



September 9, 2008

Governor David A. Paterson
State Capitol
Albany, NY 12224

Dear Governor Paterson,

As an organization dedicated to improving the quality of governmental decisionmaking, we believe that regulatory review—properly conducted—offers our state a distinct opportunity to assess how the regulatory system can best serve the needs of New York and its people. We hope to work closely with your office to refine the regulatory review process and enhance the quality, equity, and efficacy of statewide regulations.

For over a dozen years, Governor Pataki's executive order has shaped New York's administrative state. While that system has certainly helped develop many exemplary regulations, it undeniably has limitations and weaknesses. The regulatory review process can be a double-edged sword. A well-designed system has the potential to improve regulations dramatically, by emphasizing broad administrative priorities, resolving inter-agency conflicts, harmonizing regulatory policies and practices, and evaluating the balance of distributive impacts. The products of such a system are properly calibrated regulations that deliver key benefits to the people of New York with efficiency and fairness. On the other hand, the regulatory review process can also be used to delay the passage of beneficial regulation or to inject bias and capriciousness into what should be evenhanded and reasoned decision-making.

Using the last dozen years' successes and failures as a guide, a revision of the executive order can now minimize the potential pitfalls of regulatory review while enhancing the process's virtues. To that end, we strongly recommend that a revised executive order embody the following principles:

Substantive standards of review are necessary to ensure consistency and to increase accountability. Given the vast discretion afforded administrative agencies and the technical nature of many regulatory decisions, regulatory review must be based on some objective measurement to guarantee that decisions are transparent and free of special-interest politics or should set forth a substantive standard for the process of regulatory review.

Deregulation can be just as costly, in terms of adverse impacts on social welfare, as inefficient regulation. While regulatory review has always targeted the latter, far too often

deregulatory decisions escape any formal review. A revised executive order should ensure equal review of deregulation.

The lack of regulation, if regulation is called for, imposes costs in the form of reduced social welfare. As with deregulation, formal regulatory review has traditionally ignored agency decisions not to act. A revised executive order should create a formal mechanism to review significant agency inaction.

Government must minimize any inequitable and unnecessary distributional impacts of regulation. Analysis of proposed and existing regulations often excludes any concern for the distribution of benefits and burdens – especially for the cumulative impact of multiple regulations. A revised executive order should provide a centralized process for distributional analysis.

Intergenerational discounting of costs and benefits is inappropriate. The discount rate of standard financial instruments is based, in part, on the preference of individuals to enjoy benefits sooner rather than later. These discount rates are inappropriate in the intergenerational context because distribution between individuals – rather than to the same individuals at different times – is the relevant question. Other frameworks for determining obligations to future generations, including sustainable development, utilitarianism, corrective justice, and the genuine opportunity costs of regulation, are vastly more appropriate.

Regulation is just as likely to generate ancillary benefits as countervailing risks. To ensure an accurate and complete analysis of regulation, agencies must take a broad view of benefits as well as costs, and must not ignore benefits that seem intangible or difficult to monetize. A revised executive order should insist on equal consideration for ancillary benefits.

Regulatory analysis should value mortality risks, not risks to incremental years or quality units. Measuring benefits in terms of life-years or quality-adjusted life-years (QALYs) produces results that are unethical (by significantly devaluing the lives of the elderly), inaccurate (by failing to consider that an increased willingness to pay for risk reduction may accompany increased age and increased scarcity of remaining life-years), and inconsistent (by not realizing that people may be willing to pay more to avoid some risks instead of others, even if the change in QALYs is the same). A revised executive order should preclude the use of the life-years or QALYs and instead mandate the use of the average value of a statistical life.

People value natural resources even if they do not “use” them. A revised executive order should require the consideration of existence values.

Industry can and will adapt to regulatory changes. Estimates of compliance costs far too frequently are based on industry-generated data that focuses exclusively on the price of end-of-pipe equipment, ignoring the potential development of technological advancements and production process improvements. A revised executive order should require an accurate accounting of regulatory costs, based on neutral, peer-reviewed data and a dynamic

view of the marketplace.

We are greatly encouraged by your administration's desire to improve our state's regulatory review system. We hope that the process and outcome of this revision will reflect the interests of the people of New York and will truly enhance the quality, equity, and efficacy of statewide regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "M. A. Livermore". The signature is fluid and cursive, with the first name "Michael" and last name "Livermore" clearly distinguishable.

Michael A. Livermore
Executive Director