

concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. However, because of its importance to the public, the rule was treated as an otherwise significant regulatory action and was reviewed by the Office of Management and Budget (OMB).

One commenter stated that the Department failed to meet certain requirements of Executive Order 12866. Specifically, the comment asserted that the Department failed in several respects to adhere to the "Principles of Regulation" set forth in Section 1(b) of the Order:

a. The Notice of Proposed Rulemaking did not demonstrate that the Department engaged in any investigation and assessment of the problems addressed by the proposed rule.

b. The Notice of Proposed Rulemaking did not demonstrate that the Department considered any non-regulatory alternatives for accomplishing the objectives of the proposed rule.

c. The Notice of Proposed Rulemaking provided no evidence that the proposed rule would reduce financial mismanagement of labor organizations or was the most cost effective means to address the objectives of the rule.

d. There is no documentation that the Department's proposed rule is based on the best reasonably obtainable information.

e. The proposed rule ignores the preference expressed in Section 1(b)(8) of Executive Order 12866 for performance objectives rather than design standards.

The comment also asserted that the requirements for significant regulatory action set forth in Executive Order 12866 were not properly observed in that:

a. The Department did not engage in any cost-benefit analysis of the proposed rule.

b. The Department did not seek the involvement of those intended to benefit from and expected to be burdened by the proposed rule.

c. The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) did not take sufficient time to review the Department's proposed rule for purposes of Executive Order 12866.

As an initial matter, the Department firmly believes it has complied fully with E.O. 12866 in all relevant respects. The comment appears to have a fundamental misapprehension of the purpose and function of Executive Order 12866 and of the Department's

efforts to comply with the requirements of the Order. As explained below, the purpose of Executive Order 12866 is to facilitate the effective internal management of the Federal Government with respect to the development of regulatory actions. Indeed, Sections 6(a)(3)(E) and 6(b)(4)(D) in fact provide that an agency and OIRA will make available to the public various information and documents regarding the development of agency rules only "[a]fter the regulatory action has been published in the **Federal Register** or otherwise issued to the public."

Inasmuch as Executive Order 12866 is intended solely for the internal management of federal regulatory actions, the Order does not provide for judicial review or other public review of the procedures and substantive requirements of the Order during the developmental stages of a rule. That is underscored in several provisions of the Order. For example, Section 10 of the Order states: "This Executive Order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

The nature of Executive Order 12866 as a tool for the development and internal review of federal rules also is evident throughout the text of the Order. For example, "The Principles of Regulation," which the comment appears to have treated as setting forth substantive legal requirements, is introduced by the statement that agencies "should" adhere to those principles "where applicable." Section 1(b)(8), as the comment suggests, expresses a preference for rules that establish performance objectives rather than rules that mandate specific behavior or the specific manner of compliance, but states that this should be sought "to the extent feasible." Section 1(b)(6), as suggested by the comment, provides for an assessment of the costs and benefits of a proposed rule but adds, "recognizing that some costs and benefits are difficult to quantify." In the instant rulemaking, the Department has assessed fully the costs and benefits associated with the final rule.

The commenter's demand that the efforts of the Department and OIRA to comply with the procedural and substantive principles, objectives, and requirements of Executive Order 12866 be documented in detail, be described exhaustively for the review of the public at this time, and be evidenced in the Notice of Proposed Rulemaking is

misplaced, as is the objection that its view of the most cost effective alternative was not proposed. The principles, objectives, and requirements of Executive Order 12866 are designed to guide and assist the agency and OIRA during the development of the agency rule and are not addressed to the public. The remedy for any agency failure to comply with some requirement of the Executive Order, as the excerpt from Section 10 referred to above makes clear, is not judicial review at the behest of the regulated or benefited community under the proposed rule; rather, the remedy is the President's directive in Section 8 of the Order that the agency's rule may not be published in the **Federal Register** or otherwise issued to the public until OIRA either waives or completes its review.

Some of the procedural and substantive requirements of Executive Order 12866, as expressly indicated in Section 1(b)(6) ("recognizing that some costs and benefits are difficult to quantify"), are not susceptible to precise definition and measurement. The insistence of the comment that the Department did not choose "the most cost effective means to address the alleged problem" is itself not a statement that can be assessed with objective precision. Any calculus of the costs and benefits of the proposed rule is based in significant part on the value of transparency and accountability in union financial affairs as well as on very difficult projections regarding the impact of the accessibility of financial information on sound union financial management and union democracy generally. That increased transparency in union financial affairs will deter some mismanagement and malfeasance, promote democratic values in unions, and prevent the loss of trust by members and the loss of confidence by the public generally in unions and their officials cannot be seriously doubted. But the Department recognizes that it is very difficult to quantify and balance the associated costs and benefits of those matters with any precision.

The Department has concluded, therefore, that to the extent feasible, appropriate, and necessary, the Department has disclosed in the Notice of Proposed Rulemaking and, more extensively, in this preamble to the final rule the pertinent aspects of the Department's assessment of the problem, the information relied on, the costs and benefits involved, the alternatives considered, and the most appropriate remedy. For the various reasons outlined above and contrary to the apparent assumption of the comment, Executive Order 12866 did