its regulatory activities to be incidental to its overall missions, it has moved comparatively slowly to implement the Executive Order.

On May 26, 1978, Justice published for public comment proposed procedures to implement the Executive Order. The initial plan required substantial revisions. For example, no mention was made about compliance with the semiannual agenda requirements. Justice published its final plan on May 25, 1979. Because the Department has only recently implemented the Executive Order, it is difficult to evaluate its performance. Nonetheless, a tentative assessment has been made.

POLICY OVERSIGHT

Department level policy oversight has been relatively limited. The semiannual agenda development process will serve as an early warning system for policy officials on what significant regulations are being developed by operating units. To date, there are no concrete examples of the process resulting in greater departmental policy oversight or direction of the operating units. Because Justice considers its regulatory activities to be secondary or incidental to its overall missions, the Department gives day-to-day responsibility to the operating units for implementation of the Executive Order. In brief, Justice has not yet come to terms with the intent of the Executive Order to make policy officials above the operating level accountable for successful implementation.

Each component submits its semiannual agenda to either the Deputy Attorney General or Associate Attorney General to determine whether the agendas meet the requirements of the Executive Order. In addition, at the time an agenda is submitted for review, a separate document exploring the issues and alternatives pertaining to the regulations in question is also reviewed by these policy officials.

Each major component publishes its own agenda after receiving approval from the Associate Attorney General or the Deputy Attorney General who exercises administrative oversight over the component. Only two components have published a semiannual

agenda. According to Justice, one of these was reviewed only by the Office of Legal Counsel's staff because Department procedures were not yet in place. As a result, there was no policy level review above the operating component.

Each component is also required to advise these officials of any new changes or significant regulations that might occur between the publication of each semiannual agenda.

Department-level supervision also occurs on a more routine basis through the Office of Legal Counsel. This office assists other operating units by interpreting and responding to questions about the Executive Order. It helps to assure uniform procedural compliance throughout the Department. The office functions more as a service organization than as a "watchdog" or supervisory unit. The Department is considering shifting more routine administrative functions, including implementation of the Executive Order, to another office.

PUBLIC PARTICIPATION

In the past, each operating component was responsible for determining when and how to obtain public participation. Department-level oversight was not routinely performed. This situation persists today, and thus far it is difficult to evaluate what changes will occur because of the Order.

Operating units vary in the degree to which they solicit and provide opportunities for public comment. For example, some rely almost exclusively on publication and subsequent distribution of NPRM's in the Federal Register. Others seek public comment from a broad range of interests including State, local and private groups and hold public hearings and meetings.

The first agenda for law enforcement assistance identified two new significant regulations under development and seven significant existing regulations under review. Four of the public participation plans for the review of existing regulations indicated only publication in the Federal Register. Other regulations, especially one of the new regulations, revealed a fairly significant public outreach effort, including the names of specific private and public organizations that would be contacted directly.

The civil rights regulation agenda was less informative. For example, the agenda did not provide either a plan for public participation or a prospective chronology of agency actions and target dates. Two significant regulations under development were listed.

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The Department provides a 60-day comment period "whenever reasonably possible." Generally, we have noticed a greater willingness to adopt the 60-day comment period compared to the 30-day comment period typically given in the past. This improvement is, however, by no means universal.

Perhaps the best example of strong public outreach was handling of the parole guideline revision. The public was allowed time far in excess of 60 days to comment. The Department held six days of public hearings in three different locations. Advance notice was provided in the Federal Register and special notices were sent directly to members of the correctional, academic, and legal community. In addition, two evening sessions were held in Federal prisons to obtain comment from inmates and staff. In all, 3,000 pages of recorded comment were obtained at the hearings.

REGULATORY ANALYSIS

Justice has not yet identified any regulations that require a regulatory analysis. The Department now has to develop regulations to assure nondiscrimination against the handicapped in programs and activities receiving funds from the Justice Department. These will be the first significant regulations developed by the Department from beginning to end under the Executive Order. Justice initially determined that a regulatory analysis was not necessary, but we are working with the Department on review of this conclusion. In its notice of proposed rulemaking, Justice will specifically invite public comment on this issue.

REVIEW OF EXISTING REGULATIONS

Justice plans to review each existing regulation once every four years. Each operating unit is responsible for the selection, timing and planning of its review. To date, only one plan for reviewing regulations (law enforcement assistance) has been published. Most of the regulations selected for review are significant. Although this review is now underway, it is too soon to tell whether any significant benefits or changes will result.

PLAIN ENGLISH

The Department's performance in this area is uneven. In part this is attributable to differences in the complexity of the laws that are administered by the Department. Performance is not monitored at the Department level. The Department, however, states that outside groups are generally pleased with the clarity of its regulations. There has been noticeable improvement in the quality of preambles.

CONCLUSION

Overall, the Justice Department's implementation of the Executive Order has been slow and incomplete. The effect on regulatory practices is limited and uneven throughout the Department. This is a result partly of usual start-up problems and partly of the perception that regulations are not a major Justice activity. That perception accords with the facts, but more effective implementation of the Order would improve the regulatory process that does exist in Justice. This would benefit those who are affected by the regulations.

DEPARTMENT OF LABOR

The Department of Labor's (DOL) regulatory activities stem from more than 100 Federal labor laws and executive orders designed to guarantee such things as workers' rights to safe and healthy working conditions, a minimum wage and overtime pay, freedom from employment discrimination, unemployment insurance, and workers' compensation. In addition, the Department administers the Labor Management Reporting and Disclosure Act and, in conjunction with the Internal Revenue Service, administers the Employee Retirement Income Security Act of 1974.

On May 26, 1978, DOL published for 60 day public comment proposed procedures to implement the Executive Order. These procedures were revised in response to the comments. The final guidelines were reviewed and approved by OMB and published in the Federal Register on January 26, 1979.

POLICY OVERSIGHT

DOL has revamped its entire regulatory development and issuance procedures as a result of E.O. 12044. The new procedure provides that the Secretary has direct control over the regulatory process. In the past, each Assistant Secretary was delegated authority to issue regulations without Secretarial concurrence. This is no longer the case.

Before work on a regulation begins, the Secretary must approve a concept paper. Concept papers describe the purpose and need for the regulation, alternatives to be considered and whether the regulation is significant or major. Secretarial approval is also required on development plans for significant regulations. These plans describe how public participation will be obtained and what issues are to be addressed in regulatory analyses. They are reviewed in draft by all of the principal officials in the Department before being sent to the Secretary.

About 60 concept papers have already been reviewed by the Secretary. According to the Department, their "usefulness as a policy tool is already clear." For example, the concept paper on reorganizing all Office of Federal Contract Compliance Programs regulations surfaced major issues which are being resolved at the policy level before the staff begins to write the regulations.

In the past, these regulations would not have surfaced at the policy level until a Notice of Proposed Rulemaking was ready for publication. This would have been after months of work and if it had to be turned back, significant time and resources would have been wasted.

The Department established a Regulations Review Panel after the last regulatory agenda was prepared. The panel, chaired by the Under Secretary, is made up of all Assistant Secretaries and other high ranking officials. In preparing the semiannual regulatory agenda for Secretarial approval, the panel identifies possible regulatory conflicts within the Department and provides an organized channel for resolving them. For example, at a recent panel meeting, OSHA learned of an advanced dust monitoring device being developed by another bureau that could have an effect on OSHA's standards for preventing dust explosion in grain elevators, now being developed. The organizations are now coordinating.

Secretarial concurrence is required for all regulations before issuance. The Secretary's immediate staff does a detailed assessment of the proposed regulations and the regulatory analysis and advises the Secretary before he approves the regulation.

Few regulations have been moved through the Department under the new procedures. Many of the 80 regulations selected for review and listed in the January agenda had not yet been published as proposed rules by July 1. Few of the regulations listed for development have been published in final. This lack of progress which may have been the result of a too ambitious agenda is a problem that needs attention.

PUBLIC PARTICIPATION

On January 26, 1979 the Department published its first semi-annual agenda of regulations. That agenda included 76 existing regulations under review and 23 new rules under development. For each agenda item, the Department provided an indication of the action planned during the next six months. Although DOL did a relatively good job describing the regulation to be developed or reviewed, putting estimated target dates in the agenda would aid the public in planning their participation.

The Department requires the development of a public participation plan for every significant rule. Generally, the Department has a good outreach program which frequently begins before a formal draft of the proposed regulation is begun and

sometimes includes public hearings. This is in addition to the general requirement for a 60-day Federal Register comment period. Labor believes the longer comment period and other efforts to reach interested groups have "stimulated much public comment which under prior procedures might not have been communicated to the Department."

The Department cites recently issued CETA regulations and the Senior Community Service Employment Program as examples of early and effective outreach to those affected. These outreach efforts, according to the Department, avoided "many unrealistic, unnecessary, and overburdensome requirements..."

To encourage more active public participation in the early stages of rulemaking, the Mine Safety and Health Administration (MSHA) has elected to issue advance notices of proposed rulemaking for 3 sets of regulations during the past year. Many comments were received in response to a Notice of Proposed Rulemaking on MSHA's conversion of metal and nonmetal health and safety advisory standards to mandatory standards. As a result, a great many changes were made between the proposed and final rules. For example, in addition to 68 advisory standards which the proposed rule would have revoked, MSHA will revoke 21 additional standards in the final rule. These changes should result in a substantial reduction in the economic impact of the rule. One standard which was eliminated in response to comments on the proposal by itself represented a savings of \$200 million.

After receiving a large public response to its proposed fire protection standards, OSHA also held public hearings on the regulations.

Each DOL agency tailors its outreach techniques to its particular audience in a concerted effort to involve the affected public. OSHA reports that its experience leads it to believe that "constituent groups apparently believe they can have the most impact by addressing issues raised in a specific proposal." It finds that constituent groups are reluctant to use their limited resources on relatively undeveloped concepts identified early in the rulemaking process.

REGULATORY ANALYSIS

Decisions on the need for a regulatory analysis and the alternatives to be considered are made as part of the concept paper process. The completed analysis for each regulation is

reviewed as part of the final step prior to Secretarial concurrence on a regulation. The Department has done several regulatory analyses and has 14 more in various stages of preparation. The most difficult and far ranging work has been done in the OSHA area. In the case of OSHA's acrylonitrile standards--significant changes were made after the Regulatory Analysis Review Group (RARG) reviewed the analysis and raised questions.

In the case of the acrylonitrile analysis, the RARG review helped in the selection of the least costly alternative as the basis for the final rule. This rule was commended by an industry association as "a tough but realistic standard."

The analysis of the Cotton Dust standard (done in part in response to Congressional interest after the rule was issued), resulted in the selection of an alternative to the approach originally proposed. According to the Labor Department, the final standard involved a capital cost of \$2.1 billion below the original proposal of \$2.7 billion without a serious reduction of benefits. In addition, OSHA's regulatory analysis on Lead Standards resulted in the exemption of certain industries and the setting of different compliance periods.

An economic analysis is available for all OSHA regulations and summarized in the preamble to the final rule. Augmented staff capabilities have produced some improvements. MSHA's approach involves the preparation of informal economic analyses to accompany all proposed and final regulations.

Public comment on Labor's performance in analyzing the consequences of regulatory decisions is mixed. For example, one association commented that "cost-benefit ratios are almost nonexistent or completely ignored" in OSHA and MSHA and are "generally countered with 'How do you place a value on human life?'" On the other hand, comments on the RARG report on the acrylonitrile analysis were quite positive.

REVIEW OF EXISTING REGULATIONS

The Department has chosen excellent candidates for review, including Davis-Bacon, contract compliance, service contracts, and various OSHA regulations. It has also had some notable successes in the revocation or modification of about 900 so-called "nit picking" OSHA standards, the proposed collapsing of about 400 pages of fire safety standards into about 30 pages and the elimination of 89 of 229 MSHA advisory standards that the Department described as "redundant, irrelevant, or too confusing."

Several groups indicated that the OSHA standards deletion project was a step in the right direction. One person went on to say it was their "impression that most of them were unenforceable anyway" and that "more attention should be given to other safety standards which need revision."

There are two basic problems with sunset review. First, no substantial progress has been made on the agenda items selected for initial review. Changes have been made in only 5 of the regulations selected. According to the Department, 50 percent of the remaining 67 reviews are moving ahead on schedule, but the other 50 percent have fallen behind. Second, DOL's guidelines implementing E.O. 12044 provides for public petitions and recommendations for regulations thought to be in need of review. However, there is no internal DOL procedure in place which automatically triggers a review. Unless selected by the Department, an obsolete regulation can remain on the books forever. These two problems should be corrected.

PLAIN ENGLISH

The Department is writing clearer and generally more informative preambles for its regulations. Some staff members have taken seminars on writing regulations in plain English. Moreover, the regulations are now examined at each level of review for plain English and clear writing. However, this is a very complex task. The Solicitor of Labor's "requirements" for a legally correct statement that can withstand judicial review sometimes results in a regulatory statement that is complex and redundant. A recent example of this is the CETA regulations. The Act set forth very detailed reporting requirements which the Department converted into a forms preparation handbook that was incorporated into the regulations by reference. The Handbook prescribed forms and gave detailed instructions for their preparation and the timing and frequency of reporting. Detailed reporting requirements were also spelled out in the text of the regulation. The words used in the law, the regulatory text and the forms preparation handbook all meant the same thing. Nevertheless, they were different. This causes confusion as to the meaning intended and a waste of time and effort on the part of those who have to comply with the requirements.

The Department, in its October 1, 1979 agenda, plans to invite public comment on which DOL regulations are confusing or poorly written. Comments received in response to this

invitation will be carefully considered and will be used by the Regulatory Review Panel and others in the selection of regulations for sunset review.

CONCLUSION

In sum, the Department has made good progress toward improving its regulations. However, more attention to setting specific target dates for moving regulations through the Department is needed.

DEPARTMENT OF STATE

INTRODUCTION

The regulatory activities of the Department of State are limited, and many regulations are exempt from the coverage of the Executive Order because they relate to foreign affairs functions of the United States, Federal Government procurement, or internal management of the Department. Since issuance of the Executive Order, only 22 regulations have been proposed, adopted, or revised, and 12 of these were routine revisions in passport or visa procedures that were required by law. Probably because the Department is not usually thought of as a "regulator," we have received no comments from the public on change resulting from the Executive Order.

POLICY OVERSIGHT

The Department has made no changes in policy oversight procedures as a result of the Executive Order. It remains the responsibility of each bureau or office to coordinate with the Office of the Legal Adviser, the directives staff, and the liaison officer for the Federal Register to ensure compliance with E.O. 12044, the Foreign Affairs Manual, and applicable law. The Secretary approves the agenda and all significant regulations before publication.

PUBLIC PARTICIPATION

Since the Order was issued, the State Department has increased comment periods to 60 days to give the public more time to prepare and submit comments. In one specific example, a proposed rule concerning compulsory liability insurance for diplomatic missions and personnel was published in the Federal Register on December 6, 1978. A public meeting was held at the Department and a 60-day comment period was allowed. Based on the comments received, revisions were made to the regulations before they were adopted.

REGULATORY ANALYSIS

The State Department has issued no regulations that require a regulatory analysis.

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REVIEW OF EXISTING REGULATIONS

The Department has no regulations under review at this time and no plans for review.

PLAIN ENGLISH

State has made no changes in procedures as a result of the Executive Order. A review of significant regulations issued since the Order does not indicate particularly increased use of plain English, but State believes it is doing a better job.

CONCLUSION

State has made improvements in some areas addressed in the Order, most notably in outreach for public comment; however, there has been little change overall. Even though the Department is not a major regulator, benefits to State and those it serves would likely result if more systematic arrangements were made to write regulations in plain English and undertake review of existing regulations.

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DEPARTMENT OF TRANSPORTATION

Along with the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission, the Department of Transportation (DOT) is a principal regulator of transportation including railroads, aviation, highways, Coast Guard, traffic safety and mass transit. The Office of the Secretary oversees the Department's regulatory activities.

Many of the concepts of Executive Order 12044 were included in a program to improve regulatory oversight and coordination put in place by DOT several years ago. On June 1, 1978, DOT published for public comment proposed procedures to implement the Executive Order, building on this earlier program. These procedures were revised in response to the comments, final procedures were submitted to OMB in September 1978, and published in the Federal Register on February 26, 1979. They took effect March 1, 1979.

POLICY OVERSIGHT

Policy oversight by the Office of the Secretary of Transportation is extensive and effectively conducted. Commendable success has been achieved thus far in coordinating the regulatory actions within the Department.

--The Department has instituted a formal regulatory review process which includes the Secretary and high level officials in the initiating offices. A departmental Regulations Council comprised of the key officials in the Department has been established to oversee the regulatory process and advise the Secretary on specific regulations. The creation of the Council is a useful technique for increasing departmental coordination and appears to be an appropriate way to assure a cross-section review of departmental regulatory and paperwork requirements.

--An Office of Regulation and Enforcement in the General Counsel's office was established to oversee the Department's compliance with the Executive Order. Central coordination and enforcement appears to be working well for the Department. Department officials indicate that the system has resulted in a better product.

--DOT has prepared a two-year schedule of high priority matters (particularly costly and/or controversial regulations) that will require the attention of the Secretary. The

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The Department is specifically tracking efforts to develop important regulations that implement major new legislation. After the initiating office submits a work plan, departmental staff will meet with the component to develop a schedule for key decisions and data collection and arrange a reporting system to ensure that the necessary economic data are gathered and available on a timely basis. Three regulations have been selected for monitoring: the House of Service of motor Carrier Drivers; Liquified Natural Gas Facilities; and the Highway Routing of Radioactive Materials. The Department plans to add other regulations to this program as appropriate.

-Approximately 70 regulations have been identified as significant. The Department believes that the selection of significant regulations has been accurate and successful in identifying those that require Secretarial oversight. For example, the final determination for the light truck fuel economy standards was made by the Secretary after presentation and comparison of the alternatives being considered. Secretarial review also resulted in making tire grading information easier to understand. The semi-annual agendas and review lists have become important management tools for the Regulation Council in exercising policy oversight in the Department.

It was difficult for outside groups to assess policy oversight. Some groups said that they hoped higher level oversight would result in changing the "fixed sights" of some regulators who keep going back to the same ideas no matter how many times negative comments are submitted to the Department.

PUBLIC PARTICIPATION

The Department has done a commendable job in increasing public participation in rulemaking. A broad cross section of outside groups feel that DOT has made real progress in involving the public. The Department has published three agendas. The agendas list all of the Department's proposed regulations, not just those that are significant. Over 500 regulations under development or review are outlined in the agendas. DOT's agendas are among the best in the Federal Government. They are models of helpful, "early warning devices" for the public. DOT also allows people to place their name on a mailing list for news releases or other mailings concerning regulatory actions on the agenda.

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Several organizations have commented that they find the agenda generally helpful because it allows them to plan ahead. These groups have found that the most helpful part of the agenda is the name and telephone number of a knowledgeable agency official. Before the agendas were published, these groups often spent hours on the telephone being referred from office to office with questions on specific regulations. Now there is someone who is clearly identified as being responsible for answering questions and the groups no longer hear "somebody else will have to answer that." Generally the groups have found the agendas to be "time savers" even though they wish that the accuracy of projected dates could be improved.

To increase public participation, DOT has also held more public hearings and other innovative approaches have been tried. In many instances, the Department's outreach programs exceed the requirements of the Executive Order. The Department appreciates constructive public involvement, and in several cases public comment has resulted in action to withdraw regulations, revise the approach to the rulemaking, or reduce the cost of the proposed regulation. Few instances have been identified where the public had insufficient time to respond.

Examples of how DOT has encouraged public participation include:

--DOT now publishes its rulemakings in the Federal Register only on Mondays and Thursdays (except for emergencies). This makes it easier for the public to keep track of the Department's regulatory activities.

--DOT has a demonstration program to provide financial assistance to individuals and groups otherwise financially unable to participate effectively in rulemaking proceedings of the Highway Traffic Safety Administration. This has enabled DOT to obtain a wider range of views from more diverse interests. As an example of the program's benefits, in the rulemaking on fuel economy standards for passenger cars, funded participants offered important information on the impact of fuel economy standards on emissions, industry profit, and consumer expense. In addition, the Department experimented with public funding at five hearings on the NPRM for accessible transportation for handicapped persons.

--The Department has expanded its consumer newsletter to include a select list of items in the agenda expected to be of major significance to consumers. The newsletter, sent bimonthly to some 5,000 groups and individuals, includes summaries of current ANPRM's or NPRM's affecting consumers.

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--DOT has published a five-year plan for rulemakings concerning motor vehicle safety and fuel economy. The plan outlines the regulatory activity planned in this area over the next five years and is subject to periodic review and revision.

All of the outside groups noted that 60-day comment periods were now being given and they appreciated the increased time. One group did remark, however, that "DOT still takes two years and then gives us 60 days." The membership of that group has grown to such an extent that it is often difficult to get the views of the members in 60 days. The group did say that DOT is generally good about granting extensions to comment periods on request.

An increase in the number of public hearings was also noted by several commentators. Some felt that hearings were still largely "window dressing." Others felt that oral comments were taken more seriously so that more hearings were beneficial. "Anybody who gets a chance to testify at one of these sessions should grab it--it's a golden opportunity to be heard in Washington." All groups agreed that there was a definite improvement in the Department's response to public comments--"we didn't always know what happened to our comments." Some did contend, however, that DOT was still not as effective in responding to negative comments as they were to supportive views.

Views on the increasing number of Advanced Notices of Proposed Rulemakings were divided. Most commentators appreciated having them, particularly in new areas of regulations. Others felt that the ANPRM's sometimes represent "a glorified fishing expedition." They noted that it can cost an association thousands of dollars to respond to a series of wide ranging questions and felt that DOT should spend more time analyzing the issues raised by such questions.

REGULATORY ANALYSIS

Regulatory analyses have been or are being prepared for approximately 50 rulemakings since March 1978. One, on Section 504 handicapped regulations was subjected to RARG review. Others include: light truck fuel economy standards, interstate maintenance guidelines, certification of motor vehicle size and weight, locomotive alerting lights, tanker safety and pollution prevention, and existing and new tank barge construction.

Each regulatory analysis is reviewed by several high level officials and the Secretary and made available to the public early in the rulemaking. Draft regulatory analyses are required early in the rulemaking. Draft regulatory analyses are required at the ANPRM stage. Also, regulations issued

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under emergency conditions must undergo after-the-fact analyses unless personally exempted by the Secretary. Department officials claim the analyses have generally been an important aid to their review because of the emphasis on analyzing alternative approaches.

A regulatory evaluation examining the economic impact is required for every rule not undergoing regulatory analysis. The greater the cost and complexity of the "non-major" rule, the more the evaluation approaches the degree of detail found in a regulatory analysis. Several examples of evaluations prepared since March 1978 include wind shear equipment requirements and revisions to Part 135 of the Federal Aviation regulations (air taxi operators and commercial operators) in the Federal Aviation Administration; and theft protection and child restraints, in the National Highway Traffic Safety Administration.

DOT appears to be doing better than average on regulatory analysis. Most of the analyses have been drafted by DOT staff. The Department has had some problems in quantifying the costs and benefits of a regulation or in gathering sufficient data.

The most consistent criticism of DOT's compliance by outside groups focused on the Department's regulatory analyses. Several commentators noted that there was no uniform guidance on issues such as the proper discount rate to be used. Too often the analyses are felt to be "an exercise in advocacy research." The groups contend that benefit analysis is almost nonexistent since many analyses simply state that the regulation would "benefit the public health and safety" with no description or quantification provided. Some analyses, such as the draft prepared for the hours of service regulations, were criticized as being too elementary to contribute to the debate on possible changes.

REVIEW OF EXISTING REGULATIONS

Based on a review of existing regulations, more than 200 are scheduled to be revised, consolidated, or reworked to make them more effective or less burdensome. DOT has chosen some significant candidates for review, including several major economic regulations requiring a regulatory analysis. Specific examples include:

--About 100 regulations are scheduled for revision in the Federal Highway Administration (FHWA). As of May 1979, 20 of these revisions were completed. Another 15 have been cancelled and 25 more are scheduled to be cancelled.

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--The Federal Railroad Administration recently initiated a comprehensive review of its safety rules which could eventually result in annual savings of as much as \$500 million to the financially troubled railroad industry without adversely affecting safety. This Administration has already proposed one revision that will reduce costs by \$100 million.

--A major review of existing motor vehicle safety standards is underway. This review is being expanded to include a study of the fuel economy standards.

--Existing hazardous materials and pipeline regulations are being reviewed. Five sections and subparts of these regulations were reviewed to eliminate outdated regulations or clarify those that were poorly worded. Also, the cathodic protection regulations have been revised to ease compliance and inspection burdens. This will result in an estimated cost reduction in excess of \$1 million annually. A revision of the requirement for reporting gas incidents is being proposed with cost savings estimated at \$1.1 million annually.

Most commentators were pleased with the Department's efforts to review existing regulations. The Federal Railroad Administration was noted as doing a particularly good job.

PLAIN ENGLISH

More effort could be devoted in DOT to monitoring the clarity of rules. Nevertheless, the writing quality of most DOT regulations is above average. A real effort has been made to explain clearly the purposes of the regulations and describe the alternatives considered in preambles to regulations.

The Office of Public Affairs, the Office of the General Counsel, and other Secretarial offices review regulations specifically for plain English. Each operating administration has an office that is responsible for clear writing review. The General Counsel's office has a writer/editor to help the attorneys review all significant rules. Several administrations have developed training courses or hired editors to assist their staff. Numerous examples are available to show that progress has been made.

Other efforts to improve the overall quality of DOT's regulations writing include:

--The Coast Guard uses boating experts to rewrite regulations in pamphlet form and explain their effect.

--The Department plans to develop a list of terms and "buzz" words that appear frequently, but are unclear to the general public.

CONCLUSION

The Department of Transportation is a leader in carrying out the President's Executive Order. Policy oversight is strong in the Department both as a result of its program existing before the Order and the continuing commitment of senior level officials. The Department has gone beyond the Order in instituting public participation programs and has created several unique opportunities for public involvement. The Department's review of existing regulations is already showing concrete results. More effort is currently being focused on the regulatory analysis/evaluation requirement and the effort to improve "plain English" and further improvements in these two areas should be noted in the future.

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DEPARTMENT OF THE TREASURY

Treasury Department regulatory activities are primarily located in the Internal Revenue (IRS), the Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms (ATF). The Comptroller of the Currency is also a major bank regulatory agency within the Department.

One of the most notable aspects of Treasury's compliance is that it now looks at its regulatory activities as an important, manageable function of the Department. For example, both the Comptroller and the Internal Revenue Service have independent and diverse responsibilities within the Department. However, Treasury is assuring that both are complying with the Order. Although many of IRS's regulations are thought to be simply more detailed guidelines for implementing laws, IRS does issue many regulations that reflect some degree of discretionary authority and the agency has tried to improve public participation and awareness of the issues involved in these regulations. Indeed, IRS has applied the requirements of the Order to several of its regulatory actions that are not technically subject to the Order.

On May 24, 1978, the Department published for public comment its proposed procedures for implementing Executive Order 12044. The report was revised in response to the comments received and published as a Treasury Directive in the Federal Register on November 8, 1978.

POLICY OVERSIGHT

The Secretary and Deputy Secretary exercise oversight for all Treasury regulations. Regulatory oversight has been strengthened by the establishment of a more formal, centralized review process concentrating on the review and approval of regulation work plans and final regulations. Results of this new process are just beginning to be seen.

Early in 1977, the Secretary directed the Executive Secretariat to take a stronger role in reviewing departmental regulations. However, the Executive Secretariat did not become involved in the regulations until they were ready for approval, often too late to have a significant role in oversight of the regulatory process.

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Now the Executive Secretariat, the Secretary and the Deputy Secretary become involved in departmental regulations at a much earlier stage in the process. Before any substantial work can begin on a regulation, the Secretary or the Deputy must approve a work plan.

Several work plans have been rejected or modified by policy officials since the beginning of the new procedure. Some bureaus tend to proceed directly to final rules in cases where the regulation is thought to reduce a previous regulatory burden. They believe this shortcut brings benefits to the public more quickly.

Policy officers however, prefer to get public comment even in these cases where regulatory burden is being reduced. This allows the public to suggest alternative methods for reducing the burden, to suggest a more extensive review, or to disagree with the bureau's action. For example, a bureau recently proposed that seven required forms be eliminated, but public comment suggested the forms were needed and the users of the forms preferred to have no change.

A few bureaus were initially reluctant to comply with the work plan requirement, but most are now complying willingly. Some have specifically remarked that it is beneficial to the staff to have early policy-level approval of work plans so that staff time is not wasted on a project that will eventually be rejected or changed significantly. Some offices use the work plan to increase communication with the Secretary in areas where direct contact was less frequent in the past.

Only the IRS retains significant reservations as to the utility of the work plans. Although currently complying with the requirement, the IRS may propose procedural modifications to tailor work plans more to its needs.

Policy oversight has also been improved by the creation of several high-level positions and/or offices within the bureaus. For example, a new Deputy for Regulatory and Trade Affairs in Enforcement and Operations works primarily with ATF and Customs to plan regulatory projects, set priorities, and ensure analysis and review of current regulations. The IRS reallocated resources to increase the number of attorneys involved in the regulation process. This results in a 50 percent increase over last year in the resources devoted to IRS regulations.

PUBLIC PARTICIPATION

Treasury is increasing the use of ANPRM's and public hearings in order to allow more time and opportunity for participation in rulemakings.

-- On May 22, 1979, ATF issued an ANPRM on recodification, simplification, and reform of regulations governing the production and distribution of wine. These regulations comprise 15 percent of all ATF regulations. The public was given 90 days to comment. In addition to a contact point for further information, the principal author of the proposal was identified.

-- The IRS issued one of its first early invitations for public participation in the rulemaking on August 28, 1978, when it published an invitation for public comment on the requirements for creditable foreign taxes. The comment period was extended to 90 days to allow more time for the public to submit views.

-- The Comptroller with other federal bank regulators held public hearings in six major cities before issuing proposed rules under the Community Reinvestment Act.

Public comments are having a significant effect on Treasury's proposed regulatory actions.

-- As a result of public comment, Treasury has decided not to develop new regulations requiring warning labels on alcoholic beverages to increase awareness of fetal alcohol syndrome. Extensive public debate followed the publication of an ANPRM. Over 3,000 comments were received. Based on these comments, Treasury decided that it is not clear that warning labels are the best method of warning and informing the public. Treasury will defer action in order to give the industry a chance to develop its own public awareness campaign. Only if industry efforts are not successful will the proposal to require warning labels be reconsidered. Treasury has also published summaries of the major studies on fetal alcohol syndrome and the arguments for and against warning labels. Copies of the full reports are available for public inspection in seven regional offices and Bureau headquarters.

Treasury has also increased public participation in actions that are not covered by the Order. For example, it voluntarily opened up extensive opportunities for public

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participation in a recent revenue procedure for reviewing the tax-exempt status of private schools established at the time of desegregation in a region. The first draft was published in August 1978. Public hearings were held and a revised version was published for a 60-day comment period in February 1979. More than 100,000 letters were received and more than 200 witnesses were heard.

Other efforts have also been taken to expand public awareness of Treasury regulations. IRS holds a public hearing on a proposed regulation if "even only one person requests such a hearing." ATF is increasing its use of hearings outside Washington. Evening hearings will be held if the public requests them. The Comptroller is now mailing ANPRM's and NPRM's directly to national banks to improve early notification of pending actions.

All Treasury bureaus have reported an increase in the number of telephone inquiries since the publication of agency agendas. Each of the eight units within Treasury publishes its own agenda of significant new regulations and existing regulations under review. The agenda formats used by the bureaus vary significantly. Some are not adequate or not very explanatory; others are more helpful. One outside group wishes that the entries on the agenda "could be more explanatory, not just citations" and that the current or projected status of the regulation could be more frequently and accurately noted.

The name of a staff attorney is listed as an information source on the IRS agenda. IRS believes that this "is more useful than trying to be too specific in the agendas themselves because so many intervening events can affect the status of a particular project."

Despite objections to format, the groups we contacted indicated that the agendas were helpful. One group stated that "we attempt to maintain close contact with those agencies whose regulations affect the distilling industry and are usually aware of pending actions. However, the semiannual agenda is helpful as a reminder and as advance notice of regulatory changes prior to their publication in the Federal Register." Customs and ATF are working on a revised, uniform format that should be even more helpful to the public. Other bureaus may also adopt the revised format when they publish their second semiannual agenda.

Treasury has gone beyond the requirements of the Order in some ways. For example, it publishes a "negative agenda" if a bureau has no significant regulations under review or development. This keeps the public from having to search for an agenda when none had been published. In addition, the IRS publishes an agenda monthly instead of semiannually.

In some instances, Treasury's desire to increase public participation in regulatory decisions has been restricted by uncertainty over the applicability of the Federal Advisory Committee Act. ATF is also precluded by court order from discussing ingredient labeling regulations with certain interested parties. However, Department officials believe that the Executive Order has resulted in "an increase in the amount of participation" and "it is apparent that public comments are being weighed carefully when NPRM's and final rules are drafted." One outside group noted that although they did not see extensive new opportunities for comment, they thought that existing opportunities were "clearly adequate."

REGULATORY ANALYSIS

Treasury has not completed any regulatory analyses. However, two analyses are being prepared and one other regulation may require an analysis.

IRS has initiated its first regulatory analysis in conjunction with regulations governing the effective date for new rules for determining allocations of deductions to foreign or domestic income of taxpayers having foreign offices. The Department is also voluntarily doing a regulatory analysis on proposed regulations for partial ingredient labeling for alcoholic beverages. The regulation was originally proposed in 1974 and therefore technically not subject to the Order. In the NPRM, Treasury specifically asked industry for help in determining the economic effect of several alternatives. Treasury has also asked for industry views on the costs of current regulations governing the advertising of alcoholic beverages. If the information collected indicates that a regulatory analysis is required, it will be done for proposed revisions to the regulations.

Although most of the Comptroller's regulations will not require regulatory analyses, his office is implementing a policy to develop short economic assessments of new regulations. Once this procedure is in operation, the Comptroller will publish the results of these assessments along with proposed or final rules.

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Although the Department is just beginning to conduct regulatory analyses and to improve the economic analyses of its actions, one outside group has already seen a change. "With regard to the Bureau of Alcohol, Tobacco and Firearms, we do feel that increased attention is being given to the economic impact of regulations." Another group suggested greater emphasis be placed on "assessing alternative approaches to major economic regulations."

REVIEW OF EXISTING REGULATIONS

At first, the weakest area of Treasury's compliance with the Executive Order was the choice of regulations to be reviewed. In recent months, some units have become much more serious about their review efforts. For example, ATF is doing a major review of the regulations governing the advertising of alcoholic beverages. These regulations have not been reviewed in more than forty years and they govern a very large sector of corporate advertising.

Several reviews concentrate on reducing reporting burdens. For example, the Comptroller's requirements for financial statements from smaller commercial banks have been reduced by 40 percent. In addition, the Comptroller will soon propose that the form of bank annual reports be simplified and made more consistent with other reporting requirements and that the filing requirements be eliminated altogether. Also, ATF has proposed to eliminate and simplify certain reporting forms prepared by the wine industry. Consequently, Treasury has identified important targets for reform but it is too soon to see a number of concrete results.

PLAIN ENGLISH

Customs, ATF, IRS, and the Comptroller have sent many of their regulation writers to the Federal Register course on improving the readability of agency regulations. Several recent regulations are examples of Treasury's efforts to improve the explanation and understanding of its regulations. They include regulations governing the collection of child support; partial ingredient labeling for alcoholic beverages; and the discussion of issues in the debate over requiring warning labels on alcoholic beverages to help prevent fetal alcohol syndrome. On the other hand, many tax accountants and lawyers feel IRS rules should be more technical rather than less. They would like to have as much detail as possible in the regulations themselves. For them, plain English is a step backward.

CONCLUSION

In sum, Treasury has made good progress in expanding public participation and establishing effective procedures for regulatory oversight. Progress is underway in other areas but it is too soon to make final judgments.

ENVIRONMENTAL PROTECTION AGENCY

The Environmental Protection Agency (EPA) is one of the most significant and visible regulatory agencies of the Federal Government. Its regulatory functions are divided into four program areas: Air, Noise and Radiation; Water and Waste Management; Toxic Substances; and Enforcement. At any point, EPA has approximately 400 regulations being developed or revised in accordance with the twelve environmental statutes the agency is charged with implementing. These include several recent statutes aimed at the control of solid waste, toxic substances, noise, and radiation. While implementing new requirements, the agency has also been making major revisions in its basic air and water regulations to reflect recent changes in the Clean Air and Clean Water Acts.

The complexity of EPA's regulatory responsibilities has increased in recent years. In addition to the control of conventional pollutants, EPA has required more of its own and others' resources for research, testing, monitoring and disclosure of the effects of a wider range of toxic and hazardous pollutants. In addition to issuing direct regulations, the agency also administers grant programs to aid States and localities with pollution abatement facilities.

The EPA's profound influence on the economy is only partially reflected in the Federal budget (\$5.1 billion in fiscal 1980). Total public and private expenditures for pollution abatement have averaged 2-2 1/2 percent of GNP over the last several years. For 1977, the Council on Environmental Quality estimates the incremental cost of Federal environmental regulations was \$19.3 billion. Over the next decade, these expenditures are estimated to total more than \$360 billion.

Before the Executive Order, EPA had already made substantial progress to ensure effective top management oversight of its regulations. In addition to strong analysis and evaluation, EPA had a formal system for drafting and reviewing regulations, parts of which served as a model for the Executive Order. Final procedures were published in the Federal Register on May 29, 1979.

EPA's revised procedures established a detailed priority classification for its regulations, so as to ensure more effective top management oversight. The procedures also give agency managers and the Administrator advance information and the opportunity to make mid-course corrections in the regulatory development process.

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POLICY OVERSIGHT

EPA deserves credit for a disciplined program of policy oversight. Lead responsibility for developing regulations is vested in the four regulatory program areas. However, work groups, whose members come from various offices in EPA, assist in preparing each significant regulation.

EPA's internal process begins with a review by a Steering Committee representing the six assistant administrators, the General Counsel, and appropriate directors on the Administrator's staff. This is followed by "Red Border Review" in which the senior managers themselves and the ten Regional Administrators also have an opportunity to submit comments.

The Administrator provides the final level of internal review. Development plans for all significant regulations go to the Administrator. Plans for major regulations (about 20-25 percent of all significant EPA regulations) must receive the Administrator's approval. A work group can do no further work on a regulation until it writes an acceptable development plan.

EPA has established a central unit to oversee implementation of the Executive Order and the regulatory development process.

Examples of more effective policy oversight include:

--An interim report to the Administrator on a new regulation for coke oven emissions from door leaks led to an important change. EPA decided to suspend work on this regulation and to defer to an impending Occupational Safety and Health Administration (OSHA) regulation on the subject. Following OSHA's action, EPA may act to complement OSHA's rule.

--Early drafts of hazardous waste regulations included several complex provisions for defining the scope of the regulation. For example, hazardous waste was defined primarily on the basis of toxicity characteristics involving testing procedures that were expensive and not well established. As a result of senior management review, the agency modified the definition to rely primarily on a list of waste streams and a simplified set of characteristics.

--Last year, EPA reviewed available health effects data to determine if it should adjust the national standard for

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ozone set in 1970. A substantial revision of that standard resulted from prepublication review of the NPRM by the Administrator.

Although EPA oversight procedures provide for effective senior manager review at several key stages in their development, EPA is exploring ways to further improve oversight. For example, an area that needs more policy level attention is the substantial new reporting and testing requirements associated with recent new legislation the agency is now implementing.

It has also been observed that EPA's elaborate "Red Border" review process, instituted before the Order, does not generate the degree of regulatory scrutiny that characterizes their internal zero based reviews of EPA budget programs, perhaps because there is less incentive for the program areas to critique each other's programs.

Another weak spot is accuracy in scheduling. Work groups developing new regulations may be forced to commit to a schedule they feel precludes adequate policy analysis. Unrealistically stringent schedules, often mandated by legislative and court-ordered timetables, undercut the Administrator's ability to effectively oversee the development of new rules.

Agendas. EPA uses agendas as a tool to assist in oversight and planning as well as to inform the public. Having pioneered with the first public agendas, it has published three since the Executive Order was signed. The latest EPA agenda identifies 176 regulations--almost one-half of its estimated total number of regulations--as significant. The remainder are "specialized" regulations, many of which are administrative or procedural in nature.

EPA's agenda includes key dates, contact points, legal citations, and regulatory analysis requirements. A recent improvement has been to identify regulations which will be subject to urban and community impact statements. EPA has plans to further improve its agenda. For example, it will publish a quarterly agenda and report on the status of regulations since the previous agenda. The agenda will also describe progress on the review of existing regulations. Criticisms of EPA's current agenda have been:

--Incomplete coverage of regulations which might be subject to regulatory analysis. Although about 50 of EPA's significant regulations receive intensive policy

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level oversight, the recent agenda classifies only 17 as requiring a regulatory analysis. (Ten of these were in the air program.) Regulations of other program areas were only nominally represented.

--Action dates are often constrained by statutory and court ordered deadlines. "Posted dates and deadlines are, however, seldom met" - a common complaint about EPA. The first two agendas, for example, suggested a much larger output of regulations than actually occurred.

It should be noted that the agency has devoted much effort to improving agendas for internal communication which has translated, in part, to improved government-wide public communication. For example, last year, information about EPA's top twenty regulations was gathered to describe major issues, relationships with other EPA regulations, and significant economic and other impacts. This effort fed into the Regulatory Council's Calendar of Federal Regulations which EPA staff took the lead in helping to prepare. Of the 90 Executive Branch regulations on the Calendar, 23 were EPA regulations.

PUBLIC PARTICIPATION

EPA has had a tradition of effective public participation. For this reason, the impact of the Executive Order has been incremental. For example, ANPRM's were often too brief or not very informative. Now these are routinely published for all significant regulations and are much more informative in explaining why the regulation is needed, a schedule for action, alternatives that will be considered, and plans for public participation. Also, the agency has been distributing to the public more detailed information in order to obtain more effective participation early in the rulemaking process.

Public comment appears to have a significant impact on regulation development. EPA made a serious effort to gather and respond to public comment in designing its final plan for implementing E.O. 12044. Other examples of effective public participation include:

--In February 1979, EPA published final regulations for "Public Participation in Programs under the Resource Conservation and Recovery Act, the Safe Water Drinking Act, and the Clean Water Act," completing a year long effort. In the process, EPA distributed over 7,000 sets of concept papers and received 500 more comments on the proposed regulations,

including 125 over a toll free telephone line. This regulatory action has established public hearings, public meetings, and advisory groups as the three major methods of public participation in Water and Waste Management programs.

--A useful concept paper was published on testing guidelines for new chemicals. Concept papers were also published for regulations on municipal waste treatment grants, the national industrial permit system for water discharges, and for waste treatment facilities that discharge into the oceans.

--EPA's proposed regulation for municipal sewage treatment works that discharge into the ocean drew criticism that the proposed application procedure was unnecessarily burdensome and that small communities would thereby suffer a disadvantage. In response, EPA has eased the application requirements.

--Before proposing the hazardous waste regulations under the Resource Conservation and Recovery Act, the agency circulated several drafts and held numerous meetings to obtain public comment. As a result, EPA realized that the definition of hazardous waste would include a number of high volume, low hazard wastes that would be impractical to manage the same as other hazardous wastes. In response, EPA classified these wastes into a new category subject to less stringent requirements than the other hazardous wastes.

Again, deadlines are a weak spot that hinder more effective public participation. In some cases, the public has not been able to participate effectively in the development of new rules. Although deadlines "are seldom met," comments not received by the requested date are not "considered at the same level as those that meet the deadlines."

Some members of the public feel EPA has been circumventing normal rulemaking procedures by using, for example, advisory circulars. "Where these procedures have major effects, the public should have an opportunity for comment." Also, the public is sometimes confused whether guidelines issued by EPA have the force of a formal rule. For example, some members of the public have expressed confusion about the legal status of the March 1979 proposed guidelines on premanufacture testing of new chemicals.

REGULATORY ANALYSIS

Analytical improvements since the inception of the Executive Order have also been largely incremental. EPA already had one of the best analytical capabilities to do economic analyses. Improvements have helped to ensure that these analyses are routinely available when an NPRM is issued. Also, EPA program personnel are being given better guidance on what constitutes a sound regulatory analysis.

EPA recognizes that compliance with the Executive Order requirement for the balanced evaluation of regulatory alternatives has been weak. Too often, extensive analytical effort is devoted to the option that the agency believes it will adopt, not other options. Some industry groups have noted: "We are not aware of any alternative approaches that have been put forward by EPA for any recent major environmental regulations EPA does not appear to be concerned with assessing alternative approaches" Also, it is sometimes difficult for the public to understand what alternatives were considered because the relevant information appears in scattered documents (e.g., preambles to rules, development documents, and formal economic analyses).

EPA has completed eight regulatory analyses during the last year for regulations exceeding \$100 million in annual cost. These included two air quality, three mobile sources, two drinking water and one solid waste regulation. EPA recently assessed the quality and completeness of each analysis, noting constraints as well as areas of possible improvement. The constraints included statutory limits on the choice of alternatives, statutory or court deadlines, and difficulties in obtaining data. Nevertheless, there was often room for improvement, particularly in the evaluation of alternatives.

For example, in one case, three options were specified but only one "reasonable alternative" was considered; in others, only the costs and other impacts of the alternative selected were extensively analyzed. In two cases, the Council on Wage and Price Stability's review and the agency evaluation pointed to the need to evaluate the cost effectiveness of individual elements of the alternatives that were considered.

Four EPA regulations have been reviewed by the Regulatory Analysis Review Group (RARG), including standards for the prevention of significant deterioration (PSD), ambient air quality standards for ozone, new source performance standards for electric utilities, and hazardous waste regulations to

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implement the Resource Conservation and Recovery Act. In the case of the PSD standard, EPA believes that the RARG process made a substantial contribution to the selection of the final rule.

Despite the limitations of its regulatory analyses, EPA continues to demonstrate an excellent capability for sound analytical and economic support work. It will work to improve its evaluation of feasible alternatives and to more effectively present this information to the public.

REVIEW OF EXISTING REGULATIONS

Of the 176 regulations on EPA's most recent agenda, 67 or nearly forty percent, are existing regulations that the agency is reviewing or revising to incorporate new technical data, simplify language and structure, or reduce burdens. More than half of EPA's existing regulations are subject to statutory or judicial review requirements (e.g., the Clean Air Act requires that ambient air quality standards be reviewed every five years to take account of new information on health effects).

EPA also has under way a comprehensive screening project for the review of all of its significant regulations. The screening is intended to determine whether a regulation is acceptable as is, in need of short term revision, or should be scheduled for long term review.

The current review status of all existing EPA regulations in the CFR is as follows:

	<u>Statutory/Judicial Review Requirements</u>	<u>Additional Reviews/ Screening Project</u>	<u>Total</u>
Screened/Reviewed	16	27	43
Scheduled/Under Review	61	33	94
Exempt/Unscheduled/ Future Revisions	9	24	33
	—	—	—
	86	84	170