D. ASSESSMENT OF FEDERAL REGULATORY POLICY

1. Must Proposed Regulations Pass a Benefit-Cost Test?

21. One of the principles of federal regulation, found in both the Regulatory Policy adopted in February 1992 and the *Citizen's Code of Regulatory Fairness* in force since 1986 is that the government will ensure that the benefits of regulation exceed the costs. Also the *RIAS Writers' Guide* notes that "The Government's *Regulatory Policy* states, not just that the benefit of a regulation must exceed its cost, but that the regulation should be designed to maximize gains in relation to costs. This means that the benefits of the regulatory action chosen must be greater than the benefit of any other type of regulatory or non-regulatory action."[9]

22. In theory, these statements provide a strong criterion ($B \geq C$) against which to assess the Government's performance with respect to new regulations. However, in practice, it has amounted to empty rhetoric for several reasons. First, only for major new regulations is it necessary for departments to prepare a cost-benefit analysis—although the definition of the crucial word "major" is imprecise. Second, it is common for new regulations to be enacted without any estimate of the economic benefits or even to measure the benefits in physical terms, e.g., the number of premature deaths averted, although this is required in the RIAS. Further, with the exception of the Department of Transport, no federal department or agency uses an economic value for human lives saved (premature deaths avoided) as a result of new health or safety regulations. Thus, the best they can do in completing the RIAS is to prepare a cost-effectiveness analysis. Third, neither RAB (in OPRA) nor its successor RAD (in TBS) attempt to keep track of (a) whether new regulations are major or minor and (b) the number of major regulations for which a proper CBA is done. Therefore, Ministers lack knowledge of the extent to which the $B \geq C$ requirement is met—even for major new regulations.

2. Economic Value of Premature Deaths Averted

23. In many cases, the objective of regulation is to prevent premature death in the nation's residents. Without an economic value of life it is not possible to conduct a cost-benefit analysis of a proposed regulation whose primary object is to prevent premature death. Yet only the Department of Transport uses a specific number for the economic value of life. Other departments do a type of cost-effectiveness to avoid putting a dollar value on human life because of the political sensitivity of this issue. An examination of federal regulations indicates that there are huge variations in the value of life implicit in different health and safety regulations.

24. Recently, the *Economic Report of the President* (February 1992, p. 190) included a graph illustrating the cost for each premature death averted by U.S. federal health and safety regulations between 1967 and 1991. Between 1967 and 1987 in about half the new regulations, the cost per death averted was $1 million or less, and in no case was the cost over $100 million per death averted. However, between 1987 and 1991, for very few new regulations was the cost of per death averted under $1 million. Most new regulations fell into the range of $5 million to $100 million. However, for seven new regulations, the cost was over $100, million while for four regulations the cost for each death averted exceeded $10,000 million!

25. While no one can authoritatively specify the economic value of human life, it is clear that more premature deaths could be averted for the same total cost to society if the Cabinet forswears new regulations which have a huge cost per death averted while adopting other regulations which are far

[9] Treasury Board Secretariat, Regulatory Affairs Directorate, *RIAS Writers' Guide* (Ottawa, June 1992) p. 22.