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**POSSIBLE DIRECTIONS FOR PUMA WORK ON REGULATORY REFORM,
1999-2000.**

**Meeting of Regulatory Management and Reform Group, Public Management Committee,
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0.1 The OECD's Regulatory Management and Reform Group (RMRG) carries forward the work of the Public Management Committee on regulatory reform. The Group's work programme is largely driven by the needs of the policy officers who participate in the Group. However, the programme should also take account of two broader considerations. In response to the OECD's overall policy direction, PUMA is emphasising issues of governance and further integration of PUMA work with the core OECD policy agenda, is deepening its comparative work, and is strengthening its analytical capacities. At the same time, the OECD-wide programme on regulatory reform has made substantial progress on four country reviews of regulatory reform, and on work such as construction of a database for regulatory indicators. This multidisciplinary work has revealed a number of issues and gaps in the OECD work programme on regulation.

0.2 This document brings together these various strands into a proposed programme of work on regulatory management and reform for 1999-2000. It has been developed in light of the Group's discussions, as a function of country interests and priorities, and taking into account Committee and Organisation-wide agendas. The proposal is made, however, pending final decisions on available resources for those years.

0.3 This document proposes a number of options for work to be undertaken during 1999-2000. The programme is organised in three general categories: (i) improving government capacities to self-assess regulatory practices against international best practices; (ii) building more effective and efficient regulatory institutions; and (iii) enhancing regulatory transparency. Other proposals are made to improve oversight by Member countries of the work.

0.4 Participants are asked to:

- *Comment* on the proposals in this document as to their usefulness, importance, and timeliness for Member countries, and the value-added that the RMRG could bring to the work;
- *Identify* any other areas of work that would be of interest;
- Since current resources are not sufficient to cover the proposals outlined, *indicate* priorities for future work and identify those activities to which they would be prepared to contribute in a substantive way.

Possible directions for the PUMA work on regulatory reform, 1999-2000

1. The PUMA work on regulatory reform -- built over several years -- has provided substantive input and other extensive support to the development, organisation, and policy direction of the OECD-wide regulatory reform programme. PUMA's emphasis is on *regulatory quality* --- combining both *good regulation* where needed to protect health, safety, and the environment and to enhance the functioning of markets, and *deregulation* where free markets work better. The concept of quality regulation was the primary basis for a balanced and relevant set of policy recommendations that gained the support of all Member countries in the *1997 OECD Report on Ministers on Regulatory Reform*. In part because of the importance placed by Member countries on ensuring that regulatory reform contributes both to better governance and better economic performance, PUMA was asked to continue leading the horizontal work within the Organisation. This includes the OECD multidisciplinary country reviews on regulatory reform now underway, which are also developed around the concept of quality regulation.

2. The PUMA work on regulation is overseen by the *Regulatory Management and Reform Group* of the Public Management Committee. The Group is unique in the OECD in bringing together policy officials responsible for cross-cutting and horizontal regulatory reform policies, and hence has a key role in influencing the work of the Organisation in this area.. The Group developed the *1995 OECD Recommendation on Improving the Quality of Government Regulation*, which has been used by many countries as the basis for new disciplines on the use of regulation. Members of the Group made up the majority of the Ad Hoc Advisory Group on Regulatory Reform that advised the OECD on the content of the 1997 Ministerial Report. The PUMA work responds directly to their needs within the Organisation, and integrates their expertise into the OECD-wide programme.

The 1999-2000 work programme

3. Regulatory reform is an innovative and fast-moving field. The PUMA work programme on regulation has focussed on helping governments develop new capacities and identify best practices for improving the quality of their regulatory decisions. The intent is to establish a longer-term basis for efficient and responsive regulation by changing incentives, capacities, and cultures in public sector institutions, based on market, juridical, and public management principles. Quality regulation must be based on both good regulatory institutions and well designed regulatory processes. Institutions are the "hardware", while policies and practices, such as consultation with the public, are the "software" of a properly functioning regulatory system.

4. The PUMA programme has assisted in change. The *1995 Recommendation* has been used by a dozen Member countries in developing new regulatory quality controls. Since 1980, the number of countries using various forms of regulatory impact analysis (such as benefit-cost analysis) has increased from two to over 20. This trend was encouraged and policy advice was given to countries in PUMA's work programme for several years, leading to the 1997 assessment, *Regulatory Impact Analysis: Best Practices in OECD Countries*. Use of innovative alternatives to traditional forms of command-and-control regulation has been of great interest to the Group, and PUMA has published a series of reports assessing their benefits and costs, such as the 1997 *Co-operative Approaches to Regulation* and the 1997 *Putting Markets to Work: The Design and Use of Marketable Permits*.

5. Recently, PUMA has begun to use the country review process to develop comparative benchmarks of relevance to regulatory quality capacities, to build a basis for deeper and more rigorous

analysis of what works, to improve the basis for self-assessment, and to enhance international information exchange and transparency.

6. The OECD-wide country reviews on regulatory reform have made substantial progress on the first group of countries (the United States, Japan, Mexico, and the Netherlands), and intend ultimately to include all Member countries. These reviews have largely validated the policy recommendations in the *1997 OECD Report to Ministers*. They have also have identified important weaknesses in Member countries that result in systemic regulatory inefficiencies and failures, and gaps in the OECD work programme on regulation. To carry forward this work, PUMA has been asked to continue to lead the horizontal OECD work on regulatory reform through the end of 2000. In addition the PUMA work programme for the two years will respond to these emerging needs, subject to the advice of the Group on Regulatory Management and Reform and the evolution of the horizontal work, by focussing on three key areas. Its work will be aimed at improving the totality of the OECD's policy advice to countries, and will complement work in other parts of the Organisation such as trade, competition policy, environment, and macro and micro economic assessment.

7. Before coming to work areas, it would be useful to examine how the work is managed and overseen by Member countries. Some countries have, for example, suggested creation of a reference group of countries to provide more frequent advice and direction in specific or particularly sensitive work areas, such as development of regulatory indicators and regulatory impact analysis. Comment on this option would be welcome.

Area 1. Improving government capacities to self-assess regulatory practices against international best practices

8. The OECD country reviews, and past work on regulation throughout the Organisation, demonstrate the value of a more credible and systematic approach to comparing regulatory quality and practices in OECD countries as a precondition to international learning. In 1997 and 1998, the OECD, led by ECO and PUMA, made significant progress in assembling the first set of data needed for such work, and today possesses the most extensive database on regulatory frameworks in OECD countries in existence. The OECD work will help link regulatory frameworks with performance of regulated activities. PUMA, with the Regulatory Management and Reform Group, participated in the OECD-wide regulatory indicators survey, and has established a data-base of indicators on various aspects of the quality of government regulatory institutions. To gain the most value from this investment in helping countries to identify , PUMA and the RMRG could:

- draft (PUMA) and peer review (RMRG) chapter 2 of the *country reviews* assessing “Government capacities to assure quality regulation”. There will be four country reviews in 1999, and four-five in 2000. This work will also fulfil the request from the Council that PUMA assess the extent to which Member countries have implemented regulatory disciplines such as those in the 1995 *OECD Recommendation on Improving the Quality of Government Regulation*.
- improve the quality of the *regulatory indicators* database, prepare a publication reporting and interpreting the indicators (subject to approval of Member countries), and consider the development through 2000 of an electronic tool for self-assessment by Member and non-Member countries against 40-50 major indicators.
- produce a series of 14 country reports and a comparative benchmarking report from the PUMA Multi-Country *Business Survey on Regulatory and Administrative Environments*, and perhaps launch a

second round of surveys in 2000 to produce the first comparable time-series data on enterprise environments. This work focusses primarily on SMEs. This Survey is based on a partnership approach (between BIAC and the business associations, government agencies, and the OECD) that is a pioneering means of sharing costs and enhancing the impacts of OECD work.

2. *Building more effective and efficient regulatory institutions*

9. Policy outcomes are determined both by policy content and by institutions. The OECD country reviews on regulatory reform have shed considerable light on the diversity, complexity, and importance of regulatory institutions at national and other levels of government. The reviews have found that regulatory reforms are typically focussed on regulatory policies, but are not accompanied by reinventions of regulatory institutions. As a result, bodies responsible for co-ordinating and managing reform efforts are often under-resourced, lacking in authority and/or unable to relate to regulatory activities. Line ministries are fragmented and often face conflicting mandates. There is little performance assessment or correction. Regulatory bodies are too slow-moving, influenced by vested interests, narrowly focussed, and too inexperienced to develop and implement quality regulation. Regulatory powers shared with producer bodies are often unaccountable. Sectoral models -- such as the U.S. independent regulatory commission -- are often recommended by reformers (even the OECD), but are under challenge in terms of efficiency, capture, and accountability, yet new models are slow to emerge. PUMA and the RMRG could:

- in 1999 produce a report assessing *institutional development for sectoral regulators*, including an examination of the independent regulatory commission approach in various settings. In 2000, it will work with the competition policy and telecommunications experts in OECD to examine how relations between sectoral regulators and competition authorities affect sectoral performance and speed of structural adjustment.
- in 2000 examine *how regulators are held accountable for performance* in OECD countries, using developed PUMA approaches to performance measurement.
- continue work on how *new regulatory and non-regulatory policy instruments* can be most quickly tested and introduced into traditional regulatory institutions.

3. *Enhancing regulatory transparency*

10. Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Just as important is the role of transparency in reinforcing the legitimacy and fairness of regulatory processes. It is widely agreed that regulation must be transparent, yet the OECD country reviews show a wide gap between rhetoric and practice. Indicators developed by PUMA and by the Trade Directorate show that the general level of regulatory transparency is not high.

11. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeals processes that are predictable and consistent. Application of administrative discretion must be accountable and transparent. In co-ordination with DAFFE and Trade, PUMA and the RMRG could:

- following on preliminary work in 1998, prepare a report in 1999 on *regulatory compliance* approaches in OECD countries and how reform can contribute to transparency, predictability, and policy effectiveness.
- prepare a report in 1999 on “best practices” to improve the efficiency and transparency of *permitting and licensing systems*, which are among the most damaging of regulatory approaches in terms of potential for barriers to entry, discriminatory actions, and corruption.
- prepare a report in 2000 on improving *regulatory transparency*, drawing on the country reviews and other work, and suggesting high priority areas for reform of regulatory practices.