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**U.S. Report to the Economic Committee II
Roundtable Discussion on the APEC – OECD
Integrated Checklist on Regulatory Reform**

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U.S. REPORT TO THE ECONOMIC COMMITTEE II ROUNDTABLE DISCUSSION ON THE APEC – OECD INTEGRATED CHECKLIST ON REGULATORY REFORM

June 14, 2007

The APEC – OECD Integrated Checklist on Regulatory Reform (Checklist) is a voluntary tool that member economies may use to evaluate their regulatory reform efforts. The Checklist highlights key issues that should be considered during the process of the development and implementation of regulatory policy. This report provides an update on reform measures taken by the U.S. in connection with its self-assessment using the Checklist.

The Checklist has four parts – a horizontal questionnaire on regulatory reform and three sections on individual policy areas (regulatory policies, competition policies, and market openness policies). In 2006, the U.S. completed and submitted a self-assessment of the horizontal and regulatory policy criteria. This information was presented to the APEC – OECD Joint Session on Regulatory Reform in Hoi An, Vietnam, September 11-12, 2006. The U.S. response to the self-assessment was offered in relation to the defining hallmarks that guide the U.S. approach to regulatory policy:

- Centralized Management and Leadership;
- Regulatory Impact Analysis;
- Provisions to Ensure Transparency and Accountability; and
- Commitment to “Smarter Regulation.”¹

The Checklist defines regulatory reform as “changes that improve regulatory quality to enhance the economic performance, cost-effectiveness, or legal quality of regulations and related government formalities.”² The Checklist engages policy makers in the Socratic Method toward a regulatory environment conducive to open and competitive markets. The recent U.S. regulatory reforms outlined below provide answers to many of the questions posed by the Checklist. They support regulations that are sensible and based on sound science, economics and the law. This means bringing to bear on the policy problem sound economic principles, the highest quality information, and the best possible science.³

Executive Order 13422 and the OMB Bulletin for Agency Good Guidance Practices

On January 18, 2007, President Bush issued Executive Order 13422, which made several amendments to Executive Order 12866 on “Regulatory Planning and Review.”⁴ The most

¹ Jeffery A. Young and Alexander T. Hunt, “U.S. Response to the APEC – OECD Integrated Checklist for Regulatory Reform,” APEC – OECD Joint Session : Regulatory Reform, APEC EC Meeting, September 11-12, 2006.

² APEC – OECD Integrated Checklist on Regulatory Reform: A Policy Instrument for Regulatory Quality, Competition Quality and Market Openness, <http://www.oecd.org/dataoecd/3/53/36326815.pdf>.

³ For more information on the Administration’s regulatory policies and priorities, please see the “Introduction to the Fall 2006 Regulatory Plan, Federal Register / Vol. 71, No. 237 / Monday, December 11, 2006 / The Regulatory Plan.

⁴ Executive Order 13422, January 18, 2006, <http://www.whitehouse.gov/news/releases/2007/01/20070118.html>.

important of these amendments relate, not to the regulations that Federal agencies develop, but rather to the guidance that Federal agencies develop and provide to the public. In addition, Office of Management and Budget (OMB) Director Rob Portman issued the OMB Bulletin for Agency Good Guidance Practices.⁵ These regulatory reforms share a common goal: namely, the good-government objective of improving the way that the U.S. Federal government does business – by increasing the quality, public participation, and accountability of the agency guidance documents and their development and use.⁶

As the scope and complexity of regulatory programs have grown, rule-making agencies have relied on guidance documents to inform the public and to provide direction to the staffs. Used properly, they can channel the discretion of agency employees, increase efficiency, and enhance fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties. Experience has shown, however, that guidance documents also may be poorly designed or improperly implemented.

The following are a few of the noteworthy provisions of the Bulletin for Agency Good Guidance Practices, which are designed to improve the quality, transparency, public participation and accountability of agency guidance documents:

- Each agency will ensure that appropriate officials within the agency have reviewed and approved the agency’s issuance of “significant” guidance documents;
- Agencies will maintain on their websites current lists of their “significant” guidance documents that are in effect, so that the public can know what guidance applies to them;
- Agencies will provide the public with access to and the opportunity to provide feedback on their “significant” guidance documents (including a means to submit comments electronically); and
- For those guidance documents that are “economically significant” (\$100 million regulatory impact), agencies will publish drafts of the documents in the Federal Register, invite public comment on them, and prepare responses to the comments before finalizing the guidance.

These changes also improve the way the U.S. Federal government issues guidance documents by allowing for an informal process whereby “significant guidance documents” can benefit from interagency review and coordination through OMB. In addition, the recent Executive Order makes several (non-guidance related) process improvements:

⁵ Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, Federal Register / Vol. 72, No. 16 / Thursday, January 25, 2007 / Notices.

http://www.whitehouse.gov/omb/fedreg/2007/012507_good_guidance.pdf

⁶ This section draws heavily from the congressional testimony of Steven D. Aitken, former Acting Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget. For more information on Executive Order 13422 and the Bulletin for Agency Good Guidance Practices, please see

http://www.whitehouse.gov/omb/legislative/testimony/oira/aitken_042607.pdf and

http://www.whitehouse.gov/omb/legislative/testimony/oira/aitken_02132007.pdf.

- Agency-designated Regulatory Policy Officers must now be Presidential appointees;
- Commencement of a rulemaking must be authorized specifically by the agency head or by the agency's Regulatory Policy Officer;
- Agencies must sum-up for the public the total aggregated estimated costs and benefits of all its regulations planned for the coming year; and
- Each agency must identify in writing the specific market failure or other specific problem that it intends to address that warrants new agency action.

Estimates of the Benefits and Costs of Major Rules⁷

From October 1, 2005 to September 30, 2006, OMB concluded oversight review of ten major final rules that were “social regulations,” which may require additional private expenditures as well as providing new social benefits. Social regulation – defined as rules designed to improve health, safety, and the environment – creates benefits for workers, consumers, and the public. Compliance costs, however, must be paid for by some combination of workers, business owners, and/or consumers through adjustments in wages, profits, and/or prices. The best measure of the overall value of regulation is net benefits; that is, benefits to society minus costs to society.

Of the ten social regulations, Federal agencies were able to present estimates of both monetized costs and benefits for seven rules. Since OMB began to compile this information, this is among the highest percentage of economically significant rules presenting both monetized costs and monetized benefits. In addition, one independent agency not subject to the rigors of OMB review pursuant to Executive Order 12866, provided both monetized costs and benefits as well.⁸ However, more high-level regulatory research is needed. Homeland security regulations raise new issues and pose new challenges for Federal agencies seeking to analyze monetized costs and benefits of proposed regulations. Because the benefits of homeland security regulation are a function of the likelihood and severity of a hypothetical future terrorist attack, they are very difficult to forecast, quantify and monetize. This will be the subject of continuing inquiry and discussion as OMB gains further experience with the promulgation of homeland security regulations.⁹

Implementation of the Information Quality Act¹⁰

⁷ For more information see Draft 2007 Report to Congress on the Costs and Benefits of Federal Regulations, http://www.whitehouse.gov/omb/inforeg/2007_cb/2007_draft_cb_report.pdf.

⁸ U.S. Consumer Product Safety Commission, Standard for the Flammability (Open Flame) of Mattress Sets [71 FR 13472], <http://www.cpsc.gov/LIBRARY/FOIA/FOIA06/brief/matttabc.pdf>.

⁹ See Chapter 4 in Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities (pp. 64-80) for a more detailed discussion of this issue, http://www.whitehouse.gov/omb/inforeg/2003_cost-ben_final_rpt.pdf.

¹⁰ For more information see Draft 2007 Report to Congress on the Costs and Benefits of Federal Regulations, http://www.whitehouse.gov/omb/inforeg/2007_cb/2007_draft_cb_report.pdf.

The Information Quality Act,¹¹ enacted in 2001, requires OMB to develop government-wide standards “for ensuring and maximizing” the quality of information disseminated by Federal agencies. The OMB government-wide guidelines (67 FR 8452) impose three core responsibilities on agencies. First, the agencies must embrace a basic standard of “quality,” and agencies must incorporate quality into their information dissemination practices. OMB’s guidelines explain that “quality” encompasses “utility” (usefulness to its intended users), “integrity” (security), and “objectivity.” “Objectivity” focuses on whether the disseminated information is accurate, reliable and unbiased as a matter of presentation and substance. Second, the agencies must develop information quality assurance procedures that are applied *before* information is disseminated. The practice of peer review plays an important role in the guidelines, particularly in establishing a presumption that peer-reviewed information is “objective.” Third, the OMB government-wide guidelines require that each agency develop an administrative mechanism whereby affected parties can request that agencies correct poor quality information that has been or is being disseminated. Furthermore, if the public is dissatisfied with the initial agency response to a correction request, an administrative appeal opportunity is provided.

The OMB government-wide guidelines require agencies to submit a report annually to OMB providing information on the number and nature of complaints received by the agency and how such complaints were resolved. From October 1, 2005 to September 30, 2006, a total of twenty-two requests for correction were sent to eight different departments and agencies. Associated with these requests, only one appeal was filed.

In keeping with the goal of improving the quality of government information, on December 16, 2004, OMB issued the Final Information Quality Bulletin for Peer Review¹² (the Bulletin). The Bulletin requires executive agencies to ensure that all “influential scientific information” they disseminate after June 16, 2005 has been peer reviewed. The Bulletin provides two mechanisms for monitoring the progress of the agencies in meeting these peer review requirements: a transparent peer review planning process and annual reporting. For the aforementioned reporting period, agencies reported to OMB that they conducted 163 peer reviews that fell within the scope of the Bulletin’s provisions. This number includes all such peer reviews that were conducted, regardless of whether the final peer review report has been completed. Of the 163 reviews, forty were reviews of highly influential scientific assessments.

OMB considers the requirements of the Bulletin to be good science and good government. OMB is confident that the requirements of the Bulletin will assist in improving the accuracy and transparency of agency science.

¹¹ Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. No. 106-554, 31 U.S.C. § 3516 note).

¹² See Issuance of OMB’s “Final Information Quality Bulletin for Peer Review,” December 16, 2004, <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>