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From Red Tape to Smart Tape
Administrative Simplification in OECD Countries

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Administrative Simplification in the United States*

Abstract. *There is a wide-spread and bi-partisan support for the concept of burden reduction and simplification of regulatory requirements in the United States. A great number of laws and orders that require impact statements, consultations, consideration of regulatory alternatives or plain language drafting ensure that these concepts are taken into account in the regulation-writing process. At the implementation end, programme ombudsmen and one-stop shops are proliferating. Assistance to small business in implementing regulations is also very common. The spectacular improvements in information technology and the rise of the Internet as a stream of commerce and information act as an important driver for many of these efforts. Despite the Presidents and Congress' focus on administrative simplification, it is still relatively decentralised.*

* This report is based on a draft prepared by Jeffrey Lubbers, Washington College of Law, American University. The report has been fact checked and commented on by the United States Government.

Introduction

This report provides an examination of practices and programmes used in the United States to reduce administrative burdens. It primarily draws on examples of federal programmes/initiatives/experiences, with some additional information drawn from selected States.

In terms of structure, the report starts by giving a broad overview of the background to, and historical development of administrative simplification policies in the United States. It then briefly summarises the institutional framework for administrative simplification policies and the link of such policies/programmes to the broader regulatory reform agenda. It then examines US approaches to and experiences with a number of administrative simplification policies, and concludes with a summary of the key findings of this report.

Background and historical development

In the modern administrative state, once administrative agencies became active in development of regulatory polices and standards through the use of rulemaking in the 1970s, concerns began to surface about burdens (both concentrated and cumulative) imposed by regulations on regulated entities. These concerns were expressed by business associations, bar associations, and academics, and found a ready audience in the Congress and the White House. Numerous White House conferences on the needs of small businesses ensued. The "burden reduction movement" was especially effective, because it concentrated on reducing "unnecessary" red-tape, paperwork, and espoused "alternative" approaches to regulations, especially those affecting small business. While many of these initiatives were linked in some way to broader regulatory reform (or "regulatory relief" – as it became known in the Reagan and Bush I Administrations), they tended not to attract the same kind of determined opposition from the environmental, consumer, and labour movements, and many of these initiatives garnered bi-partisan support in Congress.

The themes of red-tape reduction, paperwork reduction, special attention to the needs of small business, and the new embracing of information technology run throughout this report.

Red tape

In his classic work, *Red Tape, Its Origins, Uses and Abuses*, Herbert Kaufman has a few kind words for red tape:

> Red tape is not all bad: Maybe we could suppress [red tape] if it were merely the nefarious work of a small group of villains or if it were a waste product easily separated from the things we want of government, but it is neither. Anyway, if we did do away with it, we would be appalled by the resurgence of the evils and follies it currently prevents.[1]

He also refers to some earlier works that cited the "relativity" of red tape.[2] He quotes Paul Appelby in 1945: "Red tape is that part of my business you don't know anything about".[3] Dwight Waldo in 1946: "One man's red tape is another man's system".[4] Alvin Gouldner

in 1952: "Red tape as a social problem cannot be explained unless the frame of reference employed by the person using this label is understood."[5]

Nevertheless, the term – in its pejorative sense – retains its currency today. For example, the primary report of the Clinton Administration's "Reinventing Government" initiative was called: *From Red Tape to Results: Creating a Government That Works Better and Costs Less*.[6]

Paperwork reduction

In the United States, government paperwork requirements are often equated with "red tape".[7] As recounted by Professor William Funk, President Roosevelt's concerns over "the large number of statistical reports which federal agencies are requiring from business and industry" led to a review of such reports and ultimately the enactment of the Federal Reports Act in 1942. The Act gave the Bureau of the Budget (precursor to the Office of Management and Budget) the responsibility to review agency information requests.

Enactment of the Administrative Procedure Act in 1946 provided more transparency of government rules and regulations by requiring them to be published or made available to the public.

Enforcement of the Federal Reports Act was haphazard, however, and in 1974, Congress responded to continuing constituent complaints about paperwork burdens by creating the Commission on Federal Paperwork. The Commission's charter required it to make a number of studies to determine the nature of the federal paperwork problem and to make recommendations for changes in statutes, rules, regulations, procedures, and practices.

The final report was submitted in October 1977, and in 1980 Congress responded by enacting the Paperwork Reduction Act.[8] This Act created the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) to oversee agency implementation of the Act. That same year, Congress also passed, and the President signed, the Regulatory Flexibility Act, which required special analysis of rules affecting small businesses and small governments. That Act created the Chief Counsel for Advocacy as a separate, presidentially appointed officer within the Small Business Administration to oversee agency implementation.

This legislation was strengthened in 1996 and may soon be supplemented again. In March 2001, the House of Representatives approved, by a vote of 418-0, the Small Business Paperwork Relief Act,[9] which would: *a)* require every federal agency to establish a single point of contact for small businesses who need help with paperwork requirements; *b)* require federal agencies to identify ways to reduce paperwork requirements for companies with fewer than 25 employees; *c)* require OMB to publish, in the *Federal Register* and on the Internet, an annual list of regulations that apply to small businesses; and *d)* create an interagency task force to study streamlining and consolidating federal paperwork requirements for small businesses.

History of the special concern for the needs of small business

The importance of small business needs in the United States' political system is shown not only by the existence of an agency specifically devoted to it, the Small Business Administration (SBA), but by the many pieces of recent legislation that have been enacted to reduce regulatory burdens on small businesses.[10]

Congress' "special solicitude" for the problems of small business dates back to the passage of the Small Business Act in 1953.[11] That Act established the SBA and provided small

business with assistance in receiving government grants and loans. After a while though, the small business constituency grew dissatisfied with the performance of the SBA and called for the appointment of a Chief Counsel for Advocacy, creating a new position within the SBA, to serve as ombudsman to protect the interests of small business. In 1976 Congress established the Office of Advocacy. One of the Chief Counsel's tasks included the measurement of the costs of government regulation on small businesses; and to make legislative and non-legislative proposals for eliminating excessive or unnecessary regulations of small businesses. This was followed by an influential White House Conference on Small Business that made sixty recommendations. One of the Conference's six specific policy goals for government was the elimination or reduction of onerous regulations and reporting requirements.

In that election year several important new laws were enacted with the support of the President. The Equal Access to Justice Act[12] provided small businesses and individuals with the right to recover attorneys' fees, witnesses' fees, and other costs resulting from successful litigation against the United States. The Paperwork Reduction Act, also enacted in 1980, stemmed from specific recommendations of the White House Conference on Small Business. And finally, the Regulatory Flexibility Act of 1980[13] was also a direct response to concerns about the differential impact of regulation on small business.

Additional White House Conferences on Small Business were held in 1986 and 1995. The SBA's Office of Advocacy continues to attempt to implement the 60 final recommendations issued to the President and Congress by the 1995 Conference.[14] One rapid response by Congress was to enact in 1996 the Small Business and Regulatory Enforcement Fairness Act[15] which gave the Office of Advocacy additional powers to enforce the Regulatory Flexibility Act (*e.g.*, to file briefs in court in support of litigated challenges to agency compliance with the Act).

Modernisation of information technology (IT)

The 1980 Paperwork Reduction Act also helped begin the US Government's march toward modernised IT. The 1996 Electronic Freedom of Information Act Amendments[16] hastened the development of agency Web sites. Other statutes also provided a stimulus to agency-specific activities, such as the following mentioned in a summary of the background of the US Department of Agriculture's (USDA's) use of Web-based technologies in its customer service sector:[17]

- The Department of Agriculture Reorganisation Act of 1994,[18] which required the USDA to consolidate field offices and manage IT in a manner which enhances productivity, customer service, and information sharing.
- The Clinger-Cohen Act of 1996,[19] which required the USDA to leverage IT to maximise the efficiency of programme delivery and better manage IT implementation risk and reporting.
- The Government Paperwork Elimination Act of 1998,[20] which required the USDA to move to a self-service, Web-enabled environment by 2003 in order to reduce time-consuming and often duplicative paperwork.
- The Freedom to E-File Act of 2000,[21] which required basic Web access to USDA forms and applications.

Institutional framework

At present, the key institutions in the Federal Government that oversee burden reduction efforts are OIRA, and several entities of the Small Business Administration: the

Chief Counsel for Advocacy, the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman), and the regional Small Business Regulatory Fairness Boards. In the Clinton Administration the National Performance Review (later renamed the National Partnership for Reinventing Government) also supported these efforts, but the office was closed with the end of the Clinton Administration.[22] Another office, the Administrative Conference of the United States (ACUS), established in 1968, whose charter was to recommend improvements in administrative procedure, closed its doors after being defunded by the 104th Congress in 1995.[23] Most of the other initiatives described in this report were, however, undertaken by individual departments and agencies.

Thus, although OMB/OIRA, on behalf of the President, still plays the central role in administrative simplification, due to the separation-of-powers doctrine, its effectuation in the United States is still somewhat decentralised. Congress periodically conducts oversight hearings and mandates studies of regulatory programme effectiveness by the General Accounting Office. The SBA's independent Chief Counsel for Advocacy and various agency ombudsmen play a watchdog role as well.

Techniques of administrative simplification and burden reduction

Technology-driven mechanisms to reduce administrative burdens

Since 1980, US law has required OMB to develop co-ordinated, integrated, and uniform information resource management policies and practices,[24] and has also required that federal agencies seeking to collect information must certify to OMB that the proposed collection, "to the maximum extent practicable, uses IT to reduce burdens and improve data quality, agency efficiency and responsiveness to the public".[25]

These polices have borne fruit. There are many initiatives that illustrate the use of IT to improve data quality, increase public access to information, and reduce burdens on respondents. Agency use of IT in the regulatory process is advancing rapidly. A recent report on "e-government" pointed to many "examples of the productive use of government Web sites," citing as examples that students filed more than two million applications for college financial aid through the US Department of Education's online service last year and that two-thirds of the practising physicians in Georgia renew their licences online.[26] Two very recent independent studies of e-government have also described the increasing popularity of government Web sites. The studies show that 51% of all Americans had visited a government Web site. Most (80%) such visitors are happy with what they find on such sites, and 49% responded that the Internet has improved the way they interact with the Federal Government.[27] In addition, electronic signature legislation was enacted on the federal[28] and state[29] levels in recent years.

The Federal Government has recently reported numerous examples of initiatives covering electronic docketing, filing and reporting, researching, linking, and providing of information – described in Box 8.1 below.

One-stop shops

One of the specific beneficial by-products of the advances in IT has been the proliferation of Web-based one-stop shops – sites that allow applicants and others interested in government services to obtain all the information necessary to their query at one location. Examples include probably the world's largest government-wide information search portal, FirstGov.gov, as well as several programme-specific sites.

Box 8.1. **Technology-driven mechanisms to reduce administrative burdens – examples of US federal initiatives**

a) Electronic docketing. In the mid-1990's the Department of Transportation (DOT) developed an electronic, image-based database known as the Docket Management System (DMS).[1] The searchable database contains over 800 000 pages of regulatory and adjudicatory information.

b) Electronic filing and reporting. Agencies increasingly are using interactive "intelligent" software to help customers file reports, thereby reducing burdens and improving accuracy. For example:

- The Internal Revenue Service (IRS) has made Electronic Tax Administration a top priority. The IRS is also providing businesses a growing number of electronic filing and payment options.[2]
- The Bureau of Labor Statistics in the Department of Labor (DOL) has now established a system for electronic filing of employment and payroll data from employers throughout the United States.[3]
- The Bureau of the Census, in collaboration with the US Customs Service, has developed an electronic filing system called AESDirect (Automatic Export System) that reduces by over two-thirds (from 11 minutes to 3 minutes) the time needed to file an export declaration.[4]
- The Food and Drug Administration (FDA) promulgated an electronic signature regulation permitting it to accept documents or portions of regulatory applications electronically.[5]

c) Electronic filing and research. Some electronic filing sites also offer extensive search capability for related filings:

- The United States Patent and Trademark Office (PTO) have developed two significant electronic information systems. For patents, it has developed the PTO Electronic Business Center.[6] For trademarks, the PTO developed the Trademark Electronic Business Center, a "one-stop source for all online trademark searching, filing and follow-up".[7]
- Toxic Release Inventory of the Environmental Protection Agency (EPA). Several environmental statutes mandate that a publicly accessible toxic chemical database be developed and maintained by the EPA. This database, known as the Toxics Release Inventory (TRI), contains information concerning waste management activities and the release of toxic chemicals by facilities that manufacture, process, or otherwise use such materials.[8]

d) Electronic linkages. National Banknet[9] is an exclusive extranet Web site launched in 1999 by the Office of the Comptroller of the Currency (OCC)[10] available exclusively to national banks. It enhances the private exchange of information between the agency and the banks it charters and provides products to assist these banks. To date, 1 250 national banks have subscribed.

e) E-FOIA. The Department of Housing and Urban and Development's (HUD's) Freedom of Information Act (FOIA) Division has implemented cutting-edge technology by being the first agency to institute a practice of receiving FOIA requests online.[11]

1. See *http://dms.dot.gov/help/about_dms.asp#dms*
2. See, *e.g.*, *www.irs.gov/prod/elec_svs/941elf.html*
3. See *www.bls.gov/cew/cewedr01.htm*
4. See Bureau of the Census, Correct Way to Fill Out the Shipper's Export Declaration, available at *www.census.gov/foreign-trade/www/correct.way.html*. For an interactive "tour" of the AES Direct system, see *www.aesdirect.gov/tour/start.html*

Box 8.1. **Technology-driven mechanisms to reduce administrative burdens – examples of US federal initiatives** *(cont.)*

5. Food and Drug Administration, Electronic Records; Electronic Signatures, 62 Fed. Reg. 13 430 (Mar. 20, 1997) codified at 21 C.F.R. part 11.
6. See *www.uspto.gov/ebc/index.html*
7. See *www.uspto.gov/web/menu/tmebc/index.html*
8. See Environmental Protection Agency, Office of Information Analysis and Access, EPA 745-B-01-001, Toxic Chemical Release Inventory Reporting Forms and Instructions (Feb. 2001; corrected Mar. 19, 2001), available at *www.epa.gov/tri/rfi2000mar1901.pdf*
9. Comptroller of the Currency, Fact Sheet, "National Banknet: An Exclusive Web Service for National Banks," NR 2000-69 (Sept., 17, 2000), available at *www.occ.treas.gov/00rellst.htm*
10. The OCC charters, regulates and examines approximately 2 400 national banks and 58 federal branches of foreign banks in the US, accounting for more than 57% of the nation's banking assets
11. See *www.hud.gov/ogc/foiafree.html* (posted Oct. 3, 2000).

FirstGov.gov[30]

FirstGov is the first Web site that provides the public with easy, one-stop access to all online US Federal Government resources. FirstGov allows users to use a word-search engine to browse a Web site that consolidates 20 000 government Web sites into one. It supports a wide range of tasks from researching at the Library of Congress to tracking a NASA mission. FirstGov also enables users to conduct important business online – such as applying for student loans, tracking Social Security benefits, comparing Medicare options and even administering government grants and contracts. Early reviews have been positive.

The site's genesis[31] dates back to 1993 when the Clinton Administration established an Information Infrastructure Task Force to co-ordinate the Administration's efforts to improve service delivery to the public. Chaired by the OIRA Administrator, it published a set of principles for e-commerce in July 1997, which relied heavily on industry self-regulation. Then in December 1999, President Clinton issued a "Memorandum to the Heads of Executive Departments and Agencies Regarding Electronic Government." The Memorandum called for a number of actions, such as making federal forms and transactions available online, ensuring privacy, and providing access for the disabled. Significantly, the first item in this Directive called for the establishment of a one-stop gateway to government information available on the Internet, organised by the type of service or information that people are seeking rather than by agency.

The President's Management Council, comprised of the Chief Operating Officers from the major Departments and agencies, followed up by adopting "Promoting Electronic Government" as one of its three goals for the year 2000 and adopted priorities that build upon the President's Memorandum. These include a one-stop gateway for government information and services, the development of customer-centric Web sites for specific purposes like exports and procurement, and the adoption of at least one electronic government process in every agency.

Among the various challenges faced by the organisers of this site were the following:

- *Technical issues:* The FirstGov.gov portal was developed by the government in 90 days, using a fixed price contract. The search index was donated by a private non-profit charitable organisation known as the Fed-Search Foundation.[32] It used the Inktomi technology[33] to do its searching and indexing. In a few days, they searched all publicly available government Web pages and indexed 27 million pages. Fed-Search has agreed to

keep the index updated for the next 2-3 years when the Foundation will turn over its servers and knowledge base to the government, and the Foundation will cease to exist.

- *Linkage issues:* Because most Internet users already have a favourite portal, or small group of portals, the designers of FirstGov wanted it to be linked to these successful portals and thereby invite more customers. But there were some conditions: 1) the "first use" of government information must be free to all citizens, 2) no individual can be tracked while browsing government pages, 3) security must be excellent, and 4) advertising is prohibited on FirstGov pages. Private and public portals that agree to these conditions are allowed to become a "FirstGov Partner".[34] Of course any portal, whether or not a partner, can "point" to the FirstGov "Uniform Resource Locator (URL)" and when the user clicks, that user is transported to the FirstGov.gov portal. But there are three other more official partnership statuses: 1) "Bronze", where the portal puts a FirstGov logo button (or words) on the portal's site. Clicking it takes the user to the FirstGov.gov page as if he or she had come there directly; 2) "Silver", which has a "FirstGov search box" where the user can enter a word or words with the promise of a keyword search. The keyword is processed by Fed-Search for free and results are returned to a FirstGov page on the user's PC; and 3) "Gold", where the portal pays Fed-Search a nominal fee to cover the cost of the search, and Fed-Search provides a "fast pipe" to the portal guaranteeing optimal performance of the portal.
- *Privacy*: In the spring of 1999, the OMB Director issued Memorandum M-99-18 – *Privacy Policies on Federal Web Sites*. In that memorandum, OMB directed federal agencies to post privacy policies on key Web pages contained in agency Web sites. Last year the OMB Director issued Memorandum M-00-18 – *Privacy Policies and Data Collection on Federal Web Sites*, prohibiting the tracking of user behaviour across government Web sites and over time. FirstGov complies with both of these memoranda. As one step to ensure the latter principle, the portal does not deploy "cookies" without the express permission of those employing the service.[35]
- *Security:* Only publicly available documents are included in the index; no data that the government treats as private, classified, password-protected, or firewall-protected will be covered by the search engine. Government overseers have acknowledged that more needs to be done in this area. FirstGov lacks a comprehensive security plan, independent tests of the site's access controls have not been conducted, nor has the FirstGov Board established a programme for conducting periodic security assessments.
- *Access:* Agencies were required by law[36] to make all programmes offered on their Internet and Intranet sites accessible to people with disabilities by July 2001. For example, this might include ensuring access for people with vision impairments who rely on assistive technology to access computer-based information, such as screen readers and refreshable Braille displays. The FirstGov site has already met this deadline.

Prior to FirstGov, researchers had to rely on individual agency Web sites or to sift through the results produced by the undifferentiated private search engines to find government documents. Now they can feel assured that the search is of relevant documents and is complete. Perhaps the best indication of FirstGov's success and widespread acceptance is that President George W. Bush's welcoming message has now been affixed to this site, which was launched in late 2000 by the Clinton Administration.

Improving services and reducing costs

Often, one-stop shops have proven not only to improve services by making them easy accessible and comprehensive, but also to generate important cost savings. Box 8.2 summarises the idea and results of five such cases.

Time limits for administrative decision-making

The federal Administrative Procedure Act (APA) does not require agencies to act on rulemaking proposals within a prescribed time after the end of public proceedings.[37] Congress, however, sometimes seeks to control and expedite agency rulemaking by imposing statutory deadlines for completing rulemaking actions. This has often occurred when Congress was concerned about agency delay and inaction in the public health and environment areas. Thus, for example, the Asbestos Hazard Emergency Response Act of 1986[38] required EPA to publish an advance notice of proposed rulemaking within 60 days of enactment, a proposed rule within 180 days, and final rules within 360 days for seven specific areas relating to asbestos-containing materials in school buildings.[39]

Many other agency statutes have included deadlines for agency rulemaking action.[40] Typically these statutory deadlines can be enforced only by court suits; however, in some cases Congress has added so-called "hammers" or other penalties if an agency fails to take timely action. An example of a statutory "hammer" is the provision in the 1984 amendments to the Resource Conservation and Recovery Act (RCRA), providing EPA with a specified period of time in which to issue regulations; if at the end of that time it had not acted, the "hammer" would fall; *i.e.*, a congressionally specified regulatory result would go into effect.[41] The Nutrition Labelling and Education Act of 1990[42] contained a similar "hammer" specifying that the agency's *proposed* rule would go into effect if the final rule were not issued within the statutory time limit.[43]

Legislated time limits for agency action have been criticised as ineffective and counterproductive in the United States. In 1978 the Administrative Conference of the United States opined that, "Congressional expectations that statutory time limits would be effective have remained largely unfulfilled".[44] The Conference pointed to a substantial degree of non-compliance, coupled with a feeling by agency officials that they represented unrealistically rigid demands that disregard the agency's need to adjust to changing circumstances, that they may conflict with other requirements of law (*e.g.*, the right of interested persons or parties to a full and fair hearing), and that judges have tended to treat the enforcement of statutory time limits as a matter lying within their own equitable discretion despite the precisely measured language of the statutes.

The Administrative Conference's dubiety about statutory time limits has also been reinforced by other studies. One study of the results of eleven such deadlines pertaining to regulatory proceedings concluded that there was "no evidence that statutory deadlines proved beneficial in any of the eleven cases scrutinised".[45]

However, even in the absence of a statutory time limit, many agencies find it helpful to set their own schedules for completion of the various rulemaking steps, including the deliberative process. Not only do these schedules provide the agency a practical yardstick for determining whether its rulemaking is making satisfactory progress towards completion,[46] but in some cases courts have accepted such schedules as representing good faith efforts by the agency to complete its rulemaking within a "reasonable" time.[47] Some federal agencies have established formal case tracking systems and set time limits to speed

Box 8.2. **One-stop shops – improving services and reducing costs**

Importation of food, drugs and cosmetics – the OASIS system[1]

The FDA must review eight million shipments of food, drugs, cosmetics and medical devices to the United States per year – a 50% increase in four years. The FDA's manual review process used to take days – too long for the many perishable products awaiting entry at US ports. Under the "Operational and Administrative System for Import Support" (OASIS), which has been operational since 1996, importers electronically submit documentation that is quickly reviewed on PCs by FDA employees. FDA returns its admissibility decisions to the importers within minutes. 85% of shipments are now handled without paper documentation. It is unlikely that FDA would have been able to handle its growing workload concerning foreign imports if it had not started using the electronic system. With OASIS, imports are handled consistently throughout the country. According to a study by Booz, Allen and Hamilton, the import industry will save at least USD 1.2 billion in a seven-year period thanks to OASIS.

US Department of Agriculture (USDA) initiatives[2]

Genetic evaluations of the US milking herd

The Animal Improvement Programs Laboratory (AIPL) in the US Department of Agriculture helps breeders pick the prime parents of each succeeding generation of dairy cows through a computerised evaluation of the nation's cattle. The faster AIPL can provide breeders with genetic information, the faster cows can be mated, and the more milk that can be produced. This project commenced in 1995, and according to an agency research report, it was a daunting task: Computer processing of records from the nation's dairy herd requires the analysis of over 60 million milk records, solving over 40 million equations simultaneously, and preparing evaluations and associated information for release to 40 000 breeders, 100 artificial insemination organisations, 65 extension specialists, 6 dairy records processing centres, 7 breed registry societies, and hundreds of researchers as well as to counterpart groups worldwide.[3] USDA first converted its mainframe computer to a Unix workstation with better processing speed and memory. The agency then created an electronic transfer system with password protection so breeders could quickly access the USDA data. The agency reduced genetic evaluation time from eight weeks to three, and began releasing evaluations quarterly instead of semi-annually. The faster evaluations led to more frequent breeding of better animals. Genetic improvement is permanent, so the gains will compound over the years, making US cattle more valuable and milk more plentiful. The agency also estimates it saves USD 85 000 a year in computing expenses and shipping costs.

Unified export strategy

In FY 1999, the Foreign Agricultural Service (FAS) launched a Unified Export Strategy, automating its business processes and using the Internet to serve its geographically diverse customers. Thus far, FAS and its private sector partners have developed a secure Internet Web site[4] and designed special software that allows customers to consolidate into a single submission 172 different funding requests for 12 export development programmes. Customers no longer must prepare and submit multiple applications for funding or assistance. The effort reduced paperwork by an estimated 11 413 pages annually, saving over 32 staff years, and reduced the administrative cost of the programmes by over 50%.

Service Center Initiative

Another USDA effort is the Service Center Initiative (SCI).[5] Three of its agencies – the Farm Service Agency, Rural Development, and Natural Resources Conservation Service – have established one-stop shopping and a common interface that offers farmers round-the-

Box 8.2. **One-stop shops – improving services and reducing costs** *(cont.)*

clock access to the information and services of all three agencies. This IT initiative[6] was launched after a 1994 legislation required UDSA to consolidate field offices and manage IT in a manner that enhances productivity, customer service and information sharing. The programmes share data, eliminate duplicative information collections, and streamline those collections that remain. To further this goal, in FY 1999 SCI formed a team of staff to reduce paperwork. The team identified 547 forms and 402 non-form collection methods used by the three agencies to collect information from SCI customers; of those, 74 forms were almost completely duplicative.

A State example

Electronic filing in Washington State

The State of Washington has a "Digital Washington" Web site describing its many e-government activities.[7] For example, the Department of Revenue in partnership with the Department of Information Services and Washington taxpayers, created an electronic filing system (ELF) with a simple interface; automatic computations; automatic error checking; a secure, encrypted environment; and up-to-date online help so businesses can file and pay their taxes via the Internet.[8] Washington was the first state to deliver an online programme that automatically computes taxes and enables businesses to file and pay their returns electronically. A customised online form reflects the businesses' reporting profile and eliminates the need to re-enter recurring data. By automatically performing tax-return calculations, the system saves filing time for users and reduces the manual paper return error rate of 14%. Because ELF does not accept tax filings with calculation errors, it helps businesses get it right the first time. More than 7 200 Washington businesses have used ELF. Estimates indicate that up to a third of the 330 000 businesses that file tax returns did so electronically in 2001.

1. See *www.fda.gov/ora/import/oasis/home_page.html#Project*.
2. Examples taken from Office of Management and Budget, Office of Information and Regulatory Affairs, Information Collection Budget of the United States Government Fiscal Year 2000 p. 6-8, available at *www.whitehouse.gov/omb/inforeg/icbfy2000.pdf*
3. H.D. Norman and S.M. Hubbard, Enhancing genetic improvement for milk yield by reducing generation interval (AIPL RESEARCH REPORT AWD1 (11-98)), available at *http://aipl.arsusda.gov/memos/html/awd1.html*
4. See *www.fas.usda.gov/mos/ues/unified.html*
5. See *www.sci.usda.gov/sci/default.htm*
6. United States Department of Agriculture, Service Center Modernization Initiative Information Technology Blueprint (Dec. 2000), available at *www.sci.usda.gov/itwg/index.html*
7. See *www.wa.gov/dis/e-gov/index.htm*
8. See *http://dor.wa.gov*

up their proceedings.[48] Although these systems have not generally been set up for rulemaking, a similar system might be useful in such a context.

It should be noted, however, that recent statutory and internally-generated deadlines applied to rulemakings of the Federal Aviation Administration (FAA) have not proven to be successful. A 1996 statute required that the FAA Administrator issue final regulations, or take other final action, not later than 16 months after the last day of the public comment period for the regulations, and that the Office of the Secretary of Transportation (FAA's parent Department) complete its review of proposed and final rules within 45 days.[49]

But a recent draft study of the FAA's rulemaking indicates that the FAA has met the 16-month deadline in only 6 of 12 final rules subject to the deadline,[50] and that the Office of the Secretary reviews averaged over 200 days per rule.[51]

In addition, the FAA had set internal timeliness standards for the proposed and final rule stages of 450 days and 310 days respectively, but the study indicated that the FAA had met its own time goals in only 12 of 35 proposed rules and 10 of 26 final rules.[52]

The very limited success of statutory time limits and the mixed success of internally generated time limits shows that the causes of regulatory delay are not susceptible to easy fixes. Diagnosis of bottlenecks and of excessive sign-offs must be made along with targeted deployment of resources to areas of greatest need.

The "silence is consent" rule

The technique of allowing an agency's silence to be construed as tacit authorisation of applications is not widely used in the United States. Box 8.3, however, describes two examples of how the rule is applied in the US.

Alternatives to administrative regulation

Federal agencies are subject to numerous requirements to consider alternatives to direct, command-and-control regulation. President Clinton's Executive Order 12 866 (which the Bush Administration continues to enforce)[53] specifies, in its "Principles of Regulation" that:

> (3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behaviour, such as user fees or marketable permits, or providing information upon which choices can be made by the public, and…
>
> (8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behaviour or manner of compliance that regulated entities must adopt.[54]

These principles are also reflected in requirements in the Order pertaining to the annual regulatory plan[55] and in assessments required to accompany economically significant actions.[56]

In addition, several statutes also require agencies to consider alternatives. The Regulatory Flexibility Act requires all agencies that are issuing proposed rules that may have a "significant economic impact on a substantial number of small entities" to prepare an initial regulatory flexibility analysis that contains, among other things: a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimise any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities.
- The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities.
- The use of performance rather than design standards.
- An exemption from coverage of the rule, or any part thereof, for such small entities.[57]

Box 8.3. **Examples of the "Silence is Consent-rule" as used in the US**

Food Safety Determinations by the Food and Drug Administration[1]

The FDA recently changed one of its food safety procedures to incorporate the general idea. In 1997 the FDA streamlined the system by which manufacturers may receive affirmation from FDA that a food substance is "generally recognised as safe" (GRAS). Under the earlier procedures, if a manufacturer wanted FDA affirmation of its determination, the company was required to submit a petition and go through a rulemaking process. The streamlined notification procedure now allows manufacturers to simply notify FDA of their GRAS determination and provide evidence that supports their decision. After evaluating the notification, FDA will respond to the manufacturer with any objections within 90 days. The manufacturers' notification would serve as a basis for informing FDA without the need for rulemaking. The FDA explained that because the new notification procedure is considerably simpler than the former affirmation process, manufacturers should have greater incentive to inform FDA of their GRAS determinations. Therefore, FDA will gain increased awareness of ingredients in the nation's food supply and the cumulative dietary exposure to GRAS substances. The simplified notification procedure should also redirect FDA resources from the resource-intensive GRAS affirmation process to questions that may have a greater impact on public health protection. Although the proposed notification procedure has not yet been finalised, FDA has already received numerous notices.

Export Administration Applications[2]

Under a procedure used by the Bureau of Export Administration for applications concerning foreign software, unless the Bureau requests additional information, a reporting firm is entitled to rely upon its calculations thirty days after submission of its report and for so long as the Bureau does not ask for additional information or object to the reasonableness of the assumptions or calculations in the report. Under this report-and-wait procedure, silence is consent. As of the writing of the article describing this process in early November of 1998, the Bureau has "considered more than a dozen reports thus far [and] all actions on these reports ha[ve] resulted in a conclusion that the foreign software [are] not subject to the [regulations]".

1. See *http://vm.cfsan.fda.gov/~rdb/opa-gras.html*
2. See Larry E. Christensen (2000), Technology and Software Controls Under the Export Administration Regulations, Practising Law Institute, Commercial Law and Practice Course Handbook Series 433, 457, PLI Order No. A0-002Q (Dec. 1999). The Export Administration regulations were reformed as part an interim-final rule, 61 Fed. Reg. 12 714 (Mar. 25, 1996), codified at 15 C.F.R. pt. 734 supp. 2.

If such rules are finalised, the Act provides that the agency must prepare a final regulatory flexibility analysis that, among other things, describes:

The steps the agency has taken to minimise the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[58]

As the above requirements indicate, there seems to be a consensus that the traditional command-and-control style of regulation should be replaced when possible by market-oriented approaches.[59] Under the traditional approach, the agency dictates in detail what individual firms must do to meet an established standard or goal and then enforces

compliance with those details. For example, environmental regulations may require the use of specific pollution control devices, or inspection systems may require performance of specific procedures.[60] Certainly, a command-and-control approach is appropriate – and indeed necessary – in some cases. For example, where risks that would result from non-compliance are high, as in the regulation of nuclear power, command-and-control may be the only feasible regulatory approach.[61]

But, in other situations other regulatory approaches that make use of market forces and allow greater flexibility for the private sector are preferable. Several such approaches that also serve to reduce administrative burdens are performance standards, marketable permits and environmental contracting.[62]

These different approaches to regulation clearly can save regulated sectors of the economy millions of dollars without undermining regulatory objectives – if done with proper vigilance.

Methodologies used to estimate burdens (e.g., impact statements)

The United States has been in the forefront of developing mechanisms for measuring costs and benefits of regulations and for also using the impact-statement approach to measuring other effects.[63] To some extent, the development of the various regulatory impact assessment requirements has led to a greater attention being paid to administrative burdens as well. For example, the OIRA is the lead office in reviewing both the regulatory assessments discussed in this subsection and the paperwork/reporting reduction requirements discussed in the next subsection. However, there has been an accretion of different impact assessments required during the rulemaking process under various laws and Executive Orders, and critics have suggested that they be rationalised and combined into a refined and retailored overall assessment that should accompany significant proposed and final rules.[64]

OMB annual report to congress

On a macro level, the Office of Management and Budget has begun to report annually to Congress on the costs and benefits of federal regulations.[65] As mandated by Congress,[66] OMB's report covers:

1. An estimate of the total annual costs and benefits (including quantifiable and non-quantifiable effects) of federal rules and paperwork, to the extent feasible A) in the aggregate; B) by agency and agency programme; and C) by major rule.
2. An analysis of impacts of federal regulation on state, local, and tribal government, small business, wages, and economic growth.
3. Recommendations for reform.

OMB also prepares a draft version of the report for peer review and public comment in the *Federal Register* and on the OMB Web site. The opening report to the final report discusses the comments and OMB's reactions to the comments. While it is almost moot to provide OMB's bottom line without also doing justice to OMB's explanations and qualifications, for the record, for 1999 it estimated the annual aggregate costs of social regulation to range between USD 84 billion and USD 140 billion and the benefits between USD 56 billion and USD 1.5 trillion.[67]

Box 8.4. **Alternatives to command-and-control regulation**

"Performance" standards

Performance standards are generally preferable to "prescriptive" or "design" standards because they give the regulated industry the flexibility to determine the best technology to meet established standards. For example, a design standard for ladders might specify the materials and exact dimensions to be used, whereas a performance standard might simply require that the ladder support a minimum weight and provide a minimum degree of stability. The Occupational Safety and Health Administration (OSHA) has sometimes been criticised for prescriptive design standards for plants and equipment relating to worker safety. In 1990, OSHA initiated rulemaking on ladders and scaffolding to convert design standards to performance standards wherever possible. This proposal followed complaints by industry that current standards were burdensome because they provided insufficient flexibility and also inhibited technological developments. Another well-known example of performance standards is the EPA's "bubble" concept for limiting pollution emissions, which allows the regulation of overall emissions from a single facility or a group of facilities, rather than from each source in the facility. This allows companies greater flexibility in choosing which emissions source(s) to reduce in order to meet the overall limit for emissions from the bubble. This sort of approach would reduce administrative burdens of having to report on many different pollution sources within a given plant. In many such cases it will result in a reduction in measurement responsibilities and reporting points or intervals. In 1993, EPA estimated that facilities under the 80 or so bubbles established prior to 1986 saved USD 435 million in meeting emissions standards.

"Marketable permits"

Marketable permits allow the market, rather than the government, to distribute scarce resources. They also enable businesses to avoid having to engage in costly defences to enforcement proceedings, or intra-business litigation. The 1990 Clean Air Act Amendments established an allowance trading system for sulphur dioxide emissions from utilities in an effort to reduce acid rain. Utilities may trade initially allocated allowances, each representing one ton of emissions. This allows more of the reduction in emissions to be done by those plants that can reduce emissions at lower costs. In 1993, EPA estimated that this system would save from USD 700 million to USD 1 billion per year. In 1986, DOT issued a final rule allowing airlines to buy and sell airport takeoff and landing rights (slots) at four major airports. Previously, these slots had been allocated by a committee, which frequently deadlocked. Under the new system, however, the value of the slots is determined by the market, which should allocate them most efficiently. Similarly, the National Marine Fisheries Service in the Department of Commerce has implemented a transferable quota system for allocating fishery harvesting privileges. These types of alternative approaches to direct regulation have obvious benefits in terms of burden reduction. Regulated firms are able to organise their production methods to achieve maximum efficiencies while still meeting the ultimate regulatory goals. The bubble approach, for example, reduces the number of permits required, the amount of record keeping, and the time devoted to dealing with inspectors. Waivers or self-regulatory leeway granted to companies with exemplary records can also reduce the needs for permits and the resulting time and paperwork costs.

Environmental "contracting"

The Environmental Protection Agency has embarked on an effort to obtain compliance with environmental laws by offering agreements with companies who propose innovative

Box 8.4. **Alternatives to command-and-control regulation** *(cont.)*

approaches to reducing pollution. The programme involves the approach of "environmental contracting" under which regulated entities are offered the opportunity to propose ways of achieving superior environmental performance at their facilities.*

* See generally, Dennis D. Hirsch, Project XL and the Special Case: The EPA's Untold Success Story, 26 Colum. J. Envtl. L. 219 (2001). See also Sidney A. Shapiro and Randy Rabinowitz, Voluntary Regulatory Compliance in Theory and Practice: The Case of OSHA, 52 Admin. L. Rev. 147-49 (2000), and Jody Freeman, Collaborative Governance in the Administrative State, 45 UCLA L. Rev. 1, 55-66 (1997).

To come up with even these very imprecise ranges, OMB has gathered information provided by the agencies and gleaned from economic impact analyses prepared by agencies for major rules. OMB's *2000 Report to Congress* admits the difficulties in doing this:

> It is difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with accuracy. We lack good information about the complex interactions between the different regulations and the economy. A variety of estimation problems for individual and aggregate estimates distort the results in different ways.[68]

The report breaks down the many different types of federal regulations into three categories: social (including health, safety, and environmental rules), economic (pricing and entry/exit rules), and process (administrative or paperwork requirements). The Report goes on to address the following methodological questions, many of which were raised in the comments to the draft report:

- What baseline should we use?
- What costs should we measure?
- What is the effect of technological change?
- How do we determine causality?
- How do we assess older regulations?
- Is there an "apples and oranges" problem?
- Is it enough to know the costs and benefits?

In its discussion of these issues, the Report relies on a 1996 document OMB published that describes "*Best Practices*" for preparing the economic analysis called for by Executive Order 12 866 for significant regulatory actions.[69] This document represents the culmination of a two-year effort by an interagency group to review the state of the art for preparing economic analyses required by the Executive Order.

These same issues must also be addressed by individual agencies in their regulatory analyses for particular rules. A major regulation like the FDA's 1996 regulation (later overturned by the Supreme Court)[70] limiting cigarette advertising and sales of cigarettes to minors was accompanied by a regulatory impact analysis that ran for 42 pages in the *Federal Register*.[71]

Regulatory analysis of individual rules – review by OMB

President Clinton's Executive Order 12 866 (continued by President Bush) is the latest[72] in a long line of presidential orders requiring executive branch agencies to clear all significant regulatory actions with OMB's Office of Information and Regulatory Affairs (OIRA).

In addition to requiring cost-benefit analyses for certain rules (described below), of particular significance for this report is the Order's mandate in its "Statement of Principles" for agencies to tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.[73]

The Executive Order also 1) requires agencies to participate in the *Unified Agenda of Federal Regulatory and Deregulatory Actions* by publishing information on all regulations under development or review, 2) requires that agencies develop an annual "Regulatory Plan" to be forwarded to OIRA by June of each year for review by the Vice President and for publication in the *Agenda*, 3) requires that the Plan include the agency's plans to review *existing* regulations, and 4) created a Regulatory Working Group, chaired by the OIRA Administrator, to co-ordinate regulatory approaches and develop innovations.

Finally, Executive Order 12 866 also provides for regulatory analysis and review. If a proposed or final regulation is determined by the agency or OIRA Administrator to be "economically significant" (*i.e.*, having an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities) the agency must undertake a cost-benefit analysis.[74]

The assessment also requires a description of alternative approaches that could substantially achieve the same regulatory goal at lower cost and a brief explanation of the legal reasons why such alternatives could not be adopted.

Other analysis requirements

The National Environmental Policy Act. The National Environmental Policy Act of 1970 (NEPA)[75] originated the "impact statement" as a technique for directing agencies to give special attention to certain values during the decision-making process. Under NEPA, the potential impact on the environment of federal agency action, including regulations, must be considered. NEPA directs all agencies of the Federal Government to include in proposals for "major Federal actions significantly affecting the quality of the human environment" a detailed environmental impact statement (EIS) addressing certain listed subjects and applying substantive criteria set forth in the Act. The Act requires that rulemaking agencies consult with, and solicit comments from, agencies with jurisdiction or expertise on the particular environmental impacts at issue.

The Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA)[76] adopts the NEPA impact statement approach by directing agencies to consider the potential impact of regulations on small business and other small entities. Originally enacted in 1980, it mandates consideration of regulatory alternatives which accomplish the stated objectives of the proposed rule and which minimise any significant economic impact on such entities. In follow-up legislation, in 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA),[77] which strengthened the RFA, required agencies to produce new regulatory compliance guides and guidance materials, and added additional consultation requirements for "covered agencies" (currently only EPA and OSHA).

The RFA charges the Chief Counsel for Advocacy of the Small Business Administration with overseeing agency compliance with the flexibility analysis requirements.

It requires that unless the agency head certifies to the Chief Counsel for Advocacy and publishes such certification in the *Federal Register* that the rule will not have a significant economic impact on a substantial number of small entities, an agency must prepare an "initial regulatory flexibility analysis" (IRFA). The IRFA, or a summary thereof, must be published in the *Federal Register* along with the proposed rule. The certification and supporting statement of reasons must be sent to the Chief Counsel for Advocacy of the Small Business Administration. Under the 1996 (SBREFA) amendments to the RFA, this certification decision is now subject to judicial review. If a regulatory flexibility analysis is required, the final analysis or summary must accompany the final rule in the *Federal Register*.

The RFA also requires agencies to publish and implement a plan for reviewing within ten years existing (and subsequently issued) rules that have a significant economic impact on a substantial number of small entities.

Finally, the Act requires each agency to prepare a regulatory flexibility agenda of rules under development that may have a significant economic impact on a substantial number of small entities. The agenda must be published in the *Federal Register* semi-annually, in October and April, and is to be transmitted to the Office of Advocacy for comment and brought to the attention of small entities or their representatives. In practice, this agenda is incorporated into the *Unified Agenda of Federal Regulatory and Deregulatory Actions*.

The Unfunded Mandates Reform Act. This legislation, enacted in 1995,[78] requires Congress and executive agencies to give special consideration to proposed legislation and regulations imposing mandates on state, local, and tribal entities. It also contains a provision requiring agencies to prepare a written statement, in the nature of a regulatory analysis, for *any* proposed rulemaking that may result in an expenditure by state, local, or tribal governments in the aggregate, or by the private sector, in excess of USD 100 million in any one year. The Act's impact is lessened, however, because its provisions for judicial review of agency compliance with the Act are somewhat limited.

Other Executive Orders. Other Executive Orders require that agencies conduct various other "impact statements" before issuing regulations, such as assessments of the impact on Federal-state relations, the environment, and on specific vulnerable populations. There are no specific time frames associated with OMB review under these Executive Orders.[79]

State regulatory flexibility analyses (small business impact statements)

Many States are adopting "regulatory flexibility" laws for small businesses. These state laws are similar to the federal RFA and require agencies to determine the impact of state proposed rules on small business or periodically consider the impact of existing rules. The Office of Advocacy has compiled a partial list of state regulatory flexibility laws. While there are many regulatory review processes used by state governments, numerous state laws specifically require consideration of the impact of regulations on small businesses.[80]

These impact statement requirements are focused on economic and other impacts of regulations. They have the benefit of forcing a concentration on not only various types of burdens and benefits, but also the net effectiveness of regulation. On the other hand, they can be costly to prepare.

Paperwork/reporting reduction

The Paperwork Reduction Act (PRA)[81] requires federal agencies to request OMB approval before collecting information from the public. The PRA, through a combination of OMB

review, self-enforcing sanctions, and government-wide reduction targets, seeks to minimise the amount of paperwork the public is required to complete for federal agencies. At the same time, however, the PRA also recognises that good information is essential to agencies' ability to successfully serve the public. To that end, the PRA gives OMB the responsibility to evaluate the agency's information collection request by weighing the practical utility of the information to the agency with the burden it imposes on the public.

Agencies must publish their proposed information collection in the *Federal Register* for a 60-day public comment period. After reviewing the public comment and revising the proposed collection as appropriate, agencies submit the information collection request to OMB for review, discussion, and approval (or disapproval). In seeking OMB's approval, the agency needs to demonstrate that the collection of information is the most efficient way of obtaining information necessary for the proper performance of the agency's functions, that the collection is not duplicative of others the agency already maintains, and that the agency will make practical use of the information collected. The agency also must certify that the proposed information collection "reduces to the extent practicable and appropriate the burden" on respondents,[82] including, for example, small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act.

The public has further opportunity to comment on a proposed collection once it has been submitted to OMB, at which point the agency publishes a notice in the *Federal Register* advising the public on how to comment to OMB about the information collection request. The public – during OMB's review and at any other time – is to have opportunity to make its views known concerning any federal data collection, both as to its perceived practical utility and the reporting burdens involved.

OMB can approve a data collection for no more than three years, at which point the agency must re-submit the collection for re-approval. Many collections are periodic and may be approved for only a single usage before revision and re-approval. When OMB grants approval for a collection, it issues a "control number", which must be displayed on the collection itself. If a current approval number is not displayed, a member of the public cannot be penalised for refusing to keep or submit the required information. Agencies are not supposed to expend resources carrying out unproved collections of information. OMB follows up any violations with the responsible agencies, and notifies the Congress annually of such violations. There appears, however, to be a substantial number of violations. The US General Accounting Office in 1999 found 800 cases where agencies had collected information in violation of the PRA.[83]

The Paperwork Reduction Act of 1995 requires the head of each agency, supported by his or her Chief Information Officer, to be responsible for the agency's information collection activities. This includes reducing the amount of paperwork required of the public.

OMB prepares an annual report that details the government-wide "Federal information collection burden", calculated in burden hours. The Information Collection Budget (ICB) is the vehicle through which OMB, in consultation with each agency, sets annual agency goals to reduce information collection burdens. The ICB is built around fiscal budgeting concepts. Each agency calculates its total information collection "budget" by totalling the time required to complete all its information requests. For fiscal year 2001, for example, OMB reported that the total burden hours for the government were 7.4 billion hours, 83.6% of which were attributed to the Department of the Treasury – which contains the Internal Revenue Service and the Customs Service.[84] The figures for 1987-2001 are presented in the appendix

Box 8.5. **Examples of individual burden reduction initiatives***

Streamlining regulation

Much of this streamlining took place in the arena of government contracting. An example was a rulemaking initiated in response to requests from industry to eliminate representations required by the Federal Acquisition Regulation (FAR) that place an assertedly unnecessary burden on offerors or contractors. The final rules deleted certain certifications required by the FAR that were deemed unnecessary or overly burdensome to offerors and contractors. As part of the final rulemaking, the FAR Council reported a significant savings in overall paperwork burden of 119 150 hours.

Eliminating redundancy

Raising reporting thresholds to reduce the number of reports that need to be submitted, cutting the frequency of periodic reporting requirements, consolidating information collections, or working across agencies to share information. For example, the Federal Communications Commission in 1999 consolidated three forms required of cable television operators into one, saving 18 000 burden hours.

Simplifying forms

Simplifying or streamlining forms to make them easier to read and fill out, and making programmes easier to apply for. An example was the Small Business Administration's form for "disaster relief." The earlier form required applicants to list each property item that was destroyed along with repair/replacement estimates. The new form provides a checklist for applicants to mark. The results in an estimated saving of 15 minutes per form or a total burden reduction of 26 525 hours.

* See Information Collection Budget of the United States Government Fiscal Year 2000, *supra* note 50 at 4-6, 15-27.

to this report. This budgeting exercise is used to measure progress toward reduction goals. Since 1980, the reduction targets have varied. In 1996 the PRA set an annual government-wide goal for the reduction of the total information collection burden of 10% during each of the fiscal years 1996 and 1997 and 5% during each of the fiscal years 1998 through 2001. However, during these years the actual burdens in terms of total hours only fell in 1998 (by 0.37%) whereas it increased in other years with between 2.5 to 4%, a total increase of approximately 12% from 6.8 billion man-hours in 1996 to 7.7 billion man-hours in 2001.

In the US, as for many other countries, the ability of agencies to reduce burden is sometimes constrained because their discretion is limited. For example, requirements in regulations may be changed only through existing administrative processes that may take years. Furthermore, reporting and record keeping requirements may be mandated by existing statute or may be necessary to implement recently enacted statutes. There are also factors that tend to increase paperwork burden that are outside the control of agencies. These include economic growth, natural disasters, and demographic trends. These factors can change the number of participants in a program, which – while not creating new burdens – nonetheless increases the reporting burden of the entire programme.

Permitting simplification

Obtaining government permits can be an extremely demanding and time-consuming activity – especially when multiple permits are required for a single activity. Fortunately,

advances in IT have facilitated one-stop permitting approaches to simplify the process. As the examples below show, licensing and permit programmes are attractive candidates for the sort of one-stop shopping that is made possible by advances in IT.

Reliance on industry standards and/or self-regulatory organisations

Agencies can conserve agency resources and ease the burdens on regulated entities by adopting voluntary national consensus standards rather than developing their own criteria in-house.[85] The National Technology Transfer and Advancement Act of 1995 (TTA)[86] obligates federal agencies to utilise consensus standards developed by voluntary private sector bodies (with agency participation) unless *i*) such standards are inconsistent with applicable law, or *ii*) the agency transmits to OMB a written justification for the agency's failure to adopt the voluntary standard.[87] In addition, OMB Circular A-119, through which the TTA is implemented, specifically directs agencies to refrain from developing their own government-unique standard in lieu of a voluntary consensus standard, even if the voluntary standard is not complete, provided that the standard is near completion and is otherwise suitable:

> If a voluntary consensus standards body is in the process of developing or adopting a voluntary consensus standard that would likely be lawful and practical for an agency to use, and would likely be developed or adopted on a timely basis, an agency should not be developing its own government-unique standard and should be participating in the activities of the voluntary consensus standards body.[88]

Agencies are also required to give consideration to international standards under international trade legislation.[89] Use of voluntary consensus standards or self-regulatory agencies has benefits for agencies and regulated parties alike. Agencies can deploy most of their regulatory resources elsewhere, and regulated entities can structure their reporting and other activities more efficiently and avoid the cost of duplicative but differing regulatory standards.

Of course reliance on SROs does not mean complete withdrawal from oversight by the agency. In fact, standards for use of SROs are necessary for their success.[90] One recent example of continuing agency vigilance is a recent CFTC regulation prescribing ethical obligation on persons associated with SROs.[91]

"Plain language" drafting

Plain language concerns in the law and in regulation are not new,[92] but the Clinton Administration made "plain language" a priority. In the President's Memorandum of June 1, 1998, he ordered executive departments and agencies to use plain language in all new documents including proposed and final rulemaking documents.[93]

The Office of the Federal Register has followed this memorandum with instructions on how to make regulations readable. The advice covers format, headings, paragraphing, use of tables and illustrations, and use of active verbs.[94]

The Administration's National Partnership for Reinventing Government created a Web site called "Plain Language Action Network" (PLAN) which is devoted to helping the implementation of this initiative.[95] As part of this effort, awards for plain language accomplishments by federal employees were presented by the Vice President.[96]

The State of Michigan has a formal policy of using plain English in its legislative drafting and rulemaking. The Legal Division of the Legislative Service Bureau is a non-partisan staff

Box 8.6 **Examples of one-stop permitting initiatives**

National Marine Fisheries Service Permit Shop[1]

The National Marine Fisheries Service Permit Shop was developed to replace a previous permitting system that was experiencing significant difficulties issuing Atlantic tuna fishing permits in a timely and accurate manner. The new system enables organisations to cost-effectively engage and transact with customers and partners online for both business-to-consumer and business-to-business applications.

Export licensing – Simplified Network Application Process (SNAP)[2]

The Simplified Network Application Process (SNAP) is an automated system for the submission of licence applications to the Bureau of Export Administration (within the Department of Commerce) via the Internet. SNAP is a free service that allows exporters to submit export, re-export, high performance computer notices, and commodity classifications to the Bureau via the Internet in a secure environment. In launching the programme, the Secretary of Commerce said, "I am setting the goal that by the year 2002, the Commerce Department will be truly an E-Commerce Department".[3]

New Jersey Online Air General Permits[4]

This New Jersey Web site integrates online permit registration and payment with the department's environmental management system, providing an easy-to-use permit process accessible to anyone with a Java-compatible browser and a valid credit card. That process is made possible by a change in the department's procedures: Standardised permits have been pre-approved by the department and the New Jersey public. With pre-approved permits, qualifying facilities can opt out of the lengthy custom permit process and simply register and pay online. The new process enables the department to shift resources from paperwork to compliance assistance and monitoring. Officials anticipate that the site will generate up to USD 600 000 in permit fees per year.

New York State Online Permit Database[5]

At this New York Web site, users have access to more than a thousand permit types and can develop their own customised permit packages. The site, unveiled in December 1999, provides specific information on 167 business types, including such diverse enterprises as accounting firms, bagel shops, bed-and-breakfasts, residential general contractors, lawn and garden services, and video stores.

Electronic Renewal of Driver's Licences[6]

Two states, Minnesota and Tennessee, recently initiated e-government services targeted to motorists. The Minnesota Department of Public Safety launched a Web site[7] where drivers can go to renew registrations for passenger vehicles. A typical transaction takes two minutes, according to a department press release. Customers may pay by credit card or debit their checking or savings account. Credit card payments are assessed a 1.75% processing fee. The transaction goes directly to the Division of Driver and Vehicle Services via an encrypted programme, which prevents disclosure of financial data to third parties. The division mails renewal stickers within 10 days of the Internet registration. The first day the service was in place, 490 people renewed their vehicle tags online, as noted by the site's Webmaster. In Tennessee, residents can renew their driver's licences by going to the state portal.[8] Unlike in Minnesota, fees for credit card transactions will not be passed on to applicants.

1. See *www.nmfspermits.com*
2. See *www.bxa.doc.gov/SNAP/default.htm*
3. Keynote Address by US Secretary of Commerce William M. Daley at the E-GOV 99 Conference, (July 1, 1999), available at *http://osecnt13.osec.doc.gov/public.nsf/docs/990701-daley-keynote-addr-egov-conf*

Box 8.6 **Examples of one-stop permitting initiatives** *(cont.)*

4. See *www.state.nj.us/dep/dwq/gps.htm*
5. See *www.gorr.state.ny.us/gorr/pas/pas2.nsf/LuFRM/Home?OpenDocument*
6. Eric Kulisch, Minnesota, Tennessee Join E-gov Ranks, FCW.COM, (Oct. 25, 2000), available at *www.civic.com/print.asp*
7. See *www.dps.state.mn.us/autolicence*
8. See *www.TennesseeAnytime.org*.

of 40 (including 22 attorneys) in drafting new laws and amending old ones. It also, pursuant to the state APA, reviews administrative rules and regulations proposed by executive branch agencies for format and style. Substantive review is by the Joint Committee on Administrative Rules in the legislature and the Office of Regulatory Reform in the executive branch.[97]

With respect to government forms and other information collection requests used by government, the Paperwork Reduction Act requires that agencies certify to OMB that such requests are "written suing plain, coherent, and unambiguous terminology and [are] understandable to those who are to respond".[98]

Plain English is no substitute for intelligent regulation, of course, but eliminating legalisms and "gobbledegook" reduces compliance costs and makes it easier for individuals and small businesses to deal with their government without the need to hire a lawyer.

Assistance to small business in development and implementing regulations

As mentioned in the introduction to this report, American politicians of all types pay special homage to the needs of small business. The Small Business Administration and individual agencies devote a lot of attention to the needs of small business in regulation-development and in enforcement and compliance. Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), federal agencies are required to develop comprehensive guidelines and a well defined process to respond to small business inquiries on actions that businesses are required to take to comply with rules established by the agencies.[99] These guidelines must be written in plain English. In addition, the Small Business Administration (SBA) has engaged in numerous other activities intended to simplify small business compliance with regulatory requirements, see Box 8.8.

Other agencies have also developed special assistance programmes directed at small businesses:

EPA assistance to small businesses

In addition to its other activities (discussed in the Section on Programme Ombudsmen below) the EPA Small Business Ombudsman has produced a "resource guide" that details all of the agency's small-business-specific activities.[100] The guide lists numerous EPA-supported assistance, training, mentoring, compliance support, and funding programmes tailored for small businesses as well as hotlines, clearinghouses, and information centres.

Expert advisors[101]

These interactive electronic tools give tailored, understandable advice about how to be in compliance with federal requirements. Several agencies are developing expert systems and intelligent technology to provide businesses compliance assistance and to reduce burden. DOL has developed 18 "E-law Advisors", Web-based expert systems that the public

Box 8.7 **Examples of industry standards and/or self-regulatory organisations**

Department of Energy Efficiency Standards

The Energy Policy and Conservation Act, as amended, establishes energy efficiency standards for certain commercial heating, air conditioning and water heating products. For some of these products, the Department of Energy (DOE) has recently adopted as national standards the new American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IESNA) Standard 90.1, as revised in October 1999. DOE's final rule also identifies other products covered by the recently revised ASHRAE/IESNA Standard 90.1-1999 that DOE will analyse further to determine whether more stringent standards are warranted.[1]

Federal Communications Commission reliance on private standards for telephone equipment

The FCC recently decided to transfer the responsibility for establishing technical criteria for customer premises equipment that may be sold for connection to the public switched telephone network, and for the approval of such equipment to demonstrate compliance with the relevant technical criteria.[2] In its rule, the FCC said:

Streamlining these procedures will reduce unnecessary costs and delays associated with bringing terminal equipment to the consumer without measurably increasing the possibility of harm to the public switched telephone network. Privatising the terminal equipment approval process will significantly reduce the Commission's regulatory burden and allow it to focus on enforcement of the industry-established technical criteria for terminal equipment. The Commission will maintain its role as the forum of last resort for disputes regarding terminal equipment standards and approval procedures.[3]

The FCC is transferring this responsibility to the Administrative Council for Terminal Attachments (Administrative Council) which is supposed to act as the clearinghouse, publishing technical criteria for terminal equipment developed by standards development organisations accredited by the American National Standards Institute (ANSI). This approach is intended to ensure that all manufacturers know which terminal equipment technologies can be connected to the public switched telephone network and that all providers of telecommunications can deploy services and design their networks to permit connection consistent with these technical criteria.

The Administrative Council is charged with adopting technical criteria for terminal equipment through the act of publishing criteria developed by ANSI-accredited standards development organisations. The Administrative Council is also responsible for establishing and maintaining a database of equipment approved as compliant with the technical criteria.

Self-regulatory organisations

In addition, agencies are regularly now relying on self-regulatory organisations (SROs) to serve as intermediaries between the agencies and the regulated industries.[4] In such an action, the agency delegates its authority to issue and enforce rules to a non-governmental organisation. This approach is pervasive in the regulation of professions and occupations.[5] Common examples are the Securities and Exchange Commission's (SEC) reliance on the stock exchanges and the National Association of Securities Dealers to regulate the activities of broker dealers and investment advisors.[6] Similarly, the Commodity Futures Trading Commission (CFTC) relies on the commodity exchanges and the National Futures Association.[7] Numerous other Federal Government uses of audited self-regulation occur in accreditation of participants in government benefit programmes such as Medicare and

Box 8.7 **Examples of industry standards and/or self-regulatory organisations** *(cont.)*

Medicaid, of clinical laboratories, and in financing of higher education; nuclear power production, and agricultural marketing.[8] Another more unusual example is the reliance on Indian tribe self-regulation of "Indian gaming".[9]

1. Department of Energy. Office of Energy Efficiency and Renewable Energy, Energy Efficiency Programme for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment, 66 Fed. Reg. 3336 (Jan. 12, 2001). Note that this air-conditioning standard is under review by the Bush Administration.
2. Federal Communications Commission (2001), 2000 Biennial Regulatory Review of Adopting Technical Criteria and Approving Terminal Equipment, 66 Fed. Reg. 7579, Jan. 24.
3. *Id*.
4. See ACUS Recommendation 94-1, "The Use of Audited Self-Regulation as a Regulatory Technique", 59 Fed. Reg. 44 701 (Aug. 30, 1994), [also available at *www.law.fsu.edu/library/admin/acus/305941.html*.] and the background report by Douglas Michael, Federal Agency Use of Audited Self-Regulation as a Regulatory Technique, 47 Admin. L. Rev. 171 (1995).
5. For example the Federal Government, with a few exceptions, does not regulate the practice of attorneys before federal agencies; rather the Agency Practice Act provides that an attorney in good standing with any state bar association may so practice. 5 USC. § 500.
6. See Michael, supra note 125 at 203-07, 211-114. See also the NASD's home page at *www.nasd.com*. Accountants are also subject to self-regulation under SEC supervision, *id*. at 214-17.
7. *Id*. at 207-211. See also the NFA's home page: *www.nfa.futures.org*
8. These programmes are discussed in Michael, supra note 125, at pp. 217-240.
9. See National Indian Gaming Commission (1998), Issuance of Certificates of Self Regulation to Tribes for Class II Gaming, 63 Fed. Reg. 41 960, Aug. 6.

can query through menus and routine questions to better understand and comply with DOL regulations. OSHA is working on the next generation of these systems which would combine interactive questionnaires and electronic forms with legal analysis. OSHA has made similar efforts in developing its "Expert Advisors", interactive Web-based systems designed to replicate the thinking process of OSHA's policy and enforcement staff on a particular topic area of interest to the public. OSHA has made ten Expert Advisors available online on such topics as asbestos, confined spaces, and the cost-benefit of safety, and plans to add three more, for hazard communications, nursing homes, and workers rights, in FY 2000.

Partnerships with responsible companies[102]

An example of a public-private partnership designed to benefit responsible companies is the Consumer Product Safety Commission (CPSC) Fast-Track Product Recall Program. CPSC conducts an average of 350 product recalls each year. Under the Consumer Product Safety Act, firms are required to report potentially hazardous products to the Commission. Traditionally when a firm reports, the CPSC staff conducts any necessary investigation and makes a preliminarily determination of whether the reported product is defective and presents a substantial hazard. Some firms that were inclined to recall the product themselves found that the CPSC's formal evaluation process held up the recall. In response to those concerns, in March 1997, CPSC adopted the Fast-Track Product Recall Programme as a voluntary alternative to the traditional procedure. Under the Fast-Track Program, CPSC staff does not make a preliminary hazard determination if a firm provides the necessary full report information and initiates an acceptable consumer-level recall within 20 working days of its report. The Fast-Track Programme eliminates CPSC's need to determine whether there is a defect. Instead, if it approves the corrective action, the recall can begin. Fast-Track has made it easier for firms to recall potentially dangerous products. The programme

Box 8.8 **SBA activities to simplify small business compliance with regulatory requirements**

"RegFair"

The SBA's Regulatory Fairness Programme (RegFair) presented an Innovation Award to two Denver-based organisations: The Home Builders Association of Metropolitan Denver and the Region VIII office of the US Occupational Safety and Health Administration (OSHA). These groups received the RegFair Innovation Award for their joint pilot programme, called Homesafe, which helps small home building companies in Denver more easily comply with federal regulations, while minimising their chances of being fined or penalised. A major component of the Homesafe pilot is a pocket guide that simplifies thousands of pages of OSHA regulations in 70 pages of clear, understandable pictures. In return for the builders' good faith efforts to follow the principles described in the pocket guide, OSHA promised not to cite participating home builders for non-serious violations, provided the violation is corrected within a reasonable time. The co-operative pilot programme is expected to expand to the rest of the country.[1]

RegFair Hotline

Calls to the RegFair Hotline[2] have shown significant increases. From an average of only 54 a month in 1997, the average monthly number of calls to the RegFair Hotline over the three years of programme operation has grown to 102 per month. Over 3 680 calls have been received by the Hotline in total.

RegFair Internet Web site[3]

The RegFair Internet Web site has become very popular. With almost 300 000 "hits" or visitors to date, the RegFair Web site has received a steadily increasing amount of visitors since it was constructed in March 1997. Web site hits for the 10 months of 1997 that the site was in operation totalled just over 47 000. In 1998, that number almost doubled, increasing to just under 120 000. Totals for 1999 show another increase to over 163 000.[4]

US Business Advisor[5]

This site provides the public with one-stop access to Federal Government information, services, and transactions. At this site, businesses can learn what steps to take to be in compliance with government requirements, what tools government provides to help them, and what opportunities the government is making available to them.

Compliance Assistance

SBREFA requires that agencies establish a policy for the reduction or waiver of civil penalties for violation of a statutory or regulatory requirement. Agencies may consider ability to pay in determining penalty assessments. Policies or programmes should contain the following conditions: 1) requiring the correction of a violation within a reasonable time; 2) limiting the applicability of violations discovered through small business participation in a compliance assistance or audit programme; and 3) requiring a good faith effort to comply with the law.[6]

1. United States Small Business Administration, The National Ombudsman's 2000 Report to Congress: Building Small Business – Agency Partnerships, available at *www.sba.gov/regfair/report00.pdf*
2. (888)-REG-FAIR.
3. See *www.sba.gov/regfair*
4. *Id*.
5. See *www.business.gov*
6. SBREFA, *supra* note 15, §223 (codified at 5 US.C. § 601 note). In addition, see Regulatory Reform – Waiver of Penalties and Reduction of Reports, Memorandum of President of the United States (Apr. 21, 1995), 60 Fed. Reg. 20 621.

focuses on results, not process. By streamlining CPSC review, Fast-Track makes compliance with the law less burdensome and less costly, which is a particular benefit for small businesses.[103] It has been reported that under a traditional recall process, about 30% of recalled products might be returned. Under the Fast Track process, the percentage of products returned has climbed to nearly 60%.

Maryland's Office of Business Advocacy[104]

The Office of Business Advocacy was created in August 1995 as part of the Maryland Department of Business and Economic Development. Its mission is to assist Maryland businesses in navigating through the processes and regulations of local, state, and federal government. Small businesses in Maryland, as well as in other states, must obtain a variety of permits and licences from the federal, state, and local levels in order to operate. In fact, there are over 400 different permits issued by the State of Maryland, in addition to permits issued by the federal and local governments. The Office of Business Advocacy attempts to provide Maryland businesses with a liaison to all federal, state, and local government authorities to facilitate the process of opening and operating a business in Maryland.

An Office ombudsman trained in regulatory issues assists businesses in securing the necessary licences and permits needed from any regulatory agency. The ombudsman handling the matter will be the point person charged with ensuring that the business understands all of the regulatory requirements, and that the government agencies are granting the permits in a timely manner. This "customer service" approach attempts to make it easier to start, operate, and expand a business in Maryland, while ensuring that all regulatory requirements are met.

The Office of Business Advocacy measures success by the number of businesses it assists in dealing with the bureaucracy. By mid-2001, more than 500 businesses in Maryland have benefited from the services of the Office of Business Advocacy. One example of how the Office of Business Advocacy helps businesses is that of a financial services business that requested assistance. The company was constructing several new, two-story parking garages. The Americans with Disabilities Act (ADA) required a certain number of handicapped parking spaces on each floor of the garages and an elevator to provide handicapped access to each floor of the respective garages. The Office of Business Advocacy was able to assist the company in obtaining a variance from the ADA regulations. Rather than having handicapped spaces scattered throughout the floors, the company would simply put all such spaces on the ground level of the garages. This approach allowed the company to avoid the cost of installing and operating elevators in these garages, yet maintaining compliance with ADA regulations. This simple solution resulted in a savings to the company of nearly USD 500 000. In another matter, a small ice cream store chain, which made its own ice cream, was considered a manufacturer by every taxing authority except the one in which it was a benefit to be classified as such. At the request of the business, the Office of Business Advocacy became involved in an attempt to rectify the matter. After discussions with the appropriate taxing bodies, the law was changed to classify the business as a manufacturer across the board. The cost to the company of the incorrect classification was over USD 35 000.

"Tiering" of regulations[105]

"Tiering" is designing regulations to account for relevant differences among those being regulated. Tiering may be desirable when a uniform rule would otherwise impose

disproportionate impacts on regulated businesses. By tiering, an agency can alleviate disproportionate burdens, ensure that the regulatory solution fits the problem, and make more efficient use of its limited enforcement resources. This concept of designing flexible alternatives to uniform rules is the heart of the Regulatory Flexibility Act. In that Act, Congress instructed federal agencies to explore alternatives, such as tiering, to minimise the disproportionate impact of regulations on small businesses, associations and governmental units.

In many cases tiering is an effective way of increasing the cost-effectiveness of a regulation. EPA has tiered up to 50 different regulations based either on firm size or the amount of pollutant released. An example is EPA's approach to risk management for accidental release prevention requirements under the Clean Air Act.[106] EPA created three different levels of requirements for sources that pose different risks: a low hazard tier for sources whose worst case release would not affect any public or environmental receptors of concern; a medium hazard tier for sources that were not eligible or covered by the low or high hazard tiers; and a high hazard tier based on either industry sector accident history and number of employees or simply based on the number of employees.

Another example was reported by the Drug Enforcement Administration (DEA), which in 1995 revised its regulatory approach by not requiring registration by companies that manufacture certain chemicals for internal use. It also established a tiering mechanism for collecting registration fees that distinguishes between retail distributors of regulated drug products (which are often small businesses) and manufacturers, wholesalers, importers, and distributors.[107] At least one state, Kentucky, has specifically incorporated the concept of tiering of regulations into its administrative procedure act.[108]

A possible disadvantage is that tiered regulations may provide a disincentive for a firm to grow and, consequently, subject itself to a more stringent standard. Additionally, in certain cases, it may be difficult to set an appropriate tier.

Programme Ombudsmen

The ombudsman is decidedly not a new concept. It is a Swedish word meaning "agent" or "representative," and its Scandinavian origins have been traced to 1274. The first national ombudsman was established in Sweden in 1809, and the concept began spreading to the rest of Scandinavia and Down Under (New Zealand and Australia) in the Twentieth Century.[109] But its growth in American soil did not begin in earnest until about 25 years ago when ombudsman offices began to spread to state and local governments, prisons, universities, newspapers, and corporations. And now federal agencies are joining in by creating such offices – in some cases with Congressional encouragement.[110]

In 1990, the Administrative Conference of the US adopted a formal recommendation[111] that urged agencies with significant interaction with the public to consider establishing an agency-wide or programme-specific ombudsman, and set forth guidelines concerning powers, duties, qualifications, term, confidentiality, limitations on liability and judicial review, access to agency officials and records, and outreach.

Since the 1990 ACUS study and recommendation, the popularity of the idea has grown significantly. In 1993, the President's National Performance Review recognised the potential usefulness of the concept in increasing public participation in agency proceedings and in improving customer service.[112] The American Bar Association has also recently developed standards for ombudsmen.[113]

Use of the ombudsman technique is clearly on the rise in both the government and non-government sectors. It represents a particularly user-friendly approach to burden reduction. Current examples of programme ombudsmen include:

- Small Business Administration Ombudsmen. The Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) and the regional Small Business Regulatory Fairness Boards, created by the Small Business Regulatory Enforcement Fairness Act of 1996, work to bridge the communication gap between small business communities and federal agencies. The National Ombudsman evaluates and rates agency enforcement and compliance activities and annually makes specific recommendations to improve the regulatory environment.[114]
- The US Customs Service Trade Ombudsman. The Customs Service established an ombudsman in 1990 to improve the relationship between Customs and the trade community. He/she is primarily responsible for addressing the complaints of importers and exporters. The Trade Ombudsman has, for example, created a new automated tracking system for trade cases, increasing staff, and proposed a new programme to assist small business owners with Customs trade issues.[115]
- The Federal Deposit Insurance Corporation (FDIC) Office of the Ombudsman. The FDIC contributes to stability and public confidence in the nation's financial system by insuring deposits, and examining and supervising financial institutions. The FDIC's Office of the Ombudsman, established by statute in 1994,[116] provides a confidential, neutral and informal source of information and assistance to anyone affected by regulatory decisions made by the FDIC. The law provides that the Ombudsman acts as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and ensures that safeguards exist to encourage complainants to come forward and to preserve confidentiality.[117]
- *Environmental Protection Agency Ombudsmen*. EPA has several noteworthy ombudsman offices.
  - The Asbestos and Small Business Ombudsman (SBO), established in 1982, facilitates communications between the small business community and the EPA. The SBO also began serving as the Agency's Asbestos Ombudsman in 1986. In this role, the Office focuses issues concerning use of asbestos in schools and handles questions and complaints.[118] The SBO answers questions on its toll-free hotline ranging from explanations of regulatory requirements to waste minimisation and pollution prevention, and uses technical and legal advisors to assist in answering questions from the hotline. According to one review, EPA also has received positive recognition among some industry officials for its SBO. Initially, the SBO received approximately 4 000 calls per year. Now the SBO receives 1 100 to 1 500 calls per month.[119]
  - The National Hazardous Waste and Superfund Ombudsman (National Ombudsman) and the Regional Superfund Ombudsmen (Regional Ombudsmen) were established in EPA to provide assistance to the public in resolving issues and concerns about the implementation of hazardous and solid waste management laws. The National Ombudsman is located in the EPA Headquarters office in Washington, DC. In 1995, a Regional Ombudsman position was created in each EPA Regional office as part of the Superfund Administrative Reforms. On June 4, 1996, the Administrator formally announced the appointments of the Regional Ombudsmen. The Regional

Ombudsman programme, operates in support of the Superfund programme, but – depending on the Region – may also provide support to other programmes, including RCRA, regulation of underground storage tanks, and chemical emergency prevention and preparedness.[120]

- *Food and Drug Administration. The FDA Office of the Ombudsman*, located in the Office of the Senior Associate Commissioner, works to ensure that issues have been fairly heard by considering the basis for an FDA action or position; considering issues of consistency within and among the various FDA Centres; and, where appropriate, providing information or explanations to the complainant regarding the result. Most matters involve complaints about the FDA's processing of various submissions and review of import and export issues. The Office refers certain matters, including allegations of wrongdoing or potential criminal matters, to other FDA offices. The office does not get involved in matters currently in litigation. The Ombudsman also serves as the Food and Drug Administration's Product Jurisdiction Officer.[121] The Product Jurisdiction Officer assigns review responsibility when the jurisdiction is uncertain or in dispute. A company may make a formal "request for designation" to the Ombudsman, who will make a decision within 60 days. Companies and FDA Centres may also informally request assistance from the Office of the Ombudsman in working out difficult jurisdictional issues. The FDA also has a special ombudsman for the Center for Devices and Radiological Health.
- *Securities and Exchange Commission*. The SEC Chairman created an *Ombudsman in the Office of Municipal Securities* in 1997 to work with issuers of municipal securities to improve practices in the municipal market. The Ombudsman provides the nation's municipal bond issuers with a point of contact and ready access to the Commission and a means of obtaining general information about the Commission and its initiatives affecting municipal issuers.[122]

Tax simplification

The Internal Revenue Service (IRS) has become one of the most active US agencies in attempting simplification and burden reduction. This perhaps reflects the pervasive impact of tax preparation and the accompanying burden on individuals and businesses. For example, over 80% of the total federal paperwork burden is accounted for by the Department of the Treasury (primarily the IRS and the Customs Service).[123] Examples of IRS burden reduction initiatives include:

The taxpayer advocate

The Taxpayer Advocate Service is an IRS programme that provides an independent system to assure that tax problems, which have not been resolved through normal channels, are promptly and fairly handled. The National Taxpayer Advocate heads the programme. Each state and Service Center has at least one local Taxpayer Advocate, who is independent of the local IRS office and reports directly to the National Taxpayer Advocate. The goals of the Taxpayer Advocate Service are to protect individual taxpayer rights and to reduce taxpayer burden. The Taxpayer Advocate independently represents the taxpayer's interests and concerns within the IRS. This is accomplished in two ways:

- Ensuring that taxpayer problems, which have not been resolved through normal channels, are promptly and fairly handled.

- Identifying issues that increase burden or create problems for taxpayers: Bringing those issues to the attention of IRS management and making legislative proposals where necessary.[124]

In many ways this office operates as an ombudsman. But to reflect its advocacy focus, the name was changed from the Taxpayer Ombudsman to the Taxpayer Advocate in the Taxpayer Relief Act of 1997.[125]

The IRS Web site

The IRS Web site provides tax forms, instructions, publications, regulations, and other tax information. This site also helps taxpayers find the nearest tax professional to help prepare and file tax return electronically.[126]

Problem solving days

In 1997 after Senate hearings in which taxpayers complained about IRS abuses and the mishandling of tax cases, the IRS instituted "Problem Solving Days" (PSD), on a monthly basis (frequently on Saturdays, evenings as well as weekdays) at district offices. Customer satisfaction surveys and employee surveys are conducted at each PSD and an outside contractor also provides monthly analysis reports. Mandatory PSDs were scheduled at every district at least once every other month during calendar year 2000. On Problem Solving Days, taxpayers could, among other things, set up instalment agreements, settle issues related to audits or missing returns, or negotiate offers of compromise for back taxes and penalties owed. Since the events began, nearly 63 000 cases have been handled, according to the IRS. In an IRS survey of taxpayers who participated, 41% said they were able to resolve their disputes during their appointment.[127]

Business information centres

The IRS also partnered with the SBA to place IRS small business tax forms and publications, and an informational CD-ROMs at all Business Information Centres (BIC), which are sources of information for prospective and start-up business enterprises. The IRS enhanced this partnership with the SBA by placing IRS technical specialists at four BICs. The pilot programme's goal is to educate small businesses on tax related issues and improve tax understanding and compliance.

Tax-resolution representatives

Designed to complement and replace the Problem Solving Days, the IRS has installed 2 100 tax-resolution representatives in IRS offices across the country by the end of 2001. The intent is to give front-line IRS workers expanded authority and training to resolve taxpayer disputes on the spot. Taxpayers and practitioners will be able to call a toll-free number and schedule appointments to meet with IRS personnel at one of 413 IRS walk-in sites to resolve long-standing tax issues.[128]

Citizen advocacy panels (CAPs)

The IRS established CAPs in all four IRS regions. The CAPs are comprised of seven to twelve representative citizens and the local Taxpayer Advocate. The mission of the CAP is to: *a)* provide citizen input into enhancing IRS customer service by identifying problems and making recommendations for improvement of local systems and procedures; *b)* elevate identified problems to the appropriate IRS official and monitor the progress to affect change; and *c)* refer individual taxpayers to the appropriate IRS office for assistance in resolving their problems. Open public meetings have been held at least twice a year in various locations throughout the tax districts to solicit customer service issues, obtain

information, identify taxpayer concerns, and solicit feedback on proposed panel recommendations for improvement.[129]

Simplified tax deposit rules for small business[130]

In a move to simplify a major area of tax administration, the IRS is moving to eliminate monthly tax deposit requirements for about one million small businesses with less than USD 2 500 in employment taxes per quarter. After January 1, 2001, they are now allowed to make employment tax payments quarterly. This replaces the earlier standard that allowed quarterly payments only if businesses have less than USD 1 000 in quarterly employment taxes. The difference between the USD 1 000 and the USD 2 500 thresholds affects payment requirements for about one million businesses. In all, these businesses deposit USD 6.6 billion, about 13% of the USD 52.7 billion in total employment tax deposits. The change creates a number of advantages for small businesses. IRS notices to small businesses are expected to decrease about 70% because there will be fewer deposits. Because this change will reduce the frequency of deposits, small businesses will encounter fewer mistakes and fewer penalties. Payments on a quarterly basis – rather than on a monthly standard – will help small businesses on cash flow issues.

These activities of the IRS are really agency-specific examples of many of the techniques discussed in this report. But because taxation and its attendant reporting requirements are so pervasive, they deserve special attention.

Negotiated rule-making

Many experts have decried the increasing over-formalisation or "ossification" of the US rulemaking process.[131] These critics have pointed to the accretion of procedural requirements and resulting delays but also to the increased adversariness of the process – with more frequent challenges to rules in courts and to a "war of paper submissions" rather than a meaningful dialogue in the rulemaking process between the agency and the affected public. Several procedural innovations have been developed with some success to meet these concerns, negotiated rulemaking being among the most prominent.[132]

A number of federal agencies have successfully pioneered a consensus-based approach to drafting regulations called "negotiated rulemaking". Negotiated rulemaking bring together representatives of the agency and the various affected interests in a co-operative effort to develop regulations that not only meet statutory requirements, but also are accepted by the people who ultimately will have to live with the regulations.[133]

The long-term benefits of negotiated rulemaking include: *a)* more innovative approaches that may reduce compliance costs, *b)* less time, money, and effort spent on developing and enforcing rules,[134] *c)* earlier implementation, *d)* higher compliance rates, and *e)* more co-operative relationships between the agency and other affected parties.[135] These benefits flow from the broader participation of the parties, the opportunity for creative solutions to regulatory problems, and the potential for avoiding litigation.

If the parties reach consensus, the resulting rule is likely to be easier to implement and the probability of subsequent litigation is diminished. Even negotiations that do not result in consensus on a draft rule can still be very useful to the agency by: *a)* narrowing the issues in dispute, *b)* identifying information necessary to resolve issues, *c)* ranking priorities, *d)* finding potentially acceptable solutions, and *e)* improving the agency's understanding of the real-world impact of alternative regulatory options.

Since 1982, 17 federal agencies have initiated 67 negotiated rulemakings producing 35 final rules.[136] And, the Clinton Administration strongly advocated its use.[137]

Negotiation sessions provide all participants with an opportunity to have their assumptions and data questioned and tested by parties with other perspectives. The dynamic nature of negotiating forces each party to participate in crafting solutions to issues that are on the table for resolution. When successful, the process fosters creative activity by a broad spectrum of interested persons that is targeted at producing better, more acceptable rules.[138]

In regulatory programmes with a history of adversarial rulemaking, it is not unusual for parties to negotiate a settlement under the supervision of a court after the rule has been published. Particularly in these programmes, negotiation of a rule prior to the agency's publication of a proposed rule can save the agency and other parties both time and resources. By avoiding litigation, programmes become effective sooner and regulated businesses can plan capital expenditures or production changes earlier than if they faced years of litigation and uncertainty about the outcome. Moreover, at EPA (which has been the most frequent user of the technique) regulatory negotiations, on average, take less time than other rulemakings.[139]

Time savings can translate into both monetary savings for industry and greater satisfaction all around. For example, because of a negotiated rule, EPA's wood-stove emission standards went into effect as much as two years earlier than expected. The participant from an environmental group was quoted as expressing satisfaction that over 1.5 million wood-stoves sold during the two-year period would be covered by the new regulation. For their part, manufacturers were spared two years of uncertainty and could begin re-tooling for the new standards.[140]

The most significant deterrent to using negotiated rulemaking is the up-front cost. This process can be resource-intensive in the short term for both the agency and the other participants. While there are likely to be considerable long-term savings in total resources required, the concentrated investment of effort and expense in the short term may be a serious obstacle. This is particularly true if the savings and the costs appear in the budgets of different operating components of the agency. Additional costs may include services of mediators and convenors, research conducted on behalf of the negotiating committee, administrative support for the committee, expenses of participation for some of the negotiators, and some training costs.

It also should be noted that negotiated rulemaking is not appropriate for all rules. It works best where *a)* there are a manageable number of interested groups and issues to be negotiated, *b)* where the issues are negotiable, and *c)* where all interested participants have an incentive to move forward (perhaps due to a deadline or to the inevitability that *some* regulation will be issued anyway).[141]

Findings and conclusions

The many examples in this report show that there is widespread and bi-partisan support for the concept of burden reduction and simplification of regulatory requirements in the United States.

To some extent this is reflected in laws and presidential orders that seek to force agencies to take these concepts into account in the regulation-writing process. The various "impact statement" requirements, the "regulatory alternatives", the special consideration

to the needs of small business in drafting, the emphasis on paperwork reduction, on plain language drafting, and enhanced participation through negotiated rulemaking show how important this goal is.

Though difficult to measure, the benefits of these approaches in focusing the attention of regulators on regulatory alternatives, and on burden reduction and simplification seem undeniable. However, these approaches do have a downside in that many of them make the rulemaking process more lengthy and laborious for the agencies – thus potentially delaying cost-beneficial (or even deregulatory) rules.

At the implementation end, programme ombudsmen and one-stop shops are proliferating. The related concept of permitting simplification is being practised widely at the state and federal level. Assistance to small business in implementing regulations is also very popular. And tax simplification is showing renewed impetus. Driving many of these efforts, of course, are the dramatic improvements in IT and the rise of the Internet as a stream of commerce and information.

This latter development underlies the most dramatic "finding" in this report. It is the information revolution that is driving many of these reforms – from improved public participation in rulemaking, to one-stop shopping, to paperwork reduction, to tax simplification. The impressive array of technology-driven mechanisms for reducing administrative burdens – most of which have been developed in the last several years – are "win-win" propositions. They produce cost savings for the regulatees and for the regulatory agencies as well.

But just as excited investors in the IT revolution have learned to temper their unbridled enthusiasm, regulatory observers need to be realistic as well as optimistic about the future of IT-driven regulatory reform and burden reduction. There is much farther to go along the trail marked by many of the projects described in this report. On the other hand, "point-and-click" technology is not a panacea, nor is it a substitute for a well-trained civil service, enlightened and committed agency leadership, good science, transparency of decision-making, and sufficient budgetary resources to fulfil the promises made by reformers.

Another significant finding is that despite the great attention given to administrative simplification by Presidents and Congress, its effectuation in the United States is still relatively decentralised. Congress periodically conducts oversight hearings and mandates studies by the General Accounting Office. The President relies heavily on the Office of Management and Budget (OMB). The SBA's Chief Counsel for Advocacy and various agency ombudsmen are independent watchdogs. Whether this decentralisation hinders implementation of simplification and burden reduction is worth considering. Nevertheless, the examples in this report show how the sharp focus on easing regulatory burdens on small businesses has become ingrained and popular among most politicians and policy makers in the United States.

Finally, the need for increased administrative and bureaucratic attention to impacts on various constituencies, and the tendency to seek to insulate administrative decisions from intensive judicial review, creates the need for additional resources in the administrative agencies at a time when agency personnel budgetary levels have been trending downward.[142] On the other hand, the information revolution has made it possible for regulatory personnel to accomplish some of their tasks more efficiently than ever before. Long strides have been made by the US Government in attaining the important goal

of reducing burdens on, and simplifying compliance by, the regulated. But a final conclusory caveat is that it is important to bear the needs of the bureaucracy in mind as well.

Notes

1. Herbert Kaufman (1977), Red Tape: Its Origins, Uses, and Abuses 97, The Brookings Institution.
2. *Id.* at 4, n.1.
3. *Id.* citing Paul H. Appelby (1945), Big Democracy, Knopf, Chap. 6.
4. *Id.* citing Dwight Waldo (1946), "Government by Procedure", in Fritz Morstein Marx, ed., Elements of Public Administration, Prentice-Hall.
5. *Id.* citing Alvin W. Gardner (1952), "Red Tape as a Social Problem", in Robert K. Merton and others, eds. Reader in Bureaucracy, Free Press.
6. *See* National Performance Review (1993), *From Red Tape to Results: Creating a Government That Works Better & Costs Less*.
7. William F. Funk (1987), *The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law*, 24 Harv. J., Leg. 1, (explaining that the original bill that became the Paperwork Reduction Act was entitled the Paperwork and Redtape Reduction Act. S. 1411, 96th Cong., 1st Sess. (1979)). The following discussion in the text derives from pages 7-31 of Professor Funk's article.
8. Pub. L. No. 99-591, 94 Stat. 2812, codified, as amended, at 44 U.S.C. §§ 3501-3520.
9. H.R. 327. *See* Press Release, House Committee of Government Reform, Mar. 15, 2001, *www.house.gov/reform/press/01.03.15.htm*. Committee Chairman Burton stated that "The average small company spends USD 5 100 for each employee complying with federal regulations every year. This bill should help small business cut through the red tape and get answers to their questions from federal agencies". *Id.*
10. For a dissenting view on the benefit of special treatment for small business, see Richard J. Pierce, Jr. (1998), *Small Is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms,* 50 Admin. L. Rev. 537.
11. Paul R. Verkuil (1982), *A Critical Guide to the Regulatory Flexibility Act*, Duke L.J. 213, 216-219.
12. Enacted as Title II of the Small Business Export Expansion Act of 1980, Pub. L. No. 96-481, 94 Stat. 2325, codified, as amended, at 5 U.S.C § 504 and 28 U.S.C § 2412.
13. Pub. L. No. 96-354, 94 Stat. 1 164 – 1 170, codified, as amended, at 5 U.S.C. §§ 601-612. The Act, among other things, requires an impact statement for all regulations describing the potential impact on small businesses and small governments.
14. For a list of these recommendations. S*ee www.whcsb.org:81/fropen.htm*.
15. Pub. L. No. 104-21, tit. II, 110 Stat. 847, 857 (Mar. 29, 1996) (codified at 5 U.S.C. § 601 note (Supp. IV 1998)).
16. Pub. L. No. 104-231, §§3-11, 110 Stat. 3049 (Oct. 2, 1996).
17. United States Department of Agriculture (2000), *Service Center Modernization Initiative Information Technology Blueprint* at 5 Dec., available at *www.sci.usda.gov/itwg/index.html*
18. Pub. L. No. 103-354, Title II, Oct. 13, 1994, 108 Stat. 3209.
19. "Federal Acquisition Reform Act of 1996", "Information Technology Management Reform Act of 1996", Pub. L. No. 104-106, Div. E, Feb. 10, 1996, 110 Stat. 679.
20. Pub. L. No. 105-277, Div. C, Title XVII, Oct. 21, 1998, 112 Stat. 2681-749.
21. Pub. L No. 106-222, June 20, 2000, 114 Stat. 353.
22. Its useful Web site, however, has been preserved at *http://govinfo.library.unt.edu/npr/default.html*
23. For a symposium devoted to ACUS, *see* 30 Ariz. St. L.J. 1-204 (1998).
24. Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § 3501(3).
25. *Id.* at § 3506(c)(3)(J).

26. Council for Excellence in Government, E-Government: The Next American Revolution, (Feb. 2001), at p. 6. *available at www.excelgov.org/techcon/egovex/ebluprint.htm*. This report of a bi-partisan, "blue-ribbon" commission, recommended a five-year, $3 billion appropriation from Congress for an "e-government strategic investment fund", comparable to the amount spent on the Y2K computer problem. It also recommended the establishment of a Cabinet-level assistant to the President for electronic government and an office of electronic government and information policy within the Office of Management and Budget, headed by a chief information officer appointed by the President. *See* Ben White (2001), *Council Offers Plan For E-Government*, Wash. Post, Feb. 22, at A-7.

27. *See* Pew Internet and American Life Project, *The Rise of the E-citizen, How People Use Government Agencies' Web Sites* (April 3 2002), available at *www.pewinternet.org/reports/pdfs/PIP_Govt_Web site_Rpt.pdf*, and The Council for Excellence in Government, *E-GOVERNMENT: To Connect, Protect, and Serve Us*, (Poll Conducted by Hart-Teeter 2002), *available at www.excelgov.org/techcon/0225poll/ report.PDF*. *See also* US Dep't of Commerce (2002), Economics and Statistics Administration and National Telecommunications and Information Administration, *A Nation Online: How Americans Are Expanding Their Use of the Internet*, Feb.

28. See the Electronic Signatures in Global and National Commerce Act (2000), Pub. L. No 106-229, June 30.

29. See the Uniform Electronic Transactions Act (1999), a model act issued by the National Conference on Commissioners of State Laws.

30. See *www.firstgov.gov*

31. The following description was developed from testimony of various witnesses at Hearings, House Subcomm. on Government Management, Information, and Technology, Comm. on Government Reform, "FirstGov.gov: Is it a Good Idea?" (Oct. 2, 2000), *available at www.house.gov/reform/gmit/ hearings/2000hearings/001002.FirstGov/001002h.htm*

32. This donation was approved after the Comptroller General's Office ruled that the US government is fully authorised to accept a gift of gratuitous services where there is no expectation of payment.

33. To avoid even the appearance that Inktomi would have a special advantage, the Foundation took two proactive steps. First, the Foundation and the government specifically agreed that Fed-Search would not be involved in drafting specifications to be used in the request for bids on any search engine contract nor would Fed-Search be in any way involved in selecting the company that would be awarded any search engine contract.

34. The current list of partners is available on the FirstGov Web site.

35. A "cookie" is a file placed on an Internet user's hard drive by a Web site, which allows the site to monitor visits to the site-usually without the user's knowledge.

36. The Rehabilitation Act Amendments of 1998, Pub. L. 105-220, Title IV, amending section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), require that when federal agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows individuals with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by individuals who do not have disabilities, unless an undue burden would be imposed on the agency. Regulations were issued by the agency assigned this responsibility under the law, the Architectural and Transportation Barriers Compliance Board on December 21, 2000, 65 Fed. Reg. 80 500. These standards cover the full range of electronic and information technologies in the federal sector, including those used for communication, duplication, computing, storage, presentation, control, transport and production. This includes computers, software, networks, peripherals and other types of electronic office equipment. Section 508 standards explain what makes these products accessible to people with disabilities, including those with vision, hearing, cognitive, and mobility impairments.

37. The APA does require agencies to conclude matters "within a reasonable time", 5 U.S.C. § 555(b); and authorises courts to compel agency action "unreasonably delayed". 5 U.S.C. § 706(1).

38. Pub. L. No. 99-519, 100 Stat. 2970 (codified at 15 U.S.C. §§ 2641-2656). This Act amended the Toxic Substances Control Act.

39. 15 U.S.C. § 2643(a).

40. It was estimated that Congress imposed about 600 deadlines in various environmental statutes between 1970 and 1983 and added 60 more in the Hazardous and Solid Waste Amendments of 1984. *See* Alden F. Abbott, *The Case Against Federal Statutory and Judicial Deadlines: A Cost-Benefit Appraisal*, 39 Admin. L. Rev. 171, 173 (1987).

41. 42 U.S.C. § 6924(d)(1-2). See also Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 100-202, Title I, 101 Stat. 1329-358, 1329-358-359 (1987) (reducing Department of Transportation budget if particular rulemaking deadline was not met), cited in Neil R. Eisner, *Agency Delay in Informal Rulemaking*, 3 Admin. L.J. Am. U. 7, 33 n.162 (1989).

42. Pub. L. No. 101-535, 104 Stat. 2353 (codified as amended in scattered sections of 21 U.S.C.).

43. *See* M. Elizabeth Magill, *Congressional Control Over Agency Rulemaking: The Nutrition Labeling and Education Act's Hammer Provisions*, 50 Food & Drug L.J. 149, 165-70 (1995) (describing FDA's failure to meet strict congressional deadlines for issuance of final nutrition Labeling regulations).

44. ACUS Recommendation 78-3, "Time Limits on Agency Actions" (c), 43 Fed. Reg. 27 509 (June 26, 1978), also available at *www.law.fsu.edu/library/admin/acus/305783.html*

45. Alden F. Abbott, *Case Studies on the Costs of Federal Statutory and Judicial Deadlines*, 39 Admin. L. Rev. 467, 487 (1987). The case studies include seven EPA rules, two OSHA rules, and one each from the (Consumer Product Safety Commission (CPSC) and the U.S. Coast Guard.

46. The Administrative Conference recommended that agencies adopt time limits in agency proceedings, either by announcing schedules for particular agency proceedings or by adopting general timetables for dealing with categories of the agency's proceedings, ACUS Recommendation No. 78-3(e), *supra* note 64. See also *Study on Federal Regulation, Vol. IV: Delay in the Regulatory Process,* Senate Comm. on Governmental Affairs, 95th Cong. 132-52 (1977) (concluding that agency-set time limits are useful tools for reducing delay).

47. See, *e.g.*, Oil Chem. and Atomic Workers Int'l Union v. Zegeer, 768 F.2d 1480 (D.C. Cir. 1985).

48. See Les Garner, *Management Control in Regulatory Agencies: A Modest Proposal For Reform*, 34 Admin. L. Rev. 465, 475-79 (1982) (discussing the National Labor Relations Board and the Interstate Commerce Commission); Richard B. Capalli, *Model For Case Management: The Grant Appeals Board*, 1986 ACUS Reports and Recommendations 663 (discussing the Department of Health and Human Services Grant Appeals Board); Charles Pou, Jr. and Charlotte Jones, *Agency Time Limits as a Tool For Reducing Regulatory Delay*, 1986 ACUS Reports and Recommendations 835 (discussing various agencies).

49. The Federal Aviation Reauthorization Act of 1996, Pub. L. No. 104-264 § 224, 110 Stat.3213, 3230-31, codified at 49 U.S.C. 106(f)(3)(A) and (B) (2000).

50. US General Accounting Office, *Aviation Rulemaking: Further Reform is Needed to Address Long-standing Problems* at 42-43 (GAO-01-00) (Draft, Feb. 2001) (on file with author). The report also states that for seven of its rules, FAA was subject to specific statutory deadlines, which were met only in two cases. *Id*. at 45.

51. *Id*. at 38 (the figure is for both proposed and final rule stages).

52. *Id*. at 47.

53. Although the Order was amended in ways not pertinent to this discussion by Exec. Order 13 258, 67 Fed. Reg. 9385 (Feb. 28, 2002).

54. Exec. Order No. 12 866 "Regulatory Planning and Review", § 1(b) (September 30, 1993), 58 Fed. Reg. 51 735 (Oct. 4, 1993). Most of this Order applies only to "Executive Branch" departments and agencies (but not to "independent agencies").

55. *Id*. at § 4(c)(1)(B). (This portion of the Order applies to all federal agencies, including independent regulatory agencies.)

56. *Id*. at § 6(a)(3)(C)(iii).

57. 5 U.S.C. § 603(c).

58. *Id*. at § 604(a)(5).

59. See *Improving Regulatory Systems*, Accompanying Report of the National Performance Review, (September 1993) (chapter REG02), available at *http://govinfo.library.unt.edu/npr/library/reports/reg.html*. Much of the following discussion is taken from of this report, for which the current author was the Team Leader. Original footnotes are kept and supplemented where possible.

60. As Professor Hirsch has stated, "the major federal environmental statutes establish a nationally uniform set of design and performance standards (most of which act as de facto design standards), often targeted at new sources and administered through a permit program, that prescribe the extent to which facilities must limit their pollution and, to a large degree, how they

should go about doing so". Dennis D. Hirsch, *Globalization, Information Technology, and Environmental Regulation: An Initial Inquiry*, 20 Va. Envtl. L.J. 57, 62(2001).

61. *Improving Regulatory Systems*, *supra* note 81 at 24.

62. For general discussions of economic incentives *see* Alan Carlin, *The United States Experience with Economic Incentives to Control Environmental Pollution*, Environmental Protection Agency (Washington, D.C., July 1992); and Office of Management and Budget (1993), Regulatory Programme of the United States Government, April 1, 1992-March 31, 1993, Washington, D.C., January, pp. 11-19.

63. See *e.g.,* OECD, 1998: "Government Capacity to Assure High Quality Regulation" in *Regulatory Reform Review of the United States*, Paris.

64. See *e.g.*, Administrative Conference of the United States, Recommendation 93-4, I(A) and II(C), and *Improving the Environment for Agency Rulemaking,* available at *www.law.fsu.edu/library/admin/acus/305934.html*

65. Office of Information and Regulatory Affairs, Office of Management and Budget, *Report to Congress on The Costs and Benefits of Federal Regulations – 2000*, available at *www.whitehouse.gov/omb/inforeg/2000fedreg-report.pdf*

66. 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, § 638(a), Pub L. No. 105-277, 112 Stat. 2681, 2681-525 (1998).

67. *Report to Congress On The Costs and Benefits of Federal Regulations – 2000, supra* note 88 at 19-20. (Note that the pagination of the Internet version and the hard copy differs – this information is on page 20 of hard copy.)

68. *Id*. at 12 (13 in hard copy).

69. OMB/OIRA (1996), *Economic Analysis of Federal Regulations Under Executive Order 12866*, Jan. 11, available at *www.whitehouse.gov/omb/inforeg/riaguide.html*

70. See FDA v. Brown & Williamson Tobacco Co., 529 US 120 (2000).

71. 61 Fed. Reg. 44 568 to 44 610 (Aug. 28, 1996). The entire final rule (including preamble) was 222 pages (61 Fed. Reg. 44 396 – 44 618).

72. Exec. Order No. 12 866 "Regulatory Planning and Review," (September 30, 1993), 58 Fed. Reg. 51 735 (Oct. 4, 1993) as amended by Exec. Order. 13 258, 67 Fed. Reg. 9385 (Feb. 28, 2002).

73. Exec. Order No. 12 866, § 1(11).

74. Provision is made for "emergency situations" and for those actions "governed by a statutory or court-imposed deadline", although agencies are required to comply with the Order's provisions "to the extent practicable". The Order also allows the Administrator to exempt any category of regulations from review.

75. 42 U.S.C. §§ 4321-4347d.

76. See note 12, *supra*.

77. See note 15, *supra*.

78. Pub. L. No. 104-14, 109 Stat. 48 (1995) (codified at 2 U.S.C. Chs. 17A, 25).

79. These include:
   a) Exec. Order No. 13 045, "*Protection of Children From Environmental Health Risks and Safety Risks*". Requires that agencies issuing "economically significant" rules that also concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health or safety effects of the planned regulation on children; and an explanation of why the planned regulation is preferable to alternatives.
   b) Exec. Order No. 13 132, "*Federalism*". Requires consideration of issues of federalism by executive departments and agencies.
   c) Exec. Order No. 13 175, "*Consultation and Coordination with Indian Tribal Governments*", also applies to rulemaking.

80. See list at *www.sba.gov/ADVO/laws/chart.html*. *See also* Robert W. Hahn (2000), *State and Federal Regulatory Reform: A Comparative Analysis*, 29 J. Legal Stud. 873 (concluding that more than half the

states have initiatives to improve regulations, including oversight mechanisms and use of cost-benefit analysis, but that their effectiveness is often doubtful).

81. Pub. L. No. 104-13, § 2, 109 Stat. 163 (May 22, 1995) amending and recodifying the Act, originally enacted in 1980.

82. 44 U.S.C. § 3506(c)(3)(C).

83. US General Accounting Office, *Paperwork Reduction Act: Burden Increases and Unauthorised Information Collections* (GAO/GGD-99-59) (April 20, 1999).

84. See Office of Management and Budget, Office of Information and Regulatory Affairs, *Managing Information Collection and Dissemination, Fiscal Year 2002*, Table B, p. 65, available at *www.whitehouse.gov/omb/inforeg/paperwork_policy_report_final.pdf*

85. See Administrative Conference of the United States, Recommendation 78-4, "Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulations", 44 Fed. Reg. 1357 (Jan. 5, 1979).

86. Pub. L. No. 104-113, 110 Stat. 775 (Mar. 7, 1996), § 12(a)(3), amending 15 U.S.C. § 272(b).

87. 15 U.S.C. § 272 note.

88. OMB Circ. A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (Feb. 10, 1998) § 7(j), available at *www.whitehouse.gov/omb/circulars/a119/a119.html*

89. 19 U.S.C. §§ 2531-33.

90. ACUS Recommendation 94-1, *supra* note 125, set forth suggested standards for the effective use of audited self-regulation – 1) that the substantive standards, whether imposed by statute, regulation, or otherwise, are clearly stated and are capable of objective application, 2) that an SRO with the ability and incentive to implement these substantive standards in Cupertino with the agency exists or can be created, 3) that the agency responsible for implementation and oversight must have the ability and incentive to implement the substantive standards through a self-regulatory programme, 4) that the self-regulatory programme is expressly authorised by legislation, 5) that the procedures of the self-regulatory organisation are fair, and 6) that Congress and the agency should provide public access to records of the SRO along the same lines as the Freedom of Information Act.

91. See Commodity Futures Trading Commission (2000), *Final Rules Concerning Amendments to Insider Trading Regulation*, 65 Fed. Reg. 47 483, Aug. 4.

92. See, *e.g.*, Richard C. Wydick, *Plain English for Lawyers,* 66 Calif. L. Rev. 727 (1978); Janice C. Redish, *How to Write Regulations (And Other Legal Documents) in Clear English*, 1 Leg. Notes and Viewpoints Q. 73 (1981).

93. "Plain Language in Government Writing", Memorandum from the President for the Heads of Executive Departments and Agencies, 63 Fed. Reg. 31 885, June 10, 1998.

94. "Making Regulations Readable", National Archives and Records Administration, Office of the Federal Register, *www.nara.gov/fedreg/mrr.html*

95. See *www.plainlanguage.gov.*

96. Winners of the plain language prize over the last seven months of the Clinton Administration include:

    July: The National Institutes of Health's Dr. Alexa McCray who developed clincaltrials.gov, a Web site that provides information on the status of clinical research studies.

    August: Anne Cyr of the Occupational Health and Safety Administration, who rewrote a lengthy poster to clearly inform employees of their right to know if their employer had committed OSHA violations.

    September: Steven Griswold, David Neil, Lauren Mason, and Andrea Macri of the Board of Immigration Appeals within the Department of Justice. Griswold and his partners rewrote a confusing manual describing conditions under which immigrants can be deported in a succinct question-and-answer format.

    October: The Food and Drug Administration's Naomi Kulakow and Christine Lewis who wrote a pamphlet describing how to read and use the nutrition facts printed on food labels.

November: Laura Fulmer, Helen Kirkman, Vikki Vrooman, James Cesarano, John Moro, and Melodee Mercer of the Internal Revenue Service. These foes of gobbledegook rewrote a form telling taxpayers how to obtain a refund check.

December: The Federal Aviation Administration's Don Byrne and Linda Walker, who reformatted an airworthiness directive to clearly explain potential safety hazards on a type of airplane.

January 2001: Susan Hollman and Valerie Perkins of the Health Care Financing Administration, who wrote a handbook entitled "Medicare and You" that clearly explained Medicare benefits.

Jason Peckenpaugh (2001), *Clinton administration awards last plain language prize*, *Govexec.com* January 8, available at *www.govexec.com/dailyfed/0101/010801p1.htm*

97. See Carol Cousineau and Roger Peters (2000), *Plain English in Michigan Statutes and Rules*, 79 Mich. B. J. 40.

98. Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § 3506(c)(3)(D).

99. See note 15, *supra*.

100. US E.P.A. (2000), *Environmental Assistance Services for Small Businesses – A Resource Guide* (EPA-231B-00-001), December, available at *www.epa.gov/sbo*

101. See *www.osha-slc.gov/dts/osta/oshasoft/* See also *Information Collection Budget of the United States Government Fiscal Year 2000, supra* note 29 at 10.

102. See *www.npr.gov/initiati/common/*

103. United States Small Business Administration, *The National Ombudsman's 2000 Report to Congress: Building Small Business – Agency Partnerships*, available at *www.sba.gov/regfair/report00.pdf*

104. This account is from Office of Advocacy, US Small Business Administration, *Models for Success State Small Business Programs and Policies, 1999* at 29, available at *www.sba.gov/advo/success.txt*

105. From *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business, A Report To Congress*, Office of the Chief Counsel for Advocacy US Small Business Administration Washington, DC (October 1995) available at *www.sba.gov/ADVO/laws/law_brd.html#II*

106. Environmental Protection Agency (1996), Final Rule, Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31 667, 31 674, June 20.

107. Office of Management and Budget, Office of Information and Regulatory Affairs, *A Report to the President on the Third Anniversary of Executive Order 12866: More Benefits Fewer Burdens Creating a Regulatory System that Works for the American People,* chapter I, § 4, (Dec. 1996) available at *www.whitehouse.gov/omb/inforeg/text/3_year_report.html*

108. See Kentucky Revised Statutes, Ch. 13A.210 "Tiering of administrative regulations". This provision permits tiering regulatory requirements for various classes of regulatory entities, based on size and non-size variables. Size variables include number of citizens, number of employees, level of revenues, level of assets, and market shares. Non-size variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations, and level of federal funding.

109. See David R. Anderson and Diane M. Stockton, *Federal Ombudsmen: An Underused Resource,* 5 Admin L.J. Am. U. 275, 279-80 (1991); D. Leah Meltzer, *Federal Workplace Ombuds* (Report for the Administrative Conference of the US and the Hewlett Foundation) 4-6 (1996).

110. See, *e.g.*, the recently created "Small Business and Agriculture Regulatory Enforcement Ombudsman", Pub L. 104-121 ("The Small Business Regulatory Enforcement Fairness Act of 1996"), § 221, codified at 15 US C. § 657. Other interesting statutorily mandated ombudsmen include the "Construction Metrication Ombudsman" (15 U.S.C. § 2051); and the "Aircraft Noise Ombudsman" (49 U.S.C. § 106).

111. ACUS Recommendation 90-2, "The Ombudsman in Federal Agencies," 55 Fed. Reg. 34 211 (Aug. 22, 1990).

112. See *Improving Regulatory Systems*, Accompanying Report of the National Performance Review, *supra* note 81 at 39 (Sept. 1993) ("Agencies also should consider establishing an ombudsman office to assist compliance efforts").

113. See *www.abanet.org/adminlaw/ombuds*. The ABA House of Delegates approved a recommendation in support of these standards on August 7, 2001. The recommendation, report, and standards can be found at *www.abanet.org/adminlaw/ombuds/*

114. United States Small Business Administration, *The National Ombudsman's 2000 Report to Congress, supra* note 160.

115. See *www.customs.gov/custoday/dec1999/spot.htm#top*

116. Section 309(d) of the Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806).

117. See *www.fdic.gov/about/contact/office/index.html*

118. See *www.epa.gov/sbo/whois.htm#ABOUT*

119. *Id.*

120. See *www.epa.gov/oswer/Ombud-draft.htm*

121. See *www.fda.gov/oc/ombudsman/pj.htm*

122. SEC Release 97-24, Mary Jo White to Leave SEC to Join Law Firm; Deputy Director Golden to Serve as Acting Municipal Ombudsman (Mar. 25, 1997), available at *www.sec.gov/news/press/97-24.txt*

123. See *Information Collection Budget of the United States Government Fiscal Year 2000, supra* note 50 at 11. *See also* the Appendix of this report.

124. Taken from *www.irs.ustreas.gov/ind_info/advocate.html*

125. Pub. L. 104-168, "Taxpayer Bill of Rights 2" (July 30, 1996) §101 (creating the Office of the Taxpayer Advocate), codified as amended at 26 U.S.C. § 7803(c).

126. See *www.irs.gov*

127. See Michelle Singletary, *The IRS Displays Good Form*, Wash. Post (Feb. 18, 2001) at H-1, H-12.

128. *Id.* at H-1.

129. United States Small Business Administration, *The National Ombudsman's 2000 Report to Congress, supra* note 150.

130. See *www.sba.gov/advo/advo_irstax00.html*

131. See Thomas McGarity, *Some Thoughts on "Deossifying" the Rulemaking Process,* 41 Duke L. J. 1385 (1992) (quoting Donald Elliott).

132. Much of this discussion is adapted from *Improving Regulatory Systems*, *supra* note 81 at 29-33.

133. Administrative Conference of the United States, Recommendations 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations", 47 Fed. Reg. 30 708 (July 15, 1982) and 50 Fed. Reg. 52 895 (Dec. 27, 1985); and David M. Pritzker, and Deborah S. Dalton, eds., Negotiated Rulemaking Sourcebook (2d. ed.) (Administrative Conference of the U.S.) (Washington, D.C., 1995).

134. See Jody Freeman and Laura I. Langbein (2000), *Regulatory Negotiation and the Legitimacy Benefit*, 9 NYU Envt'l L.J. 60.

135. It is difficult to obtain reliable data about the costs of regulatory proceedings. However, some information is available that may give an indication of potential savings from using regulatory negotiations. Speaking in 1984, former EPA Administrator William Ruckelshaus estimated that more than 80% of EPA's major rules were challenged in court and that approximately 30% of the rules were changed significantly as a consequence. William Ruckelshaus, "Environmental Negotiation: A New Way of Winning", address to the Conservation Foundation's Second National Conference on Environmental Dispute Resolution 3, October 1, 1984, cited in Lawrence Susskind and Gerard McMahon, *The Theory and Practice of Negotiated Rulemaking*, 3 Yale J. on Reg. 133 (1985). Ruckelshaus also estimated that the annual effort to handle this litigation took 50 person-years from EPA's Office of General Counsel, 75 person-years from EPA programme offices, 25 person-years from the Department of Justice, and 175 person-years on the part of plaintiffs' counsel. Administrator Lee Thomas, in a 1987 address to a colloquium of the Administrative Conference of the United States, pegged the level of litigation at more than 75%. Lee Thomas, *The Successful Use of Regulatory Negotiations by EPA*, 13 Admin. L. News 1 (Fall, 1987).

136. See Freeman, *supra* note 85 at 36. Professor Freeman's discussion of the topic and two case studies from pp. 33-55 are illuminating.

137. See Improving Regulatory Systems, *supra* note 81 at 32; Exec. Order 12 866, *supra* note 76 at § 6(a) ("Each agency also is directed to explore, and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking").

138. *See* Freeman, *supra* note 85 at 41-55.

139. Cornelius M. Kerwin, and Scott R. Furlong, *Time and Rulemaking: An Empirical Test of Theory*, 2 J. Pub. Admin. Res. & Theory 124 (1992) (in study of 150 rules the rulemaking process took an average of 26 months for the four negotiated rulemakings in the sample and 37 months for all rules in the sample). Based on a sample of seven reg negs, EPA estimated a saving of 6 to 18 months as compared to the normal rulemaking process. Telephone interview with Chris Kirtz, Director, Consensus and Dispute Resolution Program, EPA, August 13, 1993. *But see* Cary Coglianese, *Assessing Consensus: The Promise and Performance of Negotiated Rulemaking*, 46 Duke L.J. 1255 (1997) (finding regulatory negotiations to have been slower and more likely be challenged in court than conventional rulemaking) and *contra* Philip J. Harter, *Assessing the Assessors: The Actual Performance of Negotiated Rulemaking*, 9 N. Y. U. Envtl. L. J. 32 (2000) (criticising Coglianese's methodology and finding reg-negs to have been faster and perceived as more successful by participants). For the latter proposition, Harter relies heavily on the empirical research in Laura I. Langbein and Cornelius M. Kerwin, *Regulatory Negotiation versus Conventional Rule Making: Claims, Counterclaims, and Empirical Evidence*, 10 J. Pub. Admin. Res. & Theory 599 (2000).

140. See Mike McClintock, *Regulating Wood-Stove Emissions*, Wash. Post (Sept. 25, 1986), Home Section at 5. *But see* William Funk, *When Smoke Gets in Your Eyes: Regulatory Negotiation and the Public Interest*, 18 Envtl. L. 55 (1987).

141. See *Improving Regulatory Systems, supra* note 81 at 31-32.

142. For example, the Occupational Safety and Health Administration (OSHA) has almost 800 fewer employees than it had in 1980, and its budget is $100 million less than it was in 1982 in constant dollars. Sidney A. Shapiro and Randy Rabinowitz, *supra* note 895 at 97, 98-99. At the overall Federal Government level, the size of the civilian workforce in the executive branch peaked in 1990 at 3 067 200. By 1999 it had shrunk to 2 686 700 (–12.4%) – levels not seen since the 1950s. See Office of Personnel Management, *The Fact Book-Federal Civilian Workforce Statistics* (2000), p. 8, available at *www.opm.gov/feddata/00factbk.pdf*. This shrinkage was most pronounced in the Department of Defense, but the number of employees in non-defence departments and agencies shrunk 7.2% during this period.

Appendix

Federal information collection burden in 1987-2001

In burden hours

Agency	1987	1992	1995	1996	1997	1998	1999	2000	2001
Agriculture	67 700 000	71 600 000	131 091 022	107 248 206	89 290 439	71 950 000	67 680 000	75 190 000	86 720 000
Commerce	5 400 000	4 100 000	8 239 828	7 960 779	8 210 119	13 490 000	7 210 000	38 570 000	10 290 000
Defense	279 700 000	215 200 000	205 847 538	152 490 315	138 511 139	119 000 000	111 730 000	93 620 000	92 050 000
Education	34 500 000	23 100 000	57 554 905	49 111 300	43 725 057	40 900 000	42 070 000	41 980 000	40 490 000
Energy	14 200 000	8 700 000	9 187 531	4 656 053	4 478 981	4 460 000	4 480 000	2 920 000	3 850 000
Health and human services	163 200 000	156 700 000	152 615 502	137 540 947	137 008 078	139 310 000	164 350 000	173 710 000	186 610 000
Housing and urban development	13 300 000	30 300 000	33 769 554	37 245 148	32 210 600	18 480 000	19 750 000	12 460 000	12 050 000
Interior	3 700 000	4 900 000	4 165 429	4 357 370	5 194 780	4 570 000	4 360 000	5 640 000	7 560 000
Justice	40 400 000	32 600 000	36 670 323	36 162 128	39 130 642	26 820 000	36 590 000	36 820 000	40 530 000
Labor	72 600 000	51 800 000	266 447 906	241 077 975	216 810 705	198 990 000	195 960 000	181 590 000	186 110 000
State	1 000 000	2 000 000	8 678 480	596 789	30 557 876	28 900 000	28 850 000	29 190 000	16 560 000
Transportation	75 600 000	65 100 000	91 022 665	66 167 487	111 375 978	138 750 000	140 000 000	117 650 000	80 340 000
Treasury	**852 200 000**	**5 743 700 000**	**5 331 298 033**	**5 352 845 430**	**5 582 121 203**	**5 702 240 000**	**5 909 070 000**	**6 156 800 000**	**6 415 850 000**
Veterans	5 400 000	6 400 000	11 133 887	94 345 522	6 230 103	2 640 000	5 270 000	5 980 000	5 310 000
EPA	68 900 000	60 700 000	103 066 374	107 655 255	115 671 113	119 180 000	118 910 000	128 750 000	130 770 000
Fed. Acquisition Reg. System			22 146 676	23 445 460	24 523 313	24 420 000	23 420 000	n.a.	n.a.
Fed. Communications Comm.			22 644 046	23 879 914	27 805 236	30 340 000	32 490 000	n.a.	n.a.
Fed. Deposit Insurance Corp.			8 502 121	8 633 670	8 536 375	7 560 000	7 970 000	n.a.	n.a.
Fed. Emergency Mgmt. Admin.			5 175 501	4 802 093	5 061 582	4 680 000	4 970 000	n.a.	n.a.
Fed. Energy Regulatory Comm.				5 157 268	5 233 893	5 540 000	3 980 000	n.a.	n.a.
Fed. Trade Comm.	7 100 000	200 000	146 149 460	146 148 091	146 161 341	126 980 000	126 560 000	n.a.	n.a.
NASA			9 561 494	9 228 714	9 087 758	7 710 000	7 340 000	n.a.	n.a.
Nat. Science Foundation			5 691 560	5 760 203	5 794 805	4 730 000	4 740 000	n.a.	n.a.
Nuclear Regulatory Comm.			8 726 244	9 942 882	10 271 588	9 670 000	9 510 000	n.a.	n.a.
Agency	1987	1992	1995	1996	1997	1998	1999	2 000	2001
Securities and Exchange Comm.			191 527 284	142 105 083	148 933 539	75 680 000	76 560 000	n.a.	n.a.
Small business admin.			2 355 150	2 288 365	1 492 925	3 070 000	1 670 000	n.a.	n.a.

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Federal information collection burden in 1987-2001 *(cont.)*

In burden hours

Agency	1987	1992	1995	1996	1997	1998	1999	2000	2001
Social security admin.			25 307 594	25 679 475	24 783 842	22 080 000	21 220 000	n.a.	n.a.
All others	123 600 000	119 900 000							
GRAND TOTAL	1 828 500 000	6 597 000 000	6 898 576 107	6 806 531 922	6 978 213 010	6 952 140 000	7 176 710 000	7 361 720 000	7 651.42
TOTAL excluding treasury	976 300 000	853 300 000	1 567 278 074	1 453 686 492	1 396 091 807	1 249 900 000	1 267 640 000	1 204 920 000	

1. These figures are derived from Office of Management and Budget, Office of Information and Regulatory Affairs, *Information Collection Budget of the United States Government Fiscal Year 2002* (and preceding volumes for FY 1998-2000), and General Accounting Office, *Paperwork Reduction – Reported Burden Hour Increases Reflect New Estimates, Not Actual Charges*, GAO/PMED-94-2 (Dec. 1993).

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