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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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ADVISORY COMMITTEE

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The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comments on Interagency Review of Executive Order 12866,
Regulatory Planning and Review

Dear Administrator Jackson:

The Local Government Advisory Committee (LGAC) appreciates having the opportunity to work with you and the U.S. Environmental Protection Agency (EPA) on a wide range of issues of interest and concern to local governments. More specifically, the committee is particularly pleased to have the opportunity to inform the Agency's formal review of Executive Order 12866, Regulatory Planning and Review, as well as your recommendations to the White House for developing a new Executive Order (EO or Order) addressing these matters. With this in mind, the Committee respectfully requests that this letter be included with EPA's final recommendations to the White House.

The crisis now confronting the banking, housing and manufacturing sectors of our economy was long foreshadowed by the fiscal crisis that has been the norm for State and local governments during the past several years. As you well know, increasing Federal environmental mandates – and the resources required to effectively implement them – continue to impact the way we do business. Perhaps less obvious, however, is the fact that EPA's partners in State and local government have responsibilities that reach well beyond environmental protection. These pressing duties include:

- Providing public safety services to our citizens;
- Ensuring our children receive a high quality education;
- Meeting the ever-growing health care needs of our people;
- Growing our local economies; and,
- Maintaining and expanding the key infrastructure assets upon which our modern society depends

As a result, State and local government officials must balance their daily decisions about the allocation of scarce resources across a wide range of competing human needs. Accordingly, and with an eye toward strengthening our intergovernmental partnership, the LGAC urges EPA to continue working closely with the White House Office of Management and Budget's Office of Information and Regulatory Affairs (OMB/OIRA) to ensure that environmental regulations are both as protective and cost-effective as possible.

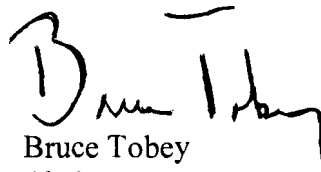
The LGAC supports many of the key principles of Executive Order 12866. Most particularly, the Committee believes that the American people deserve a regulatory system that works for them, not against them, and that regulatory approaches must respect the roles and responsibilities of State and local governments while allowing flexibility so that communities can chart their own course for achieving regulatory goals. Further, despite the considerable progress made toward these goals since the Order was issued in 1993, the LGAC respectfully contends that EPA and its intergovernmental partners still have a long way to go. Based on these beliefs, we have prepared a set of detailed comments which underscore several of the EO's principles which we feel are, quite simply, indispensable. We hope that you will carefully consider them as the Agency develops its own comments on the EO.

The Local Government Advisory Committee greatly appreciates having the opportunity to advise you on this and other important matters, and we wish you the greatest success during your tenure as EPA Administrator.

Sincerely,



Roy Prescott
Chairman



Bruce Tobey
Chairman,
Regulatory Subgroup

Attachments

**Recommendations of the EPA Local Government Advisory Committee
on the occasion of the Formal Review of Executive Order 12866,
Regulatory Planning and Review**

(A) Intergovernmental Participation in the Regulatory Process

- Reaffirm Early Consultation during Rule Development

- 1) The LGAC commends the Agency's recent policy change for implementing E.O. 13132, Federalism, by lowering the State and local government impact consultation threshold from \$100 million to \$25 million.
- 2) The LGAC has long believed that early, iterative pre-proposal consultation with State and local government representatives is essential. Specifically, *"before issuing a notice of proposed rulemaking, each agency should...seek the involvement of those who are intended to benefit and those expected to be burdened by any regulation (including, specifically, State, local and tribal officials)"* E.O. Section 6, **Centralized Review of Regulations (a)**
- 3) The LGAC also commends the Order's requirement that regulators *"seek views of appropriate State, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities"* E.O. Section 1, **Statement of Philosophy and Principles, (b)(9)**

- Reaffirm Intergovernmental Review of Existing Regulations

- 4) According to OMB staff, the following provision has never been implemented. *"The Administrator of OIRA shall meet quarterly with representatives of State, local and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities."* **E.O. Section 4, Planning Mechanism (e) Conferences.** The LGAC believes that OMB should work with EPA to institutionalize this practice.
- 5) The LGAC believes that OIRA and EPA should work with State/local representatives to *"...periodically review [EPA's] existing regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive Order."* **E.O. Section 5, Existing Regulations (a)**
- 6) Additionally, the LGAC endorses the principle that, *"State, local and tribal governments are specifically encouraged to assist in the identification of*

regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.” **E.O. Section 5, Existing Regulations (b).**

- Reaffirm Intergovernmental Involvement in Regulatory Planning

7) *“In order to have an effective regulatory program, to provide for the coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early state, to involve the public and its State, local and tribal officials in regulatory planning,”* the LGAC recommends the establishment of a joint OMB - EPA forum for the specific purpose of regularly seeking intergovernmental input and feedback on the EPA’s regulatory plans and priorities. **E.O. Section 4, Planning Mechanism.**

(B) Benefit/Cost Analysis

- Reaffirm Effective, Comprehensive Benefit/Cost Analysis

1) E.O. 12866 repeatedly emphasizes the importance of effective cost analysis in rule development, and the LGAC endorses that emphasis. Specifically, *“Each agency shall assess the effects of Federal regulations on State, local and tribal governments, including specifically the availability of resources to carry out those mandates, and to seek to minimize those burdens that uniquely or significantly affect such governmental entities...”* **E.O. Section 1, (b) The Principles of Regulation (9)**

- Reaffirm Careful Consideration of Cumulative Regulatory Burden

2) The LGAC supports the Order’s directive that agencies consider the cumulative costs of regulations when weighing regulatory alternatives *“...to confirm that regulations are... not duplicative or inappropriately burdensome in the aggregate;”* **E.O. Section 5, Existing Regulations.**

3) Additionally, the Order states that *“Each agency shall tailor its regulations to impose the least burden on society....including small communities and governmental entities...., taking into account the cost of cumulative regulations.”* **E.O. Section 1(b) The Principles of Regulation (11)**

The LGAC fully appreciates the fact that calculating and modeling for cumulative regulatory burden presents new and difficult challenges. To the best of our knowledge, few – if any – Federal agencies have given thorough

consideration to the full range of regulatory costs that are borne by their intergovernmental partners. Recognizing this, however, we believe that the new Executive Order should re-emphasize the importance of considering these costs as regulatory alternatives are considered.

- Reaffirm Careful Consideration of Indirect Impacts

4) The LGAC endorses the Order's requirement that agencies assess **all** costs and benefits of regulatory alternatives, including the alternative of not regulating. More specifically, *"Costs and benefits shall be understood to include both quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider."* **E.O. Section 1, Statement of Regulatory Philosophy and Principles (a)**

5) The LGAC also commends the Order's dictate that regulatory impact assessments shall include, among other things, *"the direct costs both to [local] government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy or the private sector"* **E.O. Section 6, Centralized Review of Regulations, (C) (ii).**

Here again, the Committee understands that developing meaningful estimates of regulations' indirect impacts presents its own set of challenges. However, it should be noted that EPA's intergovernmental partners have long expressed concern about indirect impacts, both "government intermediary" and "downstream market" effects, and the Committee would strongly encourage a frank discussion of such impacts in the new Executive Order.

(C) Other Key Principles

- Reaffirm Current Threshold for Determining Economic Significance

1) As noted previously, the LGAC commends EPA on its recent decision to lower the intergovernmental impact threshold for determining the applicability of Executive Order 13132, Federalism, from \$100 million to \$25 million. In that same vein, we would urge EPA to discourage OMB/OIRA from increasing the threshold for determining economic significance from its current \$100 million level to some higher figure. With national government budgets now being measured in trillions of dollars, regulations with national costs approaching \$100 million may not seem particularly onerous. For State and local governments whose budgets have either declined or – at best – held steady, the analysis and review performed by the *"repository of expertise"* that is OMB/OIRA is more critical than ever.

- Consideration of Regional Impacts

2) Amend **Section 3, (f) (1)** to read, "*Have an effect on the economy of \$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, communities or **regions.***"
