NLWJC - Kagan

Counsel - Box 026 - Folder 004

Counsel: Regulatory Working Group 1994 [1]

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Ron Lewis, et al. to the President-Elect re: Regulatory Process (17 pages)	01/07/1993	Personal Misfile
002. memo	Sally Katzen to Ronald Lewis re: question (6 pages)	01/14/1993	Personal Misfile
003. memo	Ron Lewis and Richard Neustadt to Leon Panetta and Alice Rivlin re: regulations (3 pages)	01/14/1993	Personal Misfile
004a. memo	Ron Lewis to Bruce Reed and John Angell re: draft memos (1 page)	01/15/1993	Personal Misfile
004b. draft	Draft memos re: regulatory process (2 pages)	01/1993	Personal Misfile
005a. memo	Ron Lewis to Steve Neuwirth re: regulations (1 page)	01/18/1993	Personal Misfile
005b. draft	Draft memos re: regulatory process (2 pages)	01/18/1993	Personal Misfile
006a. memo	Ron Lewis to Steve Neuwirth re: regulations (1 page)	01/18/1993	Personal Misfile
006b. draft	Draft memos re: regulatory process (2 pages)	01/18/1993	Personal Misfile
007. memo	Ron Lewis to Bob Boorstin and Steve Neuwirth re: Background Information (3 pages)	01/19/1993	Personal Misfile

COLLECTION:
Clinton Presidential Records
Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

2009-1006-F
ke694

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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b(1) National security classified information [(b)(1) of the FOIA]
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Counsel's Office - Elena Kagan 7 of 10

Regulatory Working Group 1994

Regulatory Working Group 1995

} Received from AS Mikva

Regulatory Reform - Other materials

Regulatory Reform - Legal + other analyses

Regulatory Reform - memos etc.

Regulatory Reform - Fair Warning Act

Regulatory Reform - Legislation materials

Regulatory Reform - press

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ENCLOSURES FILED OVERSIZE ATTACHMENTS

NARA 5944

Regulatory Working Group 1994

Regulatory Working Group 1995

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Regulatory Reform – Other materials

Regulatory Reform – Legal + other analyses

Regulatory Reform – memos etc.

Regulatory Reform – Fair Warning Act

Regulatory Reform – Legislative materials

Regulatory Reform – press

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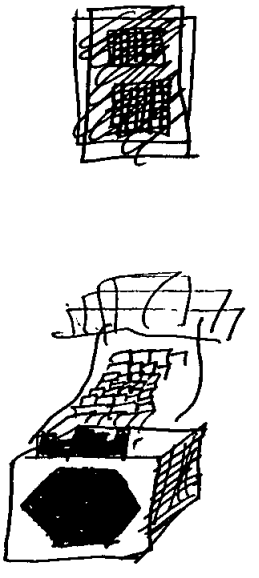

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Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Ron Lewis, et al. to the President-Elect re: Regulatory Process (17 pages)	01/07/1993	Personal Misfile

COLLECTION:
Clinton Presidential Records
Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

2009-1006-F
ke694

RESTRICTION CODES

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Sally Katzen to Ronald Lewis re: question (6 pages)	01/14/1993	Personal Misfile

COLLECTION:
Clinton Presidential Records
Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004a. memo	Ron Lewis to Bruce Reed and John Angell re: draft memos (1 page)	01/15/1993	Personal Misfile

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Abner Mikva
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004b. draft	Draft memos re: regulatory process (2 pages)	01/1993	Personal Misfile

COLLECTION:
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Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

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005a. memo	Ron Lewis to Steve Neuwirth re: regulations (1 page)	01/18/1993	Personal Misfile

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005b. draft	Draft memos re: regulatory process (2 pages)	01/18/1993	Personal Misfile

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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

January __, 1993

MEMORANDUM FOR THE ACTING DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

The Council on Competitiveness, established March 31, 1989, terminated on January 20, 1993.

Pending completion of a review, existing Executive Orders on regulatory management will continue to apply. You are directed to request the agencies described in section 1(d) of Executive Order 12291 to assure that in publishing regulations, and subject to such exceptions as the Director or the Acting Director of the Office of Management and Budget determines to be appropriate, all regulations must first be approved by an agency head or the delegee of an agency head who, in either case, is a person appointed by me and confirmed by the Senate.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006a. memo	Ron Lewis to Steve Neuwirth re: regulations (1 page)	01/18/1993	Personal Misfile

COLLECTION:
Clinton Presidential Records
Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

2009-1006-F
ke694

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006b. draft	Draft memos re: regulatory process (2 pages)	01/18/1993	Personal Misfile

COLLECTION:
Clinton Presidential Records
Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

2009-1006-F
ke694

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. memo	Ron Lewis to Bob Boorstin and Steve Neuwirth re: Background Information (3 pages)	01/19/1993	Personal Misfile

COLLECTION:
Clinton Presidential Records
Counsel's Office
Abner Mikva
OA/Box Number: 8290

FOLDER TITLE:
Counsel: Regulatory Working Group 1994 [1]

2009-1006-F
ke694

RESTRICTION CODES

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January 21, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: BERNARD NUSSBAUM

RE: Regulatory Management Actions

I recommend that you sign the attached memorandum on regulatory management.

The memorandum:

--Confirms the termination of the Council on Competitiveness, sometimes known as the "Quayle Council". Legally, the Quayle Council expired yesterday. Confirming and highlighting that it is gone fulfills campaign statements that were critical of it.

-- Instructs OMB to work with the Cabinet departments and other agencies (except for the "independent" agencies such as SEC, FCC, etc.) to withdraw for further review regulations sent to the Federal Register in the past several days by the Bush Administration. This is a precautionary measure designed to let Clinton Administration appointees look at these regulations to decide whether publication is warranted.

--Requires that new regulations be approved by Clinton appointees at each agency before publication.

-- Leaves in place for now existing Executive Orders authorizing OMB to review regulations, pending a review of those Executive Orders.

This action is time-sensitive because the Federal Register will continue to publish a portion of the Bush Administration regulatory backlog unless and until it receives instructions to the contrary.

Senior White House staff are aware of and approve this action.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 16, 1993

93 MAR 17 P2:58

file: Regulatory Reform

cc Messrs. Nussbaum, Foster, Podesta

seek to me

NOTE FOR JACK QUINN

FROM: Bob Damus RED

SUBJECT: Podesta Note and Regulatory Flexibility Proposal

I spoke to Sally Katzen on the two attached items to get her views. She would concur that:

Bernie/John →

1. The Wendy Gramm memo is still in effect. The memo has not been rescinded by OMB and is still followed. The President's order on regulatory review preserved the status quo on the regulatory review orders pending a review. That would suggest there was no intent to change the Gramm memo at this time, pending review.

Vince →

2. The Reg. Flex amendments are not good policy. Judicial review of reg. flex compliance goes against the idea that reg. flex, like regulatory review, is a managerial tool -- not something to give legal rights and remedies. A 30-day-in-advance rule for sequential review is impractical (e.g., it provides no exceptions) and will slow down regulations, adding yet another layer of review. We will let LRD know of our views on this.

Attachment

FROM THE DESK OF

Jack Quinn 3/16/93

TO: Sally Katzen
Bob Damus

RE: Attached memorandum from John Podesta

I don't know the answer to his question about the Wendy Gramm memo. Do you?

Jack

THE WHITE HOUSE

WASHINGTON

March 13, 1993

MEMORANDUM TO BERNARD NUSSBAUM
STEVE NEUWIRTH
JACK QUINN

FROM: JOHN PODESTA JWP

SUBJECT: WHITE HOUSE REGULATORY REVIEW PROCEDURES

Attached is a copy of Wendy Gramm's 1986 memo outlining procedures for OIRA's review of proposed rules. It supplements Executive Order 12291. In your views, is this memorandum still in effect?

I have also attached a copy of a memorandum from Linda Gustitus, staff director of Senator Carl Levin's Senate Government Relations Subcommittee, which proposes changes to the Gramm procedures.

I strongly agree with points two and five in Linda's memo.

I <u>strongly</u> disagree with points three and four.

I think points one and six are generally good ideas, but need some work to make them practical.

If you would like to discuss these matters, please call me at extension 2702.

Jack, you may also want to be in touch with Linda directly.

cc: Michael Waldman

224-3682

3/12/93

TO: John Podesta
FROM: Linda Gustitus
RE: Regulatory Review

Senate Gov't Affairs Committee

93 MAR 12 A11:10

You asked me to send you the Wendy Gramm memo from 1986 marked up to reflect the changes that Senator Levin thinks would be necessary for adequate disclosure. While I've attached a copy of the Gramm memo, it doesn't work well to use it as a basis for Senator Levin's recommendations. I'd rather just outline what Senator Levin sees as the essential elements in disclosure of regulatory review.

The first questions, of course, that have to be answered are: What rules are going to be reviewed? (all? significant? major? as chosen?) What office is going to review them? (OIRA? a new office? a Vice Presidential Task Force?) What is the standard for review? (benefits must outweigh the costs? benefits must justify the costs?)

Assuming those questions are answered, then, here are the necessary elements to satisfy Senator Levin's disclosure concerns:

1) The public should know when the rule has been sent to (we'll say) OIRA for review. The Reagan-Bush Administration absolutely refused to do this and it was absurd. It was part of their unitary executive theory. The result was that insiders knew when the rule was being reviewed but the rest of the world didn't.

2) The public should be able to see the drafts of the rules as they are sent to OIRA for review.

3) The rulemaking agency should be able to sit in on meetings OIRA has with any party with respect to the rule and should receive any material that OIRA receives.

4) Either all contacts with outside parties should be recorded as to the substance of the contact and the names of the contacts and/or OIRA should provide a written explanation of the reasons it recommends any changes it does in the rule.

5) The items that should be made available to the public should be placed in a public rulemaking file on an ongoing basis -- like the rulemaking agencies do (not after publication in the Federal Register as the Reagan/Bush Adminsitration required).

6) There should be a time-limit on regulatory review but it should also be waivable by the President or his designee (the Veep?) on an as-needed basis and any such waiver or extension should be made public and the reasons for it.

# # #

224-3682

3/12/93

TO: John Podesta Senate Gov't affairs Committee
FROM: Linda Gustitus
RE: Regulatory Review

93 MAR 12 A11:10

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# # #

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 13 1986

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES SUBJECT TO EXECUTIVE ORDER NOs. 12291 and 12498

FROM: Wendy L. Gramm, Administrator, OIRA wlg

SUBJECT: Additional procedures concerning OIRA reviews under Executive Order Nos. 12291 and 12498

From the time the President signed Executive Order No. 12291 on February 17, 1981, OMB has worked with the Departments and Agencies to develop and implement various procedures concerning the review of draft rules by the Office of Information and Regulatory Affairs (OIRA). We have also developed trial procedures and supported legislative proposals concerning our reviews as we have gained experience with these Executive Orders. For example last year, we implemented on a pilot basis with the Environmental Protection Agency additional procedures concerning OIRA's communications with persons outside the Federal Government.

We have also supported an American Bar Association Resolution that endorsed the President's regulatory review efforts and recommended that more information concerning our reviews be made available to Congress and the public.

The purpose of this memorandum is to advise you of additional procedures that we have determined, as a matter of administrative discretion, to implement concerning our review of draft rules under Executive Order No. 12291 and to set forth our policy on disclosure of agency regulatory program drafts under Executive Order No. 12498.

Current Procedures

These new procedures supplement our current procedures. As you are aware, Executive Order No. 12291 establishes certain procedures; the Administrative Procedure Act sets forth procedural and substantive requirements that govern agency action; other statutes establish procedures; and OIRA has adopted its own internal rules concerning its review of draft rules under Executive Order No. 12291. Furthermore, Departments and Agencies usually have established rules or practices to implement their rulemaking activities.

Attached to this memorandum are copies of some of the relevant materials concerning our reviews and procedures. Several of the most important features of these current procedures are:

Reviews under Executive Order No. 12291

- Rules must meet statutory requirements. Executive Order No. 12291 reviews cannot result in rules not authorized by law or rules that do not carry out statutory requirements.

- Rulemaking decisions are made by agency heads. Executive Order No. 12291 makes it clear that the rulemaking authority of the agency head is not displaced by the Order.

- Rules must be based on the agency record. Executive Order No. 12291 cannot cause rulemaking decisions that are not supported by the agency rulemaking record. The law requires that all agency decisions must be rationally based on information in the agency record.

- Requirements of Executive Order No. 12291 apply only to the extent permitted by law. If there is a conflict between the Executive Order or the President's regulatory principles in Executive Order No. 12291 and the law, the law governs.

Current OIRA Procedures

- Only the Administrator and Deputy Administrator within OIRA (or someone specifically designated by them) may communicate with someone who is not employed by the Federal Government on regulations submitted to OIRA for review under Executive Order No. 12291.

- Written materials received from anyone not employed by the Federal Government are made available in OIRA's public reading room for review by the public.

- OMB has advised persons who wish to send us information about regulatory proposals to send information to the rulemaking agency, with a copy to us, so that the material may be made a part of the agency record.

- In general, OIRA provides written reasons to the agency whenever OIRA returns a regulation to an agency for further review because it is not consistent with the President's regulatory principles.

- OIRA issues full reports annually on the disposition of all rules reviewed under Executive Order No. 12291, including a list of all returned rules.

New Procedures

1. OIRA will make available, upon written request made to OIRA after publication of an ANPRM or NPRM in the Federal Register, copies of any draft of the ANPRM or NPRM submitted for OIRA's review under Executive Order No. 12291;

2. Similarly, OIRA will make available, upon written request made to OIRA after publication of the final rule in the Federal Register, copies of any draft of the final rule submitted for OIRA's review under Executive Order No. 12291;

3. OIRA will make available, upon written request made to OIRA after the ANPRM, NPRM or the final rule is published in the Federal Register, all written correspondence concerning the draft submitted for OIRA's review under Executive Order No. 12291 that is exchanged between OIRA and the agency head;

These procedures are derived from provisions in S. 2433, as reported from the Senate Governmental Affairs Committee, with Administration support, in 1984. The Report on S. 2433 (No. 98-576, 98th Congress, 2d. Sess.) contains explanatory material as to how these provisions would have been interpreted had S. 2433 been enacted. We will be guided by that material in implementing these first three provisions.

4. OIRA will send EPA copies of all written material concerning EPA rules that OIRA receives from persons who are not employees of the Federal Government;

5. OIRA will advise EPA of all oral communications concerning EPA's rules, e.g., meetings, telephone calls, that OIRA (i.e., the Administrator and Deputy Administrator) has with persons who are not employees of the Federal Government; and

6. OIRA will invite EPA to all scheduled meetings with such persons concerning EPA's rules;

In May 1985, we instituted with EPA on a trial basis other procedures to better conform our Executive Order No. 12291 review procedures to EPA's somewhat unique internal procedures and statutory provisions concerning rulemaking. (See attached letter dated May 30, 1985, Attachment D). These procedures are practical, and EPA believes that they are useful. This Memorandum revises those procedures with EPA and makes them a part of OIRA's current procedures.

(Note: These procedures do not apply to information collection requests under the Paperwork Reduction Act of 1980, even if such requests are a part of a proposed agency rule. Other procedures apply to such matters, see 5 CFR Part 1320.)

7. OIRA will apply these procedures (#4 through #6) to any other Department or Agency that is subject to Executive Order No. 12291 if that agency elects to institute these procedures, or any part of them.

Procedures #4 through #6 presently apply only to EPA. Although patterned upon EPA's statutory and internal procedures nonetheless, OIRA is prepared to extend these procedures to other agencies if the head of the agency so requests.

In addition,

8. OIRA will make available upon written request to OIRA made after the Regulatory Program is published, any agency draft submission sent to OIRA under Executive Order No. 12498;

9. OIRA will continue to publish a complete annual accounting of Executive Order No. 12291 activities;

10. OIRA will make available upon written request to OIRA made after the end of a calendar month, a list of all draft ANPRMs, NPRMs and draft final rules for which OIRA has completed review under Executive Order No. 12291 during the preceding month (and the length of our review for each); and

11. OIRA will place in its public reading room: all written material received from persons outside the Federal Government concerning agency rules; a list of all meetings with persons outside the Federal Government pertaining to rules of an agency if that agency elects to participate in procedure #6; and a list of all other communications with persons outside the Federal Government pertaining to rules of any agency if that agency elects to participate in procedure #5.

These procedures do not provide for exemptions for such matters as national security information, criminal investigation information or confidential business information because we have not received such information during our reviews under Executive Order Nos. 12291 and 12498. If we do receive such information, however, that presents questions of the propriety of its release, we will discuss the matter with the Attorney General and the Senate Governmental Affairs Committee.

These new procedures and OIRA's existing procedures are intended only to improve the internal management of the Federal Government, and are not intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers or any person.

Attachments

A - Department of Justice/OLC Opinion dtd 2/13/81
B - Executive Order No. 12291
C - Executive Order No. 12498
D - OIRA Procedures #3

RUSH

THE WHITE HOUSE
WASHINGTON

TO SALLY KATZEN
BOB DAMUS
OMB

IS THIS OKAY WITH YOU?

Jack Quinn

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

March 15, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-160

93 MAR 15 AM 11:34

TO: Legislative Liaison Officer -

AGRICULTURE - Marvin Shapiro - (202)720-1516 - 312
COMMERCE - Michael A. Levitt - (202)482-3086 - 324
ENERGY - Bob Rabben - (202)586-6718 - 209
HHS - Frances White - (202)690-7760 - 328
HUD - Edward J. Murphy, Jr. - (202)708-1793 - 215
INTERIOR - Ralph Hill - (202)208-6706 - 329
JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
STATE - Matt Winslow - (202)647-4463 - 225
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
TREASURY - Richard S. Carro - (202)622-1146 - 228
CEA - Francine Obermiller - (202)395-5036 - 242
EPA - Thomas C. Roberts - (202)260-5414 - 326
GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Elizabeth Lindemuth - (202)456-6630 - 429
OPM - James N. Woodruff - (202)606-1424 - 331
FTC - Williams Prendergast - (202)326-2195 - 313

FROM: JAMES J. JUKES (for) *for Jim Jukes*
Assistant Director for Legislative Reference

OMB CONTACT: GERRI RATLIFF (395-3883)
Secretary's line (for simple responses): 395-3454

SUBJECT: SBA Proposed Report RE: HR 830, Regulatory Flexibility Amendments Act of 1993

DEADLINE: March 19, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Jeff Hill
Peter Weiss
Don Arbuckle
Doug Criscitello
Adrien Silas
Vince Foster
Bruce Reed
Bob Damus
Steve Aitken
Ahmad Al-Samarrie
Katie McGinty
Jim MacRae
Jack Quinn

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: GERRI RATLIFF
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3883
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

SUBJECT: SBA Proposed Report RE: HR 830, Regulatory Flexibility Amendments Act of 1993

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No objection

_____ No comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

SBA

Draft

Congressman Thomas W. Ewing
1632 Longworth Building
Washington, D.C. 20515

Dear Congress Ewing:

I am pleased to see that the Regulatory Flexibility Amendments Act of 1993, H.R. 830, has garnered so much bi-partisan support from your colleagues and the small business community.

The Regulatory Flexibility Act (RFA) has played an important role in many rulemakings by insuring that small business' understanding and ability to comply with federal regulations is properly considered during the rulemaking process. However, despite the RFA, all too often the burdens of small business have been underestimated or ignored because there is no enforcement mechanism. I believe the amendments you are proposing, especially those dealing with judicial review and inclusion of indirect effects of regulation within the ambit of RFA consideration, would lessen the excessive cost of government regulation on small business.

I understand that there is some concern within the government about the potential for increased litigation that would be created by H.R. 830, but I believe the added procedural opportunity afforded to small business to pursue regulatory relief is well worth the extra care necessary in issuing rules. These changes will ensure proper agency review of proposed rules by subjecting their small business regulatory analyses to the same kind of judicial scrutiny as other regulatory assumptions, analyses and decisions.

Although I strongly endorse the aforementioned provision, I do have some reservations about the mechanics of prepublication review of agency rulemakings by the Chief Counsel for Advocacy at the Small Business Administration. However, with some modifications, this section could add to the effectiveness of the RFA.

I look forward to working with Congress on this legislation and hope we can act quickly to effect this necessary change.

[Signature]

BILL TEXT Report for H.R.830
As introduced in the House, February 4, 1993

I

103d CONGRESS
1st Session

H. R. 830

To amend title 5, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
February 4, 1993

Mr. Ewing (for himself, Mrs. Meyers of Kansas, Mr. LaFalce, Mr. Skelton, Mr. Combest, Mr. Goodling, Mr. Ramstad, Mr. Shays, Mr. Doolittle, Mr. Montgomery, Mr. Penny, Mr. Baker of Louisiana, Mr. Kyl, Mr. Lightfoot, Mr. Lehman, Mr. Bereuter, Mr. Flake, Mr. Zeliff, Mr. Pete Geren of Texas Mr. Poshard, Mr. Gilman, Mr. Danner, Mr. Sam Johnson of Texas, Mr. Machtley, Mr. Dornan, Mr. DeLay, Mr. Torkildsen, Mr. Porter, Mr. Burton of Indiana, Mr. Hefley, and Mr. Sisisky) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 5, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "Regulatory Flexibility Amendments Act of 1993".

SEC. 2. JUDICIAL REVIEW.
(a) In General.--Section 611 of title 5, United States Code, is repealed
(b) Conforming Amendment.--The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by striking the item relating to section 611.

SEC. 3. CONSIDERATION OF DIRECT AND INDIRECT EFFECTS OF RULES.
(a) In General.--Title 5, United States Code, is amended by inserting

after section 610 the following new section:

"Sec. 611. Consideration of direct and indirect effects of rules

"In determining under this chapter whether or not a rule is likely to have a significant impact on a substantial number of small entities, an agency shall consider both the direct and indirect effects of the rule.".

(b) Conforming Amendment.--The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by inserting after the item relating to section 610 the following:

"611. Consideration of direct and indirect effects of rules.".

SEC. 4. RULES OPPOSED BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) In General.--Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) Statement of Opposition.--

"(1) Transmittal of proposed rules and initial regulatory flexibility analysis to sba chief counsel for advocacy.--On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration--

"(A) a copy of the proposed rule; and

"(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

"(2) Statement of opposition.--On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of opposition of the proposed rule.

"(3) Response.--If the Chief Counsel for Advocacy transmits to an agency a statement of opposition to a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.".

(b) Conforming Amendment.--Section 603(a) of title 5, United States Code, is amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

SEC. 5. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

File

March 25, 1993

MEMORANDUM

TO: Mss. Laura Tyson
Carol Rasco
Katie McGinty
Sally Katzen

Messrs. Leon Panetta
Tony Lake
Robert Rubin
Jack Gibbons

FROM: Jack Quinn
Counsel to the Vice President

RE: **Regulatory Review**

Attached is a discussion draft of a proposal for regulatory planning and review. This approach has been reviewed and approved in concept by the President and the Chief of Staff, and they and the Vice President expect us to build upon it and report back to them with a more expansive set of recommendations.

In order to begin the process of developing this proposal further, we will meet at 3:30 p.m. on Monday, March 29, in the Vice President's ceremonial office (Rm. 272-OEOB). If you cannot attend, you are welcome to send a designee.

Many thanks.

Jack Quinn
J.Q.

Attachment

cc: Mack McLarty
Mark Gearan
Alice Rivlin
Bernard Nussbaum
John Podesta
Greg Simon
Phil Lader
Bruce Reed
Joe Stiglitz
Ellen Seidman

March 26, 1993

Regulatory Review Reform

Regulatory review reform is a vital part of both our commitment to put people first and our mission to reinvent government. This document sets forth an organizational framework to govern regulatory review in the Clinton-Gore Administration. It also incorporates and supplements the attached regulatory review principles drafted by OMB.

1. In the future, regulatory review must be carried out within the framework of a process that reflects major reform. Among other changes, the process must be more open to public view than has been the case in the recent past. And, the process must be accessible on equal terms to all interested parties; it must not provide special access -- as it has in the past -- to narrow interests whose goal is to subvert agency implementation of statutory mandates. The process must also be streamlined to minimize the delays it creates in the rulemaking process. Finally, regulatory review must be guided by the policy objectives of the new Administration and a regulatory philosophy that encourages innovation, flexibility and negotiation in the rulemaking process.
2. On a day-to-day basis, the regulatory review process should be carried out by OIRA. The work of OIRA should

be guided and supplemented by a regulatory planning and review committee that would have the following functions:

a. to review, on a periodic basis, the regulatory agendas and priorities of the departments and agencies in order to (i) ensure that they reflect the President's policies and (ii) identify emerging regulatory issues that are likely either to create conflict within the government or to have exceptionally significant effect on the economy, the environment, public health or safety, American competitiveness or competition or the efficient functioning of markets;

b. to facilitate resolution of matters that create conflicts between departments, or between OMB and a department; monitor the regulatory process with regard to exceptionally significant initiatives; encourage the use of negotiated rulemaking and other innovative regulatory techniques; and

c. to provide to the President recommendations for his resolution of regulatory conflicts that do not lend themselves to resolution at the OIRA or review committee levels.

The committee process of reviewing rulemaking proceedings would be available only to heads of government agencies, the OMB Director and the Director

of OIRA. Private parties would not be entitled to seek review of regulatory matters at the White House level.

3. The planning and review committee would be chaired by the Vice President and include the Chief of Staff (or his deputy); the Chair of the Council of Economic Advisers (or a member of the Council designated by the Chair); the Director of Office of Management & Budget (or his deputy); the Director of the National Economic Council (or his designee); the Domestic Policy Adviser (or her deputy); the National Security Advisor (or his deputy); the Director of the Office of Science & Technology Policy; the Director of the Office on Environmental Policy; and any other agency and Departmental representatives as are invited by the Vice President to serve on an ad hoc basis. Members of the committee would be permitted to act through an authorized designee, and the committee would have a small staff commensurate with its modest responsibilities.

4. As an initial matter, the committee should form a working group of staff designees to make recommendations to the committee with respect to implementing the proposals described above as well as --

a. the details of a new Executive Order to replace or revise the Orders that presently govern the regulatory review process;

b. the process by which the regulatory agendas and priorities required of each Department and agency will be prepared, submitted, evaluated and acted upon by the committee;

c. the procedures by which disputed or exceptionally significant regulatory issues are identified and brought before the committee (or review subcommittees made up of some, but not necessarily all, committee members or their designees); and

d. the manner in which the regulatory review process will be opened to public scrutiny and made more accountable by the application of "sunshine" rules that, among other things, require the disclosure of all non-governmental contacts on regulatory review matters while preserving the confidentiality of intra-governmental deliberations and communications.

5. The new regulatory review Executive Order should outline a philosophy of openness, efficiency, economy, fairness and "putting people first." As an integral part of the effort to reinvent government, the new review process should stress the Administration's commitments to --

a. vindicating constitutional and statutory rights;

b. making the process more responsive and accessible to the citizenry it serves;

c. the efficient functioning of markets and the economy;

d. improved quality of life, preservation of the natural environment, efficient and rational use of the world's resources, enhancing the health and safety of the American people as well as ensuring that those who must comply with regulatory requirements are not burdened by unnecessary on unjustified costs of compliance.

e. streamlining the regulatory process to reduce significantly the number of proposed rules reviewed by OIRA each year;

f. discouraging unnecessary litigation and administrative proceedings; and

g. easing the burden on state and local government.

PRINCIPLES OF REGULATORY REVIEW

- A new executive order should be issued that would replace existing executive orders on regulatory review. The new executive order would implement the regulatory principles set forth below.

- The purpose of regulatory review is to help regulatory agencies carry out their statutory functions effectively and in a manner consistent with the Administration's overall regulatory policy; it should not usurp or duplicate agency regulatory functions.

- Regulatory review should resolve conflicts among federal agencies to ensure that citizens are not burdened with duplicative or inconsistent regulations emanating from different agencies.

- Regulatory review should reduce the total burden of regulation on the economy by ensuring that the costs of regulations are justified by their benefits, that innovative and less costly approaches to meeting policy goals have been considered, and that regulations are as simple and easy to understand as possible.

- Regulatory review can provide a useful management function not only by identifying in advance particularly significant rules so that they may be issued and reviewed in an orderly and expeditious manner, but also in identifying those areas where a number of agencies have a legitimate interest.

- Regulatory review should be as expeditious as possible; deadlines for review should be set and enforced. To ensure timely review, there should be early consultation and coordination between OMB and the agencies.

- Regulatory review should be fair; there should be no opportunity for private parties to subvert the regulatory process, and the procedures adopted should reflect the value of openness.

- OMB and the agencies should strive to resolve all issues raised during review without the necessity of appeal. In the exceptional case where issues remain unresolved after OMB review, those issues should be presented for resolution to the Vice President, or if necessary, to the President.

CLOSE HOLD

Document No._____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/6/93 ACTION/CONCURRENCE/COMMENT DUE BY: 7/9 4:00 p.m.

SUBJECT: EXECUTIVE ORDER ON REGULATORY REVIEW

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	✓	MONTOYA	☐	☐
McLARTY	☐	✓	NUSSBAUM	✓	☐
GEARAN	☐	☐	PASTER	✓	☐
NEEL	☐	☐	RASCO	✓	☐
PANETTA	✓	☐	RUBIN	✓	☐
EMANUEL	☐	☐	SEGAL	☐	☐
GIBBONS	✓	☐	STEPHANOPOULOS	✓	☐
HALE	☐	☐	TYSON	☐	☐
HERMAN	☐	✓	VARNEY	☐	✓
LAKE	✓	☐	WATKINS	☐	☐
LINDSEY	☐	☐	WILLIAMS	☐	☐
McGINTY	☐	☐	_____	☐	☐

REMARKS:

THIS IS THE MATTER JACK QUINN DISCUSSED AT THIS MORNING'S STAFF MEETING. PLEASE PROVIDE COMMENTS TO MY OFFICE AND KUMIKI BY 4:00 p.m. FRIDAY 7/9.

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

July 2, 1993

CLOSE HOLD

93 JUL 3 A9:48

MEMORANDUM FOR THE REGULATORY REVIEW WORKING GROUP

FROM: JACK QUINN

SUBJECT: DRAFT EXECUTIVE ORDER ON REGULATORY REVIEW

Attached is our proposed Executive Order on regulatory review. Please treat this as highly confidential, and do not circulate it beyond those immediately working on this issue in your offices. (We will be vetting this proposed Order over the next two weeks, and we hope to be able to present to the President a consensus recommendation from the Working Group.)

If you have any questions, please feel free to call Kumiki Gibson or me at ext. 7022.

Thank you.

Jack Q.

Attachment

Distribution: Bill Burton
David Doniger
Sally Katzen
Bob Knisely
James Kohlenberger
Linda Lance
Jeff Lubbers
Mark Middleton
John Podesta
Heather Ross
Ellen Seidman
Greg Simon
Joseph Stiglitz
Paul Weinstein

CLOSE HOLD (JULY 1, 1993 DRAFT)

EXECUTIVE ORDER NO. _____

REGULATORY PLANNING AND REVIEW

The American people deserve a regulatory system that works for them, not against them: a regulatory system that advances their health, safety, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; and regulations that are sensible, understandable, consistent, and effective. We do not have such a regulatory system today.

With this Executive Order, the federal government begins a program to reform and make more efficient the regulatory process. The objective of this Order is to restore the integrity and legitimacy of regulatory review and oversight, for both new and existing regulations, and to make the process more open and accessible to the public. The regulatory process shall be conducted so as to best serve the American people, and with due regard for the discretion that has been entrusted to federal agency expertise and applicable law.

Accordingly, by the authority vested in me as President of the United States, it is hereby ordered as follows:

Section 1. *Statement of Regulatory Philosophy and Principles.*

A. *The Regulatory Philosophy.*

Federal agencies shall promulgate only such regulations as are required by law or made necessary by compelling public need, including consequential failures of the private markets. In deciding whether and how to regulate, agencies shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall include quantified measures (to the fullest extent that these can be usefully estimated) plus qualitative measures that consider values that do not lend themselves to quantification. In choosing among alternative regulatory approaches, agencies shall select those approaches that maximize the net benefits, including potential economic, environmental, public health and safety, or other advantages, to the American people without imposing unjustifiable costs, burdens, or other disadvantages.

B. *The Principles of Regulation.*

1. The decision whether to regulate shall, to the extent permitted by law, be based on the following principles:

a. The agency shall assess the significance of the problem the regulation is intended to correct.

b. The agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) can be modified to achieve the intended regulatory goal more effectively.

c. The agency shall assess both the costs and benefits of the intended regulation based on the best reasonably obtainable scientific, technical, and economical information and, recognizing that some costs and benefits are not easily quantifiable, make a judgment as to whether the benefits of the regulation outweigh its costs.

d. The agency shall choose the regulatory approach that maximizes the net benefits to society.

e. The agency shall assess the effects of federal regulations on and, as appropriate, harmonize such actions with related state and local governmental functions.

2. The design of each regulation shall, to the extent permitted by law, be based on the following principles:

a. Each agency shall identify and assess alternatives to direct regulation, such as designing ways of ensuring that those who are regulated internalize the costs of their actions; using marketable permits; or providing information upon which choices can be made by the public.

b. When feasible, each agency shall choose the regulatory approaches that reshape market incentives to encourage the desired behavior.

c. In considering a new regulation, the agency shall assess its impact in the context of existing regulations -- not only its own, but all relevant federal, state, and local regulations -- on individuals, families, small businesses, firms, industries, governments, and the economy as a whole, and seek to

enhance the effectiveness of each new regulatory action within that context.

d. Each agency shall avoid, to the extent possible, inconsistent, incompatible, or duplicative regulations.

e. Each agency shall tailor its regulatory actions to impose the least burden on individuals, businesses, and other entities (including small businesses and governmental entities).

f. Regulations shall be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation.

g. Each agency shall assess enforcement costs and the possible consequences of non-compliance and design regulations so to minimize enforcement and compliance costs.

h. When there are reasonably reliable, enforceable measures of the end result desired by a regulation, the agency shall prefer performance standards to regulations that specify the manner of compliance.

i. In achieving regulatory goals, the agency shall seek to maximize the net benefits to society and use the most cost-effective approach, including considerations of administrability, enforceability, consistency, predictability, flexibility, equity, and fairness.

Section 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the federal government's regulatory system best serves the American people.

A. *The Agencies.* Federal agencies are the repositories of substantive expertise and experience. They are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the Administration's priorities, and the principles set forth in this Executive Order.

B. *Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with the Administration's priorities and the principles set forth in this Executive Order and that decisions made by one agency do not conflict with the policy or action taken or planned by another agency. The Office of Management and Budget ("OMB") shall carry out that function and, to the extent permitted by law, provide guidance to agencies and assist the President, the Vice President, and the regulatory policy advisors to the President in regulatory planning and in reviewing individual regulations, as provided by this Executive Order.

C. *The Vice President.* The Vice President shall oversee the development and presentation of regulatory policy, planning, and review recommendations to the President and otherwise ensure that the objectives of this Executive Order are realized. In fulfilling his responsibilities under this Executive Order, the Vice President shall be assisted by such regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as he may, from time to time, consult.

Section 3. *Definitions.* For purposes of this Executive Order:

A. "Advisors" refers to the regulatory policy advisors to the President, who include: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President on Science and Technology; (7) the Deputy Assistant to the President and Director of the Office on Environmental Policy; (8) the Chief of Staff; (9) the Administrator of the Office of Information and Regulatory Affairs ("OIRA"), who shall coordinate communications relating to this Executive Order among the agencies, OMB, the other Advisors, and the Office of the Vice President; and (10) the Vice President's senior counsel, who shall serve as counsellor to the Advisors in connection with the activities relating to this Executive Order.

B. "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. § 3502(1).

C. "Director" means the Director of OMB.

D. "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

1. Regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. §§ 556, 557;

2. Regulations that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of goods;

3. Regulations that are limited to agency organization, management, or personnel matters; or

4. Any other category of regulations exempted by OIRA.

E. "Regulatory action" means any action by an agency related to the development of a regulation or rule that ordinarily (under the agency's own rules and procedures or the Administrative Procedure Act) would be published in the Federal Register or otherwise promulgated to the public.

F. "Significant regulatory action" means any regulatory action that is likely to result in a rule that may --

1. Have an annual effect on the economy of $100 million dollars or more or any other important effect on the economy, a sector of the economy, or state, local, or tribal governments;

2. Have an important effect on a large number of individuals or entities, the natural environment, or the depletion of natural resources;

3. Create a serious inconsistency or interfere with another action taken or planned by another agency;

4. Substantially alter the budgetary impact of entitlements, grants, or loan programs or the rights and

obligations of recipients thereof; or

5. Raise important legal or policy issues arising out of legal mandates, the Administration's priorities, or the principles set forth in this Executive Order.

Section 4. *Planning Mechanism.* In order to have a coherent regulatory program; to provide for coordination of regulations; to maximize consultation and the resolution of potential conflicts at an early stage; to involve the public in regulatory planning; and to ensure that new or revised regulations promote the Administration's priorities and the principles set forth in this Executive Order; these procedures shall be followed, to the extent permitted by law:

A. Within thirty days of the date of this Executive Order, the Administrator of OIRA shall convene a Regulatory Working Group, that shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group. The Regulatory Working Group shall serve as a forum to assist agencies in identifying and analyzing regulatory issues (including methodologies and procedures) that affect more than one agency. The Working Group shall meet at least quarterly and may meet as a whole or in sub-groups of agencies with interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA,

the Administrative Conference of the United States, or any other agency.

B. Early in each year's planning cycle, the Vice President will convene a meeting of the Advisors and the heads of agencies to develop a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

C. By April 1st of each year, each agency shall create a Regulatory Plan ("Plan") of significant regulatory actions that the agency expects to issue in proposed or final form in the next fiscal year or thereafter, including any review of existing significant regulations. The Plan shall be approved personally by the agency head and shall contain at a minimum:

1. A statement of the agency's regulatory objectives and priorities;

2. A summary of each planned significant regulatory action and the anticipated effects that it would have;

3. A summary of the legal basis for each such action, including whether any aspect of the action is mandatory;

4. A statement of the need for each such action and how it relates to the Administration's priorities and to the principles set forth in this Executive Order;

5. The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

6. The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

D. The agency shall forward its Plan to OIRA by April 1st of each year.

E. OIRA shall, by April 10th of each year, circulate all agency Plans to other affected agencies, the Advisors, and the Vice President.

F. If OIRA determines that a planned regulatory action of an agency is inconsistent with the Administration's priorities or the principles set forth in this Executive Order or is in conflict with the policy or action taken or planned by another agency, OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

G. An agency head who determines that a planned regulatory action of another agency conflicts with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

H. The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, render recommendations as to the need for further consideration or inter-agency coordination.

I. OIRA shall cause to be published all submitted Plans, as may be modified by the head of the issuing agency, by June 30th of each year. In this publication, OIRA shall invite the public to comment on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the

public, or confer any unclaimed benefits on the public. The public shall be asked to send all such comments to the issuing agency, with a copy to OIRA.

Section 5. *Existing Regulations.* In order to reduce the regulatory burden on the American people, their families, their communities, and industries; to verify that regulations promulgated by the executive branch of the federal government are compatible with one another; and to ensure that all regulations are consistent with the Administration's priorities and the principles set forth in this Executive Order, within applicable law:

A. Within ninety days of the date of this Executive Order, each agency shall submit to OIRA a program (which shall include its schedule for further action with respect to specific regulations) under which the head of the agency will periodically and selectively review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective, less burdensome, and in greater alignment with the Administration's priorities and the principles set forth in this Executive Order. The public should direct any comments regarding the review of existing regulations to the appropriate agencies.

B. Any significant regulation selected for review shall be designated in the agency's annual Plan. If the agency determines after review that modification or elimination is warranted, the agency shall initiate appropriate procedures to achieve such

modification or elimination.

C. The Vice President, in consultation with the Advisors, may identify other existing regulations, or groups of regulations, that are appropriate for review and reconsideration under this Executive Order. The relevant agency or agencies shall review any regulation, or group of regulations, so identified and (1) undertake the appropriate procedures to modify or eliminate the regulation, or group of regulations, or (2) explain to the Vice President the decision not to do so.

Section 6. *Centralized Review of Regulations.* The following guidelines shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(10), and those agencies specifically exempted by the Administrator of OIRA:

A. *Agency Responsibilities.* Each agency shall, consistent with its own rules and regulations, provide the public with meaningful participation in the regulatory process. To the extent feasible, each agency shall seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation, including, where appropriate, state and local elected officials, before issuing a Notice of Proposed Rulemaking. Each agency shall also afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than sixty days. Each agency

is also directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. Finally, in addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act and other applicable law, each agency shall adhere to the following procedures:

1. On the first day of each month, each agency head shall send OIRA a brief description of --

a. each significant regulatory action that the agency intends within the next sixty days to submit to OIRA for review (as provided for in paragraphs 3 and 4 of this Section); and

b. each other regulatory action that the agency intends to publish in the Federal Register or otherwise promulgate to the public within the next sixty days.

2. OIRA may waive review of any action identified under paragraph 1(a) of this Section. In addition, OIRA may determine that an action under paragraph 1(b) of this Section may be a significant regulatory action. If within ten working days of an agency's submission, OIRA does not notify the agency of the need to submit for review an action identified in paragraph 1(b) of this Section, the agency need not submit this action to OIRA for review under this Order prior to its publication.

3. For each matter identified as, or determined by OIRA to be, a significant regulatory action, the issuing agency shall --

a. Provide to OIRA the text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

b. Provide to OIRA an assessment of the potential impact of the regulatory action, including an explanation of the manner in which --

(i) The regulatory action is consistent with a statutory mandate or otherwise promotes the Administration's priorities and the principles set forth in this Executive Order;

(ii) The regulatory action does not unduly interfere with state, local, and tribal governments in the exercise of their governmental functions;

(iii) The regulatory action does not violate any constitutional right, including, but not limited to, the freedom of expression and the right to privacy; and

(iv) If the regulatory action will affect private property, whether the effects of the action may require payment of just compensation under the Fifth Amendment of the United States Constitution, as interpreted by the United States Supreme Court.

4. For those matters identified as, or determined by OIRA to be, an economically significant regulatory action, as set forth in Section 3(F)(1), the agency shall also provide the following additional information to OIRA:

a. An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the preservation of the natural environment, and the elimination or reduction of discrimination or bias) together with, wherever feasible, a quantification of those benefits;

b. An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost of the regulatory action, any adverse effects on the efficient functioning of the economy and private markets, health and safety, and the natural environment) together with, wherever feasible, a quantification of those costs; and

c. An assessment, including the underlying analysis, of potentially effective alternatives to the planned regulation, including reasonably viable non-regulatory action, and an explanation as to why the particular alternative was selected.

5. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as outlined in paragraphs B(2) through (4) of

this Section. In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with paragraphs A(3) and (4) of this Section.

6. After the regulatory action has been published in the Federal Register or otherwise promulgated to the public, the agency shall identify and make available to the public the substantive changes between the draft submitted for review and the action subsequently announced in a clear and simple manner.

7. All information provided to the public by the agency shall be in plain, understandable English.

B. *OIRA Responsibilities.* OIRA shall provide meaningful guidance and oversight so as to ensure that each agency's regulatory actions are consistent with the Administration's priorities and the principles set forth in this Executive Order, and that they do not conflict with the policy or action of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

1. OIRA may review actions identified by the agency or by OIRA as significant regulatory actions under paragraph A(2) of this Section.

2. OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

a. For Notices of Inquiry, Advanced Notices of Proposed Rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within ten working days after the date of submission of the draft action to OIRA;

b. For regulatory actions that do not include complex technical, scientific, or economic issues, within sixty calendar days after the date of submission of the information set forth in paragraphs A(3) and A(4) of this Section; or

c. For regulatory actions that involve complex technical, scientific, or economic issues, within ninety calendar days after the date of submission of the information set forth in paragraphs A(3) and A(4) of this Section.

d. The review process may be extended by no more than thirty calendar days upon the written approval of the Director.

3. For each regulatory action that OIRA returns to an agency for further consideration of some or all of its provisions, the OIRA Administrator shall provide the issuing agency a written explanation for such return. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the OIRA Administrator in writing.

4. In order to ensure openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

a. Only the Administrator of OIRA (or a designated subordinate) shall receive communications initiated by persons not employed by the executive branch of the federal government regarding the substance of a regulatory action under review;

b. All substantive communications between OIRA personnel and persons not employed by the executive branch of the federal government regarding a regulatory action under review shall be governed by the following guidelines:

(i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within ten working days of receipt of the communication(s), all written communications, regardless of format, between OIRA and any person who is not employed by the executive branch of the federal government, and the dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any such persons; and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in paragraph B(4)(c) of this Section.

c. OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information

pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under paragraph B(4)(b)(ii) of this Section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the federal government, and the subject matter discussed during such communications.

d. After the regulatory action has been published in the Federal Register or otherwise promulgated to the public, or after the agency has announced its decision not to publish or promulgate the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and agency heads concerning each draft regulatory action submitted for review.

6. All information provided to the public by OIRA shall be in plain, understandable English.

Section 7. *Resolution of Conflicts and Inconsistencies.* The rare disagreements or conflicts among agency heads or between OMB (or OIRA) and any agency that cannot be resolved by OIRA shall be resolved by the President or the Vice President, acting on behalf of the President. Such resolution shall be based upon

recommendations developed by the Vice President, after consultation with the Advisors (or other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). Vice Presidential and Presidential consideration of such disagreements may be initiated by the Director or his designee, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review shall not be undertaken at the request of private parties or their representatives. Vice Presidential and Presidential consideration shall be concluded within sixty days after review by the Vice President and Advisors has begun, at which time the President or the Vice President, acting on behalf of the President, shall notify the affected agency as to whether it may publish the regulatory action at issue.

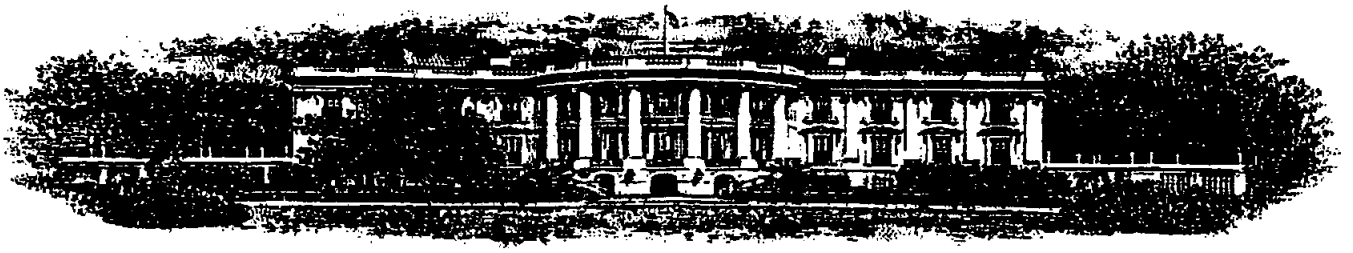
Section 8. *Publication.* An agency shall not publish in the Federal Register or otherwise promulgate to the public any regulatory action that is subject to review under Section 6 of this Executive Order until (1) OIRA notifies the agency that it has waived its review of the action or has completed its review without any requests for further consideration or (2) the applicable time period in Section 6(B)(2) expires without OIRA having notified the agency that it is returning the regulation for further consideration under Section 6(B)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency nonetheless wants to publish or otherwise promulgate a

regulatory action, the head of that agency may request Presidential consideration through the Vice President. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in Section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Section 9. *Judicial Review.* Nothing in this Executive Order shall affect any otherwise available judicial review of agency action. This Executive Order, however, is intended only to improve the internal management of the federal government and is not intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or any person.

Section 10. *Revocations.* Executive Orders 12291, 12498, 12606, 12612, 12630, and 12778; all amendments to those Orders; and any exemptions from those Orders heretofore granted for any category of rule are revoked.

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

TO: Cliff Sloan

FAX NUMBER: x1647

TELEPHONE NUMBER: x7900

FROM: Tom Castleton

TELEPHONE NUMBER: x6611

PAGES (INCLUDING COVER): 10

COMMENTS: How should we respond?

TRANSMISSION REPORT

THIS DOCUMENT (REDUCED SAMPLE ABOVE)
WAS SENT

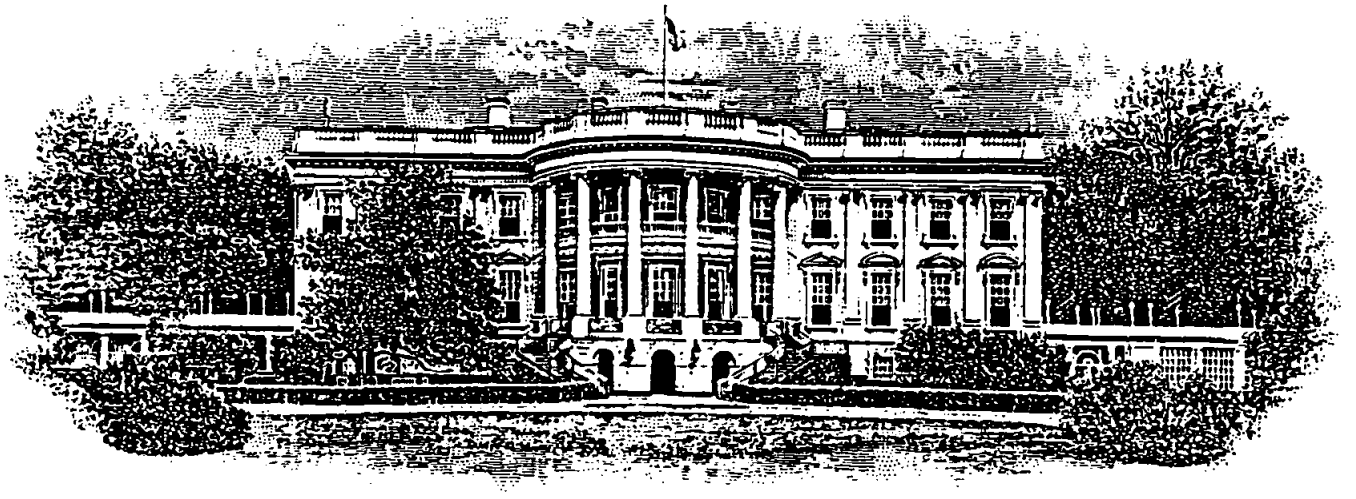
** COUNT **
# 10

*** SEND ***

NO	REMOTE STATION I. D.	START TIME		DURATION	#PAGES	COMMENT
1	12024561647	7- 8-93	10:10	5'55"	10	
			TOTAL	0:05'55"	10	

XEROX TELECOPIER 7020

The White House



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FROM: Tom Castleton

TELEPHONE NUMBER: x6611

PAGES (INCLUDING COVER): 10

COMMENTS: How should we respond?

CLOSE HOLD

Document No._____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 7/7/93 ACTION/CONCURRENCE/COMMENT DUE BY: 7/9 4:00p.m.

SUBJECT: SECTION BY SECTION MEMO ON THE DRAFT EXECUTIVE ORDER ON REGULATORY REVIEW

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	✓	MONTOYA	☐	☐
McLARTY	☐	✓	NUSSBAUM	✓	☐
GEARAN	☐	☐	PASTER	✓	☐
NEEL	☐	☐	RASCO	✓	☐
PANETTA	✓	☐	RUBIN	✓	☐
EMANUEL	☐	☐	SEGAL	☐	☐
GIBBONS	✓	☐	STEPHANOPOULOS	✓	☐
HALE	☐	☐	TYSON	☐	☐
HERMAN	☐	✓	VARNEY	☐	✓
LAKE	✓	☐	WATKINS	☐	☐
LINDSEY	☐	☐	WILLIAMS	☐	☐
McGINTY	☐	☐	_____	☐	☐

REMARKS: YOU RECEIVED A COPY OF THE DRAFT EXECUTIVE ORDER ON 7/6.

PLEASE RETURN ANY COMMENTS TO MY OFFICE BY 4:00 p.m. FRIDAY JULY 9.

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

OFFICE OF THE VICE PRESIDENT

WASHINGTON

July 7, 1993

MEMORANDUM FOR WHITE HOUSE SENIOR STAFF

FROM: JACK QUINN

RE: PROPOSED EXECUTIVE ORDER ON REGULATORY REVIEW

As many of you already know, when the President abolished the Competitiveness Council, he asked the Vice President to prepare recommendations for a new process of regulatory review. At the direction of the Vice President, I convened an informal Working Group -- comprised of representatives of the Office of Management and Budget/Office of Information and Regulatory Affairs, the National Economic Council, the Council of Economic Advisors, the Domestic Policy Council, the National Performance Review, the Administrative Conference of the United States, the Office on Environmental Policy, and the Office of the Vice President -- to organize a range of alternative approaches to this issue. In March, I reported on the progress of the Working Group to the President and Vice President and outlined a general framework for a new regulatory review process. The President and Vice President endorsed that general framework and directed the Working Group to flesh out proposed particulars of the new process.

The attached draft Executive Order on Regulatory Planning and Review is based on that framework and reflects the disparate perspectives and the ultimate agreement of our Working Group, as well as the views of the many representatives of the business community, public interest groups, and federal regulators with whom we met. The process we propose in this draft Order has three primary components: (1) regulatory planning and coordination; (2) OMB, Vice Presidential, and Presidential review; and (3) reconsideration of existing regulations that may have outlived their usefulness, but continue to burden the American economy.

PRINTED ON RECYCLED PAPER

The proposed process represents a clean break with the past. It differs in significant ways from the scheme developed during the Reagan/Bush Administrations:

- Our Executive Order enhances government accountability by, for example, clearly delineating the responsibilities of the various entities involved in the process, establishing tight time limits for OIRA and Presidential review, requiring OIRA to justify in writing its objections to a proposed regulatory action, mandating that OIRA and the agencies adhere to certain "sunshine" provisions, and requiring OIRA to maintain a publicly available log that reflects the status of each regulatory action under review.

- This proposed Order enlarges public involvement in the regulatory planning and review process by, for example, requiring agencies to seek the involvement of its customers before drafting a regulation and encouraging public comment at the agency planning stage and the use of consensual mechanisms for developing regulations.

- The draft requires agencies to consider factors that go beyond the traditional notions of costs and benefits, including public health and safety, the environment, the depletion of natural resources, issues of equity and fairness, and other "non-quantifiable" advantages and disadvantages.

- The draft Order attempts to limit the number of regulations that may be reviewed by OIRA, thus reducing delay in the review process. Specifically, under our proposed plan, OIRA may review only those regulations that are significant. (Under the current system, OMB is entitled to review all regulatory actions.)

- Our Executive Order includes specific guidelines for the review of not only new regulations, but of <u>existing</u> regulations as well.

- Under our proposed plan, Presidential and Vice Presidential involvement in the regulatory process is (1) explicit and (2) limited to providing leadership and guidance at the planning stage and, at the request of OIRA and agencies only, resolving conflicts that cannot be resolved by OIRA -- a dramatic departure from the Competitiveness Council's covert process which catered to the interests of affected private parties.

For your convenience, we have summarized (below) each provision of the draft Order.

THE PREAMBLE

The message that we attempt to convey in the Preamble of the draft Executive Order is a "putting people first," reformist message. This Preamble also attempts to exhibit our deference to the agencies and the limited role of OIRA and the White House in the rulemaking process.

SECTION 1: STATEMENT OF REGULATORY PHILOSOPHY & PRINCIPLES

Section 1 of the proposed Executive Order sets forth the Administration's regulatory philosophy: i.e., Agencies should regulate only when necessary and, when doing so, should adopt the most cost-effective approach, using a broad definition of costs and benefits so to include non-quantifiable factors, such as the impact on the economy, environment, and public health and safety.

This Section also details the Administration's "principles" applicable to the decision to regulate and to the design of regulations. Among other things, the principles include the following:

- In achieving regulatory goals, agencies shall seek to maximize the net benefits to society and use the most cost-effective approach, including considerations of administrability, enforceability, consistency, predictability, flexibility, equity, and fairness.

- Agencies shall tailor their regulatory actions to impose the least burden on individuals, businesses, and other entities, including small businesses and governmental entities.

- Regulations must be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation.

SECTION 2: ORGANIZATION

Section 2 of the proposed Executive Order explicitly delineates the parameters of each entity's authority and responsibilities.

Part A establishes that federal agencies are responsible, in the first instance, for designing and issuing regulations that fulfill their statutory mandates and that are consistent with the Administration's priorities and the principles set forth in Section 1 of the proposed Executive Order.

Part B sets forth OIRA's role -- that is, to ensure that the agencies issue regulations that are consistent with the Administration's priorities and regulatory principles and the regulatory actions proposed or taken by other agencies.

In Part C, the President grants to the Vice President the authority and responsibility to oversee the development and presentation of regulatory policy, planning, and review recommendations to him and to otherwise ensure that the objectives of the Executive Order are met. In carrying out these functions, the Vice President shall be assisted by the "regulatory policy advisors," defined to include (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President on Science and Technology; (7) the Deputy Assistant to the President and Director of the Office on Environmental Policy; (8) the Chief of Staff; (9) the Administrator of the OIRA, who shall coordinate communications relating to this Executive Order among the agencies, OMB, the other Advisors, and the Office of the Vice President; and (10) the Vice President's senior counsel, who shall serve as counsellor to the Advisors in connection with the activities relating to this Executive Order.

SECTION 3: DEFINITIONS

Section 3 is virtually identical to the definitions provision of the Reagan/Bush Executive Orders and the Carter Executive Order on regulatory review. The major distinction is the definition of the term "agency."

Under the draft Order, the term "agency" would include, for the first time, both executive branch and independent agencies and departments. (Both the Carter and Reagan/Bush Executive Orders were directed at executive branch agencies only.) Our approach would require independent agencies to adhere to the planning process, which we believe encourages good government by forcing agencies to plan ahead and to consider other agencies in their planning. Independent agencies are, however, explicitly exempted from executive review.

SECTION 4: THE PLANNING MECHANISM

In January 1985, Ronald Reagan issued Executive Order 12498, which established the current regulatory planning process. Under the current process, the head of each agency is required to submit to OMB a draft program of all of the major regulatory actions that it anticipates in the upcoming year. OMB then reviews the draft program to ensure that the planned regulatory actions of one agency do not conflict with those of another and to resolve any conflicts that may exist. After that review, the agency submits a final program, which is circulated to other agencies for their review and input. No regulatory action may be taken (except in emergency situations) unless the Director has approved the action, and the Director may return for

reconsideration any regulatory action that was not included in an agency's final program.

Without question, agency planning imposes discipline on the agencies and provides the Administration with the opportunity to identify problem regulations or groups of regulations at an early stage. It is for this reason that the Group proposes that we maintain this process insofar as it requires agencies to develop and submit for review an annual plan of anticipated regulatory actions.

In order to enhance and streamline the agency planning process, we propose several additional requirements at the planning stage. First, Section 4 requires the Administrator of OIRA to convene a working group -- comprised of the appropriate representatives of the Vice President, the regulatory policy advisors, and agencies -- to identify and discuss cross-cutting (substantive and procedural) regulatory issues. Second, this section requires the Vice President to convene an annual meeting of agency heads and policy advisors to discuss Administration priorities and goals in the upcoming year. Third, under our proposed scheme, an agency is required to submit only a final plan, and an agency may supplement its plan throughout the year. Fourth, the proposed Executive Order invites the public to participate in the planning process by submitting comments on the agencies' plans.

SECTION 5: EXISTING REGULATIONS

We have heard the complaints of the business community about regulations that conflict with each other or are duplicative, out-dated, or obsolete. The proposed Executive Order, therefore, requires agencies to submit to OIRA a program by which to review (periodically) existing regulations. The public is invited to contact an agency with suggestions. In addition, Section 5 provides that the Vice President may, in consultation with the Advisors, identify for the agencies problematic regulations and ask the affected agency to "undertake the appropriate procedures to modify or eliminate the regulation or group of regulations" or explain its decision not to do so.

SECTION 6: CENTRALIZED REVIEW OF REGULATIONS

Section 6 of the proposed Executive Order is the heart of the executive branch regulatory review process.

The current process for executive branch review is set forth in Executive Order 12291. That Order instructs agencies to prepare a regulatory impact analysis ("RIA") for all major rules. This analysis must contain a cost-benefit analysis, an identification of who shall bear the costs and receive the

benefits of the rule, and a description of the alternatives to the proposed rule.

The current system allows the Director of OMB to review the RIAs, as well as non-major rules, and make a determination as to whether any reason exists to intervene with the publication of the regulation. This determination must be made (generally) within sixty days. An agency may not publish a regulation unless it is notified otherwise by the Director of OMB.

The process agreed upon by the Working Group is both similar to and quite different from the current system. It is similar in that it requires agencies to submit for significant regulatory actions information that is similar to, although somewhat broader than, the RIAs currently required for major rules. Like the current process, the scheme outlined in the proposed Executive Order allows OIRA time to review the proposed regulatory action (generally, within sixty days) and grants to OIRA the authority to intervene with publication if it has problems with a proposed regulatory action.

Our process, however, differs significantly from the current scheme in several respects. First, the lines of responsibility and authority are clearly demarcated in the proposed Executive Order: Section 6 of the proposed Executive Order sets forth separately the responsibilities for the agencies and for OIRA.

Second, Part A of Section 6 encourages agencies to involve the public in the rulemaking process at an early stage and recommends the use of consensual mechanisms for rulemaking, such as negotiated rulemaking (commonly known as "reg neg").

Third, in order to limit the number of regulations to be reviewed by OIRA, this provision restricts OIRA review to significant rules only and allows OIRA to waive review of significant regulations -- a significant difference from the current process.

Fourth, at the end of the OIRA review process, OIRA is required to provide in writing the results of its review, including a written justification for the "rejection" of any proposed regulatory action. (This is dramatically different from the current system, which does not require OIRA to explain its decision in writing.)

Fifth, Section 6 contains a "sunshine provision" that requires OIRA to invite the agency head to all meetings concerning a regulation being proposed or contemplated by that agency, to make public all written communications between OIRA and the public, and to disclose the fact of a meeting regarding a particular regulation and the subject matter of that meeting. Most important, perhaps, is the fact that the proposed Executive

Order requires OIRA to maintain a publicly available log that tracks the status of a regulatory action, including if, and if so, when, Presidential consideration was sought for that regulatory action.

SECTION 7: RESOLUTION OF CONFLICTS AND INCONSISTENCIES

Section 7 sets forth the mechanism for dispute resolution. Essentially, either OIRA or the head of the agency issuing the regulation or an agency that has a substantial interest in the regulatory action may seek Presidential consideration. (Unlike the back-door process created by the Quayle Council, under our proposed process, affected private interests may not seek such consideration.) Through Section 7, the President designates the Vice President to review the problem and develop recommendations to the President, after consulting with the Advisors. The Vice President and the President will be allowed sixty days to conduct this review, at which time the President (or the Vice President acting on his behalf) must make a decision as to whether the agency should proceed.

SECTION 8: PUBLICATION

This provision instructs the agency not to publish a regulation submitted for review unless its has the approval of OIRA or, where Presidential consideration has been sought, the President (or the Vice President acting on his behalf).

SECTION 9: JUDICIAL REVIEW

This provision makes clear that the Executive Order is not intended to interfere with any existing rights to judicial review or to create any new rights for review.

SECTION 10: REVOCATIONS

This provision revokes all of the Executive Orders that pertain to regulations that were issued during the Reagan/Bush Administrations. The Group believes that no reason exists to maintain these Orders in light of the fact that the positive aspects of these Orders have been incorporated into the proposed Executive Order.

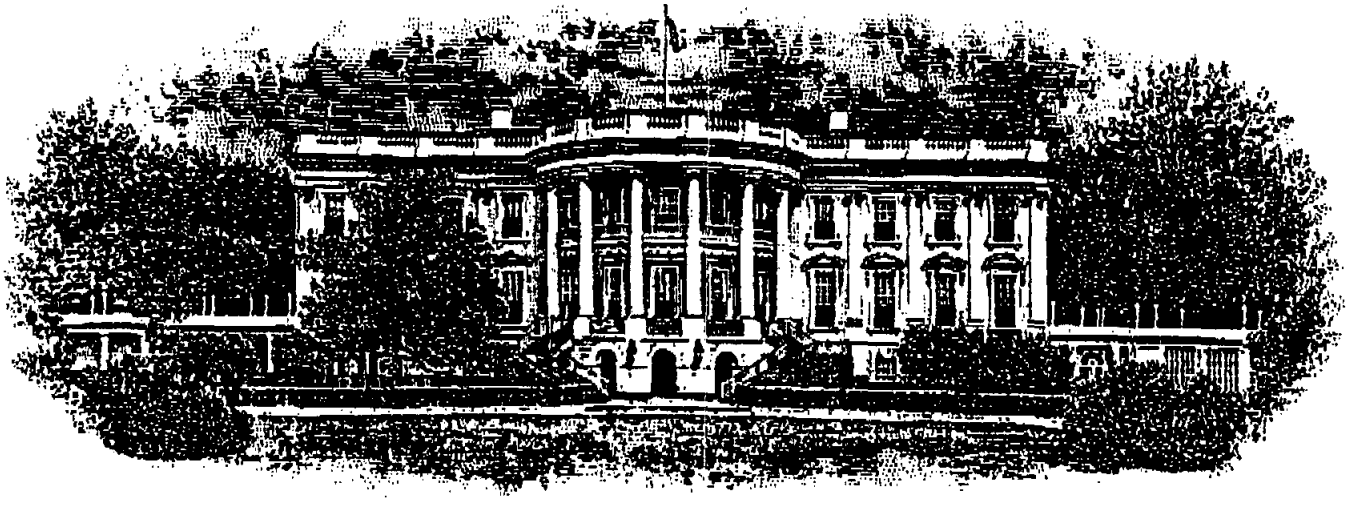
* * *

In sum, the Regulatory Review Working Group believes that the process created by the proposed Executive Order will best serve the American people and the Administration. If you have any comments or suggestions regarding our proposed Order, please contact Kumiki Gibson or me at your earliest convenience; we plan to vet the proposed Order next week to key parties on the Hill and additional representatives of the business and public interest communities.

Jack Q.

Attachment

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

TO: Steve Neuwirth / Clarissa Cerda

FAX NUMBER: x1647

TELEPHONE NUMBER: x7903

FROM: Tom Castleton

TELEPHONE NUMBER: x6611

PAGES (INCLUDING COVER): 12

COMMENTS: The incoming have been referred to Bernie for action. He has not seen them yet, but if you feel that any action is warranted, please discuss the appropriate matter with him.

Document No._____

WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/29/93 ACTION/CONCURRENCE/COMMENT DUE BY: 7:00PM, SEPT. 29

SUBJECT: PROPOSED PREST'L MEMORANDA:
1. REPORT OF REGULATIONS REVIEWED
2. NEGOTIATED RULEMAKING
3. AGENCY RULEMAKING PROCEDURES

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	✓	PASTER	✓	☐
McLARTY	✓	☐	RASCO	✓	☐
NEEL	☐	☐	RUBIN	✓	☐
PANETTA	✓	☐	SEGAL	☐	☐
BAGGETT	☐	☐	SEIDMAN	☐	☐
EMANUEL	☐	☐	STEPHANOPOULOS	☐	☐
GEARAN	✓	☐	TYSON	☐	☐
GERGEN	☐	☐	VARNEY	✓	☐
GIBBONS	☐	☐	WATKINS	☐	☐
HALE	☐	☐	WILLIAMS	✓	☐
HERMAN	☐	☐	CLERK	☐	✓
LAKE	☐	☐		☐	☐
LINDSEY	☐	☐		☐	☐
McGINTY	✓	☐		☐	☐
MONTOYA	☐	☐		☐	☐
NUSSBAUM	✓	☐		☐	☐

REMARKS:
These will be issued in conjunction with the Regulatory Review order tomorrow. Please have comments back ASAP.

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

September 29, 1993

MEMORANDUM FOR THE ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS

FROM: THE PRESIDENT

SUBJECT: REPORT OF REGULATIONS REVIEWED

Today, I issued an Executive order setting forth the Administration's regulatory philosophy; defining a more effective and accountable role for the Executive Office of the President in regulatory planning and review; and establishing the procedures to be followed by agencies and your office in promulgating and reviewing regulations. The review process set forth in the order is designed to assist agencies in issuing better regulations by, among other things, streamlining the review process and enhancing accountability.

In order to ascertain the success of the regulatory review process, I direct you to monitor your review activities over the next six months and, at the end of this period, to prepare a report on your activities. This report shall include a list of the regulatory actions reviewed by OIRA, specifying the issuing agency; the nature of the regulatory action (e.g., advance notice of proposed rulemaking, notice of proposed rulemaking, interim final rule, or final rule); whether the agency or OIRA identified the reviewed regulatory action as "significant," within the meaning of the order; and the time dedicated to the review, including whether there were any extensions of the time periods set forth in the order, and, if so, the reason for such extensions. The report shall include any other information that your office may have with respect to the kind or amount of regulatory actions that were not reviewed by your office. Finally, the report shall identify any provisions of the order that, based on your experience or on comments from interested persons, warrant reconsideration so that the purposes and objectives of this order can be better achieved.

I further direct you to submit this report to the Vice President and me by May 1, 1994 and to publish the report in the *Federal Register*.

September 29, 1993

MEMORANDUM FOR THE EXECUTIVE DEPARTMENTS AND SELECTED AGENCIES
THE ADMINISTRATOR OF OIRA

FROM: THE PRESIDENT

RE: NEGOTIATED RULEMAKING

Today, I issued the Executive order on Regulatory Planning and Review, which sets forth the Administration's regulatory philosophy and establishes the procedures to be followed by agencies in promulgating regulations. This order also enhances public disclosure requirements and public involvement in the regulatory review process. In Section 6(a) of the Order, I direct each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." Consistent with that directive and the recommendation of the National Performance Review on this issue, I further direct each agency, within 90 days of this Order, to (i) identify to OIRA at least one rulemaking which the agency will, within the upcoming year, develop through the use of negotiated rulemaking or (ii) explain to OIRA why the use of negotiated rulemaking will not be feasible in the upcoming year.

I further direct the Administrator of OIRA to publish this memorandum in the *Federal Register*.

September 29, 1993

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE PRESIDENT

RE: AGENCY RULEMAKING PROCEDURES

Today, I issued an Executive order setting forth the Administration's regulatory philosophy; defining a more effective and accountable role for the Executive Office of the President in regulatory planning and review; and establishing the procedures to be followed by agencies and the Office of Information and Regulatory Affairs ("OIRA") in promulgating and reviewing regulations. One primary objective of this order is to streamline the regulatory review process, thus reducing the delay in the developing and promulgating rules.

We cannot, however, reduce delay in the rulemaking process without reforms within the agencies themselves. The National Performance Review team examining the issue found that many agencies require numerous clearances within the agency before a rule is submitted to OIRA for review. (Indeed, one agency found that its internal review process could only be described by using an 18-foot flow chart.) The team also learned that too often agencies use the same internal review procedures for all rules -- regardless of their complexity or significance.

In order to streamline the entire rulemaking process, agencies must utilize internally the most efficient method of developing and reviewing regulations. Accordingly, I direct the head of each agency and department to examine its internal review procedures to determine whether and, if so, how, those procedures can be improved and streamlined. In conducting this examination, the agency or department shall consider the number of clearances required by its review process and whether the review process varies according to the complexity or significance of a rule.

I further direct the head of each agency and department to submit to the Vice President and me, within six months of this memorandum, the results of its examination.

Document No. 037491SS

WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/29/93 ACTION/CONCURRENCE/COMMENT DUE BY: 9:00AM, SEPT 30

SUBJECT: PROPOSED EXECUTIVE ORDER ENTITLED "CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES"

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	✓	PASTER	✓	☐
McLARTY	☐	✓	RASCO	✓	☐
NEEL	☐	☐	RUBIN	✓	☐
PANETTA	☐	☐	SEGAL	☐	☐
BAGGETT	✓	☐	SEIDMAN	☐	☐
EMANUEL	✓	☐	STEPHANOPOULOS	✓	☐
GEARAN	☐	☐	TYSON	☐	☐
GERGEN	☐	☐	VARNEY	✓	☐
GIBBONS	☐	☐	WATKINS	☐	☐
HALE	✓	☐	WILLIAMS	✓	☐
HERMAN	✓	☐	CLERK	✓	☐
LAKE	✓	☐		☐	☐
LINDSEY	✓	☐		☐	☐
McGINTY	✓	☐		☐	☐
MONTOYA	✓	☐		☐	☐
NUSSBAUM	✓	☐		☐	☐

REMARKS:

This needs to be signed tomorrow. Please have any comments back ASAP.

RESPONSE:

JOHN D. PODESTA
Assistant to the President
and Staff Secretary
Ext. 2702

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

September 23, 1993

'27 P10:11

MEMORANDUM FOR THE PRESIDENT

FROM: Leon E. Panetta
Director

SUBJECT: Proposed Executive Order Entitled "Continuance of Certain Federal Advisory Committees"

SUMMARY: This memorandum forwards for your consideration a proposed Executive order that was prepared by the General Services Administration. The proposed order would extend certain Federal advisory committees established by the President to September 30, 1995.

BACKGROUND: The proposed Executive order would extend certain Presidential advisory committees which would otherwise terminate on September 30, 1993 pursuant to the sunset provision of the Federal Advisory Committee Act, as amended. Among other committees, it would extend the: (a) Committee for the Preservation of the White House; (b) President's Committee on the Arts and Humanities; and (c) President's Council on Physical Fitness and Sports.

The order would also revoke certain Executive orders or portions thereof, which established committees that have been terminated or whose work is complete. Among those committees are the: (a) National Commission on America's Urban Families; (b) President's Council on Rural America; and (c) the Vice President's Space Advisory Board.

The order is consistent with the policy established by Executive Order No. 12838, which is entitled "Termination and Limitation of Federal Advisory Committees." The disposition of the individual committees reflects the recommendations of the agencies or entities that sponsored the committees.

None of the affected agencies objects to the proposed Executive order.

RECOMMENDATION: I recommend that you approve the proposed Executive order.

Attachment

U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

September 27, 1993

MEMORANDUM

Re: Proposed Executive Order Entitled "Continuation of Certain Federal Advisory Committees"

The attached proposed Executive order was prepared by the General Services Administration. The Office of Management and Budget, with the approval of the Director, forwarded it to this Department for review with respect to form and legality.

The proposed Executive order would extend certain Presidential advisory committees which would otherwise terminate on September 30, 1993 pursuant to the sunset provision of the Federal Advisory Committee Act, as amended. The order also would revoke certain Executive orders or portions thereof, which established committees that have terminated or whose work is complete.

The disposition of the individual committees reflects the recommendations of the agencies or entities that sponsored the committees. None of the affected agencies objects to the proposed Executive order.

The proposed order is approved with respect to form and legality.

Walter Dellinger

Walter Dellinger
Acting Assistant Attorney General
Office of Legal Counsel

U.S. Department of Justice
Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

September 27, 1993

The President,

The White House.

My dear Mr. President:

I am herewith transmitting a proposed Executive Order entitled "Continuance of Certain Federal Advisory Committees." This proposed Executive Order was prepared by the General Services Administration. The Office of Management and Budget, with the approval of the Director, forwarded it to this Department for review with respect to form and legality.

The proposed Executive Order is approved with respect to form and legality.

Respectfully,

Walter Dellinger
Acting Assistant Attorney General
Office of Legal Counsel

EXECUTIVE ORDER

- - - - - - -

CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1995:

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior);

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor);

(c) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management);

(d) President's Committee on the Arts and Humanities; Executive Order No. 12367, as amended (National Endowment for the Arts);

(e) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor);

(f) President's Committee on Mental Retardation; Executive Order No. 11776, as amended (Department of Health and Human Services);

(g) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation);

(h) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services);

(i) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce); and

(j) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

Sec. 2. The President's Council of Advisors on Science and Technology; Executive Order No. 12700, as amended (Office of Science and Technology Policy), the authority for which expired on June 30, 1993, is hereby reestablished in accordance with the provisions of Executive Order No. 12700, as amended, and shall continue until September 30, 1995.

Sec. 3. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in sections 1 and 2 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 4. The following Executive orders or sections thereof, which established committees that have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12792, establishing the National Commission on America's Urban Families;

(b) Executive Order No. 12813, as amended by Executive Order No. 12815, establishing the President's Commission on the Management of the Agency for International Development (AID) Programs;

(c) Executive Order No. 12720, as amended by Executive Order No. 12783, establishing the President's Council on Rural America;

(d) Executive Order No. 12696, as amended by Executive Order No. 12756, establishing the President's Drug Advisory Council;

(e) Executive Order No. 12687, as amended by Executive Orders Nos. 12741 and 12785, establishing the President's Education Policy Advisory Committee; and

(f) Section 5 of Executive Order No. 12675, establishing the Vice President's Space Policy Advisory Board.

Sec. 5. Executive Order No. 12774 is superseded.

Sec. 6. This order shall be effective September 30, 1993.

THE WHITE HOUSE