

NLWJC - Kagan

DPC - Box 022 - Folder 028

**Environment - Children's Executive
Order [2]**

THE WHITE HOUSE
WASHINGTON

March 31, 1997

MEMORANDUM FOR THE CHIEFS OF STAFF

FROM: Elena Kagan
Kathleen Wallman
Katie McGinty

SUBJECT: Children's Health Executive Order

We are providing for your review a revised version of the proposed executive order on children's health. This version reflects a consensus among White House offices about how best to balance the goals of the initiative and the concerns about implementation that have been raised among federal agencies.

In order to identify any remaining agency concerns that should be considered in deciding whether to move forward with this version of the executive order, CEQ, DPC and NEC will convene a deputies meeting on Wednesday, April 2, at 3:45 p.m. in the Roosevelt Room. Please contact Laura Emmett at 456-5584 to arrange clearance of the appropriate person into the meeting.

THE WHITE HOUSE
WASHINGTON

March 31, 1997

Please Distribute to:

Elaine Shocas	647-5548
Mike Froman	622-0073
John Hogan	616-5117
Anne Shields	208-6956
Greg Frazier	690-2119
Paul Donovan	482-2741
Vince Trivelli	219-7659
Bill Corr	401-5783
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Peter Robertson	260-0279
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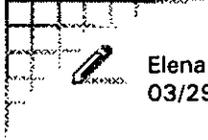
From:

Elena Kagan, DPC
Kathleen Wallman, NEC
Katie McGinty, CEQ

***** Note time and location have been changed*****

Please call Laura Emmett at 456-5584 as soon as possible to confirm your attendance at the mentioned meeting Thursday, April 2, 1997 at 2:30 in the Room 476 OEOB.

Total: 9 pages



Elena Kagan
03/29/97 02:24:52 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: attached

Attached is a memo that should be sent to all chiefs of staff of agencies that are members either of the DPC or of the NEC. (Cathy has the list of our members, and you should be able to get the list of NEC's from Melissa.)

I have picked a time for the reading. Please check if I can actually do it at that time, and also if Kathy and Katie can. If not, find another.

Send the memo out ASAP with the most recent version of the executive order attached to it. (But bring it all in for me to look over and initial first.) You can get the executive order from Mike Fitzpatrick who works for Sally Katzen at OMB's OIRA.

Thanks.


KIDSX.B

Mac Reed

5-3563

Protection of Children from Environmental
Health Risks and Safety Risks

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. Policy.

1-101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because: children's neurological, immunological, digestive and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features, and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Therefore, to the extent permitted by law and appropriate and consistent with the agency's mission, each federal agency:

- (a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and
- (b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

1-102. Each independent regulatory agency is encouraged to participate in the implementation of this Executive order and comply with its provisions.

Sec. 2. Definitions. The following definitions shall apply to this order.

2-201. Federal agency means any authority of the United States that is an agency under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies under 44 U.S.C.

- (a) Secretary of Health and Human Services, who shall serve as a Chair of the Council;
- (b) Administrator of the Environmental Protection Agency, who shall serve as a Chair of the Council;
- (c) Secretary of Education;
- (d) Secretary of Labor;
- (e) Attorney General;
- (f) Secretary of Energy;
- (g) Secretary of Housing and Urban Development;
- (h) Secretary of Agriculture;
- (i) Secretary of Transportation;
- (j) Director of the Office of Management and Budget;
- (k) Chair of the Council on Environmental Quality;
- (l) Chair of the Consumer Product Safety Commission;
- (m) Assistant to the President for Economic Policy;
- (n) Assistant to the President for Domestic Policy;
- (o) Assistant to the President and Director of the Office of Science and Technology Policy;
- (p) Chair, Council of Economic Advisers; and
- (q) Such other officials of Executive departments and agencies as the President may, from time to time, designate. Members of the Task Force may delegate their responsibilities under this order to subordinates.

3-304. Functions. The Task Force shall recommend to the President Federal strategies for children's environmental health and safety, within the limits of the Administration's budget, to include the following elements:

- (a) statements of principles, general policy, and targeted annual priorities to guide the federal approach to achieving the goals of this order;
- (b) a coordinated research agenda for the Federal Government, including steps to implement the review of research databases described in section 4 of this order;

- (c) recommendations for appropriate partnerships among Federal, State, tribal and local governments and the private, academic, and non-profit sectors;
- (d) proposals to enhance public outreach and communication to assist families in evaluating risks to children and in making informed consumer choices;
- (e) an identification of high-priority initiatives that the Federal Government has undertaken or will undertake in advancing protection of children's environmental health and safety; and
- (f) a statement regarding the desirability of new legislation to fulfill or promote the purposes of this Executive order.

3-305. The Task Force shall prepare a biennial report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health risks and safety risks to children. For purposes of this report, cabinet agencies and other agencies identified by the Task Force shall identify and specifically describe for the Task Force key data needs related to environmental health risks and safety risks to children that have arisen in the course of the agency's programs and activities. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. The White House Office of Science and Technology Policy and the National Science and Technology Council shall ensure that this report is fully considered in establishing research priorities.

3-306. The Task Force shall exist for a period of four years from the first meeting. At least six months prior to the expiration of that period, the member agencies shall assess the need for continuation of the Task Force or its functions, and make appropriate recommendations to the President.

Sec. 4. Research Coordination and Integration.

4-401. Within six months of the date of this order, the Task Force shall develop or direct to be developed a review of

existing and planned data resources and a proposed plan for ensuring that researchers and federal research agencies have access to information on all research conducted or funded by the Federal Government that is related to adverse health risks in children resulting from exposure to environmental health risks or safety risks. The National Science and Technology Council shall review the plan.

4-402. The plan shall promote the sharing of information on academic and private research. It shall include recommendations to encourage that such data, to the extent permitted by law, is available to the public, the scientific and academic communities, and all federal agencies.

Sec. 5. Agency environmental health risk or safety risk regulations.

5-501. For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs ("OIRA") for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

- (a) an evaluation of the environmental health or safety effects of the planned regulation on children;
- (b) an assessment of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agency or the public, that provide different degrees of protection to children; and
- (c) an explanation of why the planned regulation is preferable to the identified potential alternative(s).

5-502. In emergency situations, or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the provisions of this section to the extent practicable. For those covered regulatory actions that are governed by a court-imposed or statutory deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for completing the analysis required by this section.

5-503. The analysis required by this section may be included as part of any other required analysis, and shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public, to the extent permitted by law.

Sec. 6. Interagency Forum on Child and Family Statistics.

6-601. The Director of the OMB ("Director") shall convene an Interagency Forum on Child and Family Statistics ("Forum"), which will include representatives from the appropriate Federal statistics and research agencies. The Forum is to produce an annual compendium ("Report") of the most important indicators of the health and well-being of children.

6-602. The Forum shall determine the indicators to be included in the Report and identify the sources of data to be used for the indicators. The Forum shall provide an ongoing review of Federal activity in the collection of data on children and families, and shall make recommendations to improve the coordination of data collection and to reduce duplication and overlap.

6-603. The Report shall be published by the Forum in consultation with the National Institute for Child Health and Human Development. The Forum shall issue the first annual report to the President, through the Director, by July 31, 1997. The report shall be submitted annually thereafter, using the most recently available data.

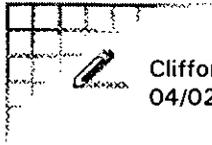
Sec. 7. General provisions.

7-701. This order is intended only for internal management of the Executive Branch. This order is not intended, and should not be construed to create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

7-702. Executive Order 12606 of September 2, 1987 is
revoked.

THE WHITE HOUSE,

*Env-Kids Health
EO*



Clifford J. Gabriel
04/02/97 06:21:39 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Sally Katzen/OMB/EOP
Subject: Environmental and Safety Risks EO

Elena: I thought today's meeting was an excellent airing of agency concerns. The broader children's initiative we have been working on is moving through final NSTC clearance and addresses the concerns of DOJ that the definition in the EO should be broader to include child abuse, etc. Clearly, research associated with the impact of child abuse and other negative influences on children's physical and emotional development are part of this larger initiative. I would narrow the definition in the EO further to address USDA and HHS concerns and focus the regulatory impact of the EO on EPA issues (environmental contaminants), at least initially, since that is where most of the concern lies. Please keep OSTP in the loop when it comes to EOP clearance of the decision memo. Cliff

1/11 Deputies Mtg - Kids EO

1. Treasury - Nervousness - impose reg. regime - don't know how will work. ~~at~~
 Still have to say not doing most protective thing w.r.t. kids
 Alternative: task force should review practice / develop models.
 Way EPA deals w/ kids - commercial (PM rule))
 OK to administrate - pay attn to kids. broader than new

2. EPA - Too small ↑. We've redline to address concerns.
 Weakened already. Only significant rules.
 Meant is: we're going to make spec efforts to protect kids.

3. Commerce - Secondary treasury. Need to evaluate / understand
 Not clear of econ impacts / econ consistency response.
 Can studies / likely impacts - hasn't happened in this process.

4. DOT - Defs - victims of abuse + neglect.
 She would feel strongly - safety risks to children ought to include this.

5. USDA - def is too broad - many naturally occurring substances. EB
 task force to further elaborate what is meant by this.

Pathway - we'll have to initiate rulemaking because of harm to kids!

Slippery slope

Reports - still how biennial or annual?

6. Energy - Don't exclude natural
e.g. - mushrooms only killing kids

7. HHS - No examples - wouldn't change anything.
Just added costs.

1. We try to address now if we think there's a
problem for kids.

2. "Diff degrees of protection"

"Ban tobacco"

Kick Me.

Puts us at risk.

[Follow guidance of 12866 + specifically
apply to children.

Do this study -
apply 12866 specif
to kids.

Jully - More consistent / more routine

Yes, P do this now.

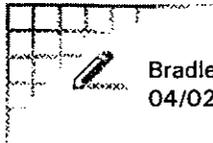
E6 - small businesses too.

Katie - Safe Thinking Act etc does this.

DOT: Do anyway / more has to
Can live w/ it if we have to.

CEA - Like Treasury. Poss of unintended consequences.
Take out b+c. You're going to have
to do that anyway
a compelled by Dec of Policy
b+c make explicit what lawyers will
tell you you have to do.

Env-Kids EO



Bradley M. Campbell
04/02/97 05:34:46 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Children's Health EO

I appreciated your superb conduct of the meeting today. In terms of next steps, are you planning a further meeting of WH types? Or further consults with principals? Or should we proceed directly to a decision/options memorandum? If the last, we would be happy (or at least willing) to volunteer to get a draft in circulation (Diane left behind some raw material for this purpose). Let me know.

Env - Children's Health
EO

March 26, 1997

MEMORANDUM FOR THE CHIEFS OF STAFF (DRAFT)

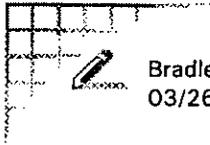
FROM: Elena Kagan
Kathleen Wallman
Katie McGinty

SUBJECT: Children's Health Executive Order

We are providing for your review a revised version of the proposed executive order on children's health. This version reflects a consensus among White House offices about how best to balance the goals of the initiative and the concerns about implementation that have been raised among federal agencies.

In order to identify any remaining agency concerns that should be considered in deciding whether to move forward with this version of the executive order, CEQ, DPC and NEC will convene a meeting of the Chiefs of Staff on _____, March _____, at _____. Please contact _____ to arrange clearance into the meeting.

relevant ~~is~~
senior staff ?



Bradley M. Campbell
03/26/97 08:45:03 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Elwood J. Holstein/OPD/EOP, Kathleen M. Wallman/WHO/EOP
cc: Michael A. Fitzpatrick/OMB/EOP
Subject: Transmittal of Kid's Health EO

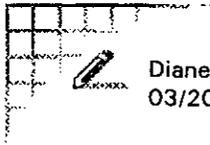


Attac **KIDSX.B** hed hereto is a draft transmittal memo for the OIRA-revised version of the EO. Please advise if it is acceptable (and if a time and place has been set for the COS meeting) and we will circulate for signature and transmit.

EK

MEETING WITH BRUCE REED

- We continue to believe that the Children's Executive Order is a great opportunity for the President to articulate a vision of where government can be at its best. We appreciate the DPC's efforts to move this forward.
- Current debate among the White House and agencies concerns the regulatory portion of this order (section 5), which now would require agencies to consider how protective alternatives are of children, and to explain the basis for a choice. This is very contentious, but we believe it is at the heart of the draft order.
- We also believe that transparency is critical; being honest with the public about how much we know and how much we do not when we claim to be protecting children by government regulations. The draft should be fixed to reflect this.
- We continue to believe that the Administration should endorse legislative principles applying right-to-know at the consumer product level where it affects children. Inter-agency discussions on this appears to have stalled, and we are eager for it to move forward.
- We are also eager to be of any assistance on the Early Childhood Development Conference in April, and believe that several EPA initiatives -- such as our work in cities providing information to families concerning the risks to children from lead poisoning and contaminated fish -- could fit well within that framework.



Diane C. Regas
03/20/97 09:50:49 AM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Sally Katzen/OMB/EOP, Michael A. Fitzpatrick/OMB/EOP
Subject: Kids e.o.

I think that we have resolved all the kids e.o. issues among WH offices--thanks to your investment of time, thought and energy.

At three this morning one more issue was keeping me thinking, and I want to ask for your thoughts on it before we put a WH draft of the e.o. into review.

As currently drafted the application of the analytical requirements is only to rules initiated after signature. I am concerned that the Administration could be criticized for taking away with one hand what it is giving with the other because so many rules take years and years to complete. In addition, it seems to me that 5 years down the road this could get to be a stumbling block from both an implementation perspective and a political one.

I suggest you consider a phase-in in addition to the current 2-202. One good approach would be to expand application of the analytical requirement to rules for which a proposal is published after two years from the date of signature. I think that two years is enough time for agencies to begin the kind of analysis we have discussed, and this change would ensure that we are well on the way to implementation within this term.

I know that we are planning to circulate a final around noon, so please get back to me before then with your thoughts.



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

Env -
Children: EO

March 6, 1997

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus *(Signature)*
General Counsel

SUBJECT: Revised Proposed Executive Order Entitled
"Protection of Children from Environmental Health
and Safety Hazards"

Attached is a revised proposed Executive order entitled "Protection of Children from Environmental Health and Safety Hazards." It was revised based on agency comments received during the January 30, 1997 circulation of the order.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. If you have any comments or objections, they should be received no later than close of business Friday, March 7, 1997. Please be advised that agencies that do not respond by the March 7, 1997, 1997 deadline will be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed of this office (Phone: 395-3563; Fax: 395-7294).

Thank you.

Attachments - Distribution List
Proposed Executive Order

cc: Jack Lew
John Koskinen
Gordon Adams
T.J. Glauthier
Joe Minarik
Ken Apfel
Nancy-Ann Min
Sally Katzen
Steve Kelman
Ed DeSeve
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Bill Halter
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Consumer Product Safety Commission

Honorable Stuart E. Weisberg
Chairman
Occupational Safety and Health Review Commission

Honorable Aida Alvarez
Administrator
Small Business Administration

Honorable Margaret Milner Richardson
Commissioner
Internal Revenue Service

Honorable David A. Kessler
Commissioner
Food and Drug Administration

Honorable Bruce Reed
Assistant to the President for
Domestic Policy

Honorable Janet L. Yellen
Chair
Council of Economic Advisers

Honorable Kathleen McGinty
Chair
Council on Environmental Quality

Honorable John Gibbons
Assistant to the President and Director
Office of Science and Technology Policy

Honorable Gene Sperling
Assistant to the President
for Economic Policy

Honorable Charles Ruff
Counsel to the President

Honorable Todd Stern
Assistant to the President
and Staff Secretary

Honorable Ron Klain
Chief of Staff to the Vice President

DISCUSSION DRAFT -- DO NOT CITE OR RELEASE**EXECUTIVE ORDER NO. __****Protection of Children from Environmental Health and Safety Hazards**

By the authority vested in me as President by the Constitution and laws of the United States of America, including the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and other federal laws for the protection of the public from environmental health and safety hazards, I hereby order as follows:

Section 1. Policy.

1-101. Each Federal agency shall make it a high priority to identify and assess environmental health and safety risks that may disproportionately affect children.

1-102. Each Federal agency shall ensure that it considers, and that its policies, programs, activities, and standards address, disproportionate risks to children that result from environmental health or safety hazards, to the fullest extent appropriate and consistent with the agency's mission and applicable law.

1-103. Each Federal agency should recognize, and contribute to the development of, the growing body of scientific knowledge demonstrating that children may suffer disproportionate risk from environmental health and safety hazards. These risks arise because: children's neurological, immunological, digestive and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children have activity and exposure patterns that are significantly different from those assumed for adults (e.g., greater hand-to-mouth contact, more frequent ingestion of non-food items); children's size and weight may diminish their protection from standard safety features; and children are less able to respond to warnings or otherwise protect themselves from risk.

1-104. Each independent regulatory agency is encouraged to participate in the implementation of this Executive order and comply with its provisions.

Section 2. Definitions. The following definitions shall apply to this order.

2-201. **Federal agency** means any authority of the United States that is an agency under 44 U.S.C. 3502(1). For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-202. **Independent regulatory agency** means an agency defined as an independent

regulatory agencies as defined in 44 U.S.C. 3502(10).

2-203. Covered regulatory action means any substantive regulatory action initiated after the date of this Executive order that is likely to result in a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; and
- (b) Concern an environmental health or safety hazard or risk that may disproportionately affect children.

2-204. Environmental health and safety risks means a risk to health or safety that is attributable to: industrial or agricultural chemicals; physical agents (e.g. heat, radiation); by-products of combustion or industrial processes; foods and nutrients; prescription drugs; activity patterns; products; substance abuse; and social and economic factors.

Section 3. Task Force on Environmental Health and Safety Risks to Children

3-301. There is hereby established the Task Force on Environmental Health and Safety Risks to Children, to further the purposes of this Executive order.

3-302. The Task Force will report to the President in consultation with the Domestic Policy Council, the National Science and Technology Council, and the Council on Environmental Quality.

3-303. Membership. The Task Force shall be comprised of the:

- (a) Secretary of Health and Human Services who shall serve as a Chair of the Council;
- (b) Administrator of the Environmental Protection Agency who shall serve as a Chair of the Council;
- (c) Secretary of Education;
- (d) Chair of the Consumer Product Safety Commission;
- (e) Secretary of Labor;
- (f) Attorney General;
- (g) Secretary of Energy;

- (h) Secretary of Housing and Urban Development;
- (I) Secretary of Agriculture;
- (j) Secretary of Transportation;
- (k) Commissioner of the Food and Drug Administration;
- (l) Director of the Centers for Disease Control and Prevention;
- (m) Director of the National Institutes of Health;
- (n) Chair of the Council on Environmental Quality;
- (o) Director of the Office of Management and Budget;
- (p) [[Assistant to the President for Economic Policy;]]
- (q) Assistant to the President for Domestic Policy;
- (r) Assistant to the President and Director of the Office of Science and Technology Policy;
- (s) Such other officials of Executive departments and agencies as the President may, from time to time, designate.

3-303. Functions. The Task Force on Health and Safety Risks to Children shall develop a coordinated Federal strategy for Children's Health and Safety, to include at least the following elements:

- (a) Statements of principles, general policy, and targeted annual priorities to guide the federal approach to achieving the goals of this Order.
- (b) A coordinated research agenda for the federal government, including steps to implement the plan for the consolidated research database developed pursuant to section 4 of this order, and for a cross-cutting budget that reflects investments of Task Force members to accomplish this research.
- (c) Recommendations for appropriate partnerships among federal, state, and local governments and the private, academic, and non-profit sectors.
- (d) Proposals to enhance public outreach and communication to assist families in evaluating risks to infants and children and in making informed consumer choices;
- (e) An identification of high-priority initiatives for the federal government to undertake in advancing protection of children's health, safety, and environment.

- (f) A statement regarding the desirability of new legislation to fulfill or promote the purposes of this Executive Order.

3-304. The Task Force shall annually prepare a report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health and safety risks to children. For purposes of this report, every Federal agency shall identify and specifically describe for the Task Force all data needs that have arisen in the course of the agency's programs and activities, including regulatory and enforcement actions. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. The White House Office of Science and Technology Policy and the National Science and Technology Council shall ensure that this report is fully considered in establishing research priorities.

3-308. The Task Force shall exist for a period of four years from the first meeting. At least six months prior to the expiration of that period, the member agencies shall assess the need for continuation of the Task Force or its functions, and make appropriate recommendations to the President.

Section 4. Research Coordination and Integration

4-401. Within six months of the date of this order, the White House Office of Science and Technology Policy and the National Science and Technology Committee shall present to the Task Force a proposed plan for establishing, maintaining, and keeping current a consolidated research data base that lists and describes all research conducted or funded by the Federal government that is related to adverse health effects in children and infants resulting from exposure to environmental health, or safety hazards. This plan shall include recommendations to ensure that the activities of the Task Force and other requirements of this Executive order are fully integrated with, and not duplicative of, other current or planned initiatives with respect to children's health and safety.

4-402. The proposed plan shall promote the submission of information on academic and other private research for inclusion in the data base.

4-403. The plan shall include provisions to ensure that the consolidated research data base is available to the public to the extent permitted by law, to the scientific and academic communities, and to all Federal agencies.

Section 5. Agency environmental health or safety regulations.

5-501. For each covered regulatory action submitted to the Office of Information and Regulatory Affairs (OIRA) for review, each Federal agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process (unless prohibited by law):

- (a) An evaluation of the effects of the covered regulatory action on children;
- (b) An assessment of potentially effective and reasonably feasible alternatives to the covered regulatory action that have been identified by the agency or the public and that may more effectively mitigate or reduce risks to children; and
- (c) An explanation of why the covered regulatory action is preferable to the identified potential alternative(s).

5-502. In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the provisions of this section to the extent practicable. For those covered regulatory actions that are governed by a court-imposed or statutory deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for completing the analysis required by this section.

5-503. The analysis required by this section may be included as part of any other required analysis, and shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public.

Section 6. General Provisions.

6-601. This order is intended only for internal management of the Executive Branch. This order is not intended, and should not be construed to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

6-602. Federal agencies should implement this order consistent with, and to the extent permitted by, existing law.

6-603. This order supersedes and revokes Executive order 12606 of September 2, 1987.

6-604. This order shall be effective immediately and shall continue to be in effect until revoked.

The White House
_____, 1997

ELENA

This is on your e-mail. I realize it's very rough, but I do not have a good sense of which kinds of info you most want. I figured it's easier for you to cut & add some spin if you find you need a memo. Good luck. Diane.

MEMORANDUM FOR THE PRESIDENT

FROM:

SUBJECT:

Executive Order to Protect Children from Environmental Health Risks and Safety Risks

ACTION FORCING EVENT

We are presenting for your decision an Executive order that seeks to heighten substantially the protection of children from safety risks and risks in the environment. This executive order will build on your commitment and the First Lady's commitment to protecting children. This policy announcement would add substantially to the upcoming Conference on the Brain.

BACKGROUND

There is a growing body of evidence that demonstrates that children face a disproportionate risk from their environment, and federal policy does not account for this risk. Children's disproportionate risks stem from several fundamental differences between children and adults. Children are still developing, and are neurologically and immunologically more susceptible to certain risks. Children eat, drink and breathe more for their weight, exposing them to greater amounts of contamination and pollution for their weight. Children are less able to protect themselves by use of judgment and skill (e.g. navigating traffic, reading and following warnings).

Concurrent with this new scientific understanding of mechanisms that make children more vulnerable, scientists have documented an alarming increase in the incidence of certain diseases in children which can not be explained with current scientific knowledge.

- The incidence of childhood cancer is going up at the alarming rate of 19.6% per generation, almost 1% per year. Nearly all of this increase is accounted for by leukemia and nervous system tumors. While treatment may be possible, particularly for leukemia, treatments (radiation and chemotherapy) are traumatic and life-defining experiences for children and families.
- The severity of childhood asthma has increased substantially in the last decade, and the mortality has increased 118% percent since 1985. Approximately 10% of hospital care for children is for asthma.

Right title?

FYI NO ONE has reviewed this.

- Accidents are the leading cause of death for non-infant children and teenagers. Transportation accidents alone caused over 9,000 children's deaths and 975,000 children to be injured in 1995. (These figures are for those under age 20.)

While there has been a leap in scientific recognition of these issues, federal policy has been inconsistent in accounting for new information about children. Some agencies are responding vigorously to the challenge posed by the new science--taking action to protect children's health in the new Food Quality Protection Act, accounting for children in the development of new standards for passive restraints in cars, and taking administrative action to protect children from tobacco, lead, and other hazards. While there have been successes, there is no overall, coordinated approach to children's issues that highlights their priority, coordinates federal research and ensures that federal regulations consistently account for disproportionate risks to children.

The proposed Children's Executive Order seeks to fill those gaps with provisions on policy, research coordination and federal regulatory decision making.

Policy: The Children's Executive Order requires all agencies to make the protection of children a high priority in implementing their statutory responsibilities and fulfilling their overall missions.

Research Coordination: The Children's Executive Order creates an interagency Task Force with responsibility to establish a coordinated research agenda, to identify actions the Administration will take to advance the protection of children's environmental health and safety, and to reach out to the public.

Federal Regulatory Analysis: The Children's Executive Order would, for the first time, require agencies to analyze and explain the effects of their rules on children. The primary goal of this provision is to link policy decisions to the emerging science regarding children's environmental health and safety. This provision also ensures accountability to the public and helps agencies to identify their research needs.

DISCUSSION AND RECOMMENDATION

All agencies and White House offices support the Executive Order, however some have raised concerns regarding the wisdom of including the provisions regarding Federal Regulatory Analysis.

Option 1: The Executive Order should include the provisions requiring federal regulatory analysis.

how?
There is substantial bipartisan support for requiring special regulatory analysis with respect to children. The last Congress unanimously passed the Food Quality Protection Act and the Safe Drinking Water Act, both of which require heightened analysis to protect children. This provision will build on the public and bipartisan congressional support for filling the gap in

federal policy with respect to children.

The key conclusions of the National Academy of Sciences and the interagency report *Investing in our Children* (attached) are that the federal government needs to better support research in this area, and needs to strengthen the link between the science regarding children and policy decisions. This requirement to analyze and explain the impacts of federal actions supports both of these goals. First, a requirement to analyze effects on children is likely to identify the most important investments agencies need to answer these basic questions. Second, the analytical requirement will ensure that agencies explicitly consider the emerging science regarding children when making regulatory decisions.

This requirement could also yield cases in which the federal government will be forced to acknowledge that we do not know enough to analyze or explain the effects of our actions on children. The question of whether this is a wise requirement is primarily a philosophical one. Those in favor of the requirement argue that the government has the responsibility to be open about its shortcomings and to give the public information even if it may be used to hold government accountable for its actions.

This requirement will not lead agencies always to impose the most stringent regulatory option. First, agencies are constrained to consider factors established within their own statutory framework, which often require findings related to cost and feasibility. Second, data may suggest different approaches that account for children's vulnerabilities that are not more stringent (like warning parents not to seat children in front of air bags, or depowering air bags). This analytical requirement simply brings agencies' consideration of children on par with other important policies that agencies are required to analyze separately--like costs, benefits, and effects on small business.

Agencies supporting this view include: [[EPA, DPC, CEQ, OMB and NEC.]]

Option 2: Do not include the provisions requiring federal regulatory analysis.

There is a danger that this provision will be criticized as a back-door way to tighten all federal environmental and safety standards, and will contribute to accusations that the Administration does not account for the costs to industry of its actions.

This requirement will make it difficult for agencies to make reasoned decisions that balance the protection of children with other important policy goals. The emotional power of accusing an agency of failing to protect children counsels caution in moving forward. The requirement to compare the effectiveness of the options at protecting children will, in effect, create an untenable choice between admitting that a regulation does not fully protect children or choosing an option that may not support other important policy goals--like imposing only reasonable costs, protecting other populations, and maximizing efficiency and flexibility.

Agencies supporting this view include:

DECISION

- Approve the Executive Order as drafted
- Approve the Executive Order, modified to remove the provisions regarding Federal Regulatory Analysis
- Reject
- No Action

TABS

Proposed Executive Order and Section by Section summary

Investing in our Future

NAS study or other survey paper on kids risks

THE WHITE HOUSE
WASHINGTON

March 13, 1997

MEMORANDUM TO Elena Kagan
FROM: Diane Regas 
SUBJECT: Executive Order to Protect Children from Environmental Health Risks and Safety Risks

This memorandum sets out the factual and philosophical background supporting a requirement that agencies analyze certain regulations for their impact on children. This memorandum does not address other aspects of the draft executive order.

The incidence of certain diseases in children is significant and growing, and can not be explained with current scientific knowledge.

- One in twenty children is born with birth defects, serious health problems or dies in infancy. Birth defects and serious health problems at birth are the leading cause of death in infants. While many of these birth defects and diseases may not be preventable, we can not explain the causes of a significant fraction of these problems—and they may be preventable.
- The incidence of childhood cancer is going up at the alarming rate of 19.6% per generation, almost 1% per year. Nearly all of this increase is accounted for by leukemia and nervous system tumors. While treatment may be possible, particularly for leukemia, treatments (radiation and chemotherapy) are traumatic and life-defining experiences for children and families.
- The severity of childhood asthma has increased substantially in the last decade, and the mortality has increased 118% percent since 1985. Approximately 10% of hospital care for children is for asthma.
- Accidents are the leading cause of death for non-infant children and teenagers. Transportation accidents alone caused over 9,000 deaths and 975,000 reported injuries in those under 20 in 1995.

Our current scientific knowledge about the effects of particular substances on children is sparse, but it demonstrates that children are at disproportionate risk from their environment for several key reasons. Children are still developing, and are neurologically and immunologically more susceptible to certain risks. Children eat, drink and breathe more for their weight, exposing them to greater amounts of contamination and pollution for their weight. Children have less judgement and skill to protect themselves (e.g. navigating traffic, reading warnings).

While we know these general conclusions are true, we do not know their implications for many specific substances and safety features.

An important reason for this lack of understanding is that the current scientific, policy, and legal framework is not adapted to addressing these problems. There is a paucity of science because the nation's private and public investment in science to understand the causes of these problems and their prevention is tiny compared with other research investment. The dearth of science has meant that legal requirements to specifically analyze effects on children are rare and recent. The rarity of legal requirements to analyze these issues in turn limits the urgency of the demand for science. One way to break this cycle is a clear and enforced Administration policy to separately analyze the impact of federal actions on children.

Given the state of science, a requirement to analyze and explain the impacts of federal actions on children is likely to yield a policy-driven demand for more research--which should be one of our goals. This requirement could also yield cases in which the federal government will be forced to acknowledge that we do not know enough to analyze or explain the effects of our actions on children. The question of whether this is a wise requirement is primarily a philosophical one. Those in favor of the requirement argue that the government has the responsibility to be open about its shortcomings and to give the public information that may be used to hold government accountable for its actions. Those opposed argue that this requirement will only raise unrealistic expectations and require federal agencies to publicly acknowledge the untenable position that a particular regulation can not assure the protection of children; some argue further that acknowledging data gaps may create legal vulnerabilities.

We have made significant drafting changes to accommodate concerns. We have limited the requirement in the draft executive order to those actions that may disproportionately affect children. In addition, we have moved from a requirement that missing data be identified within the rulemaking record to allowing it to be identified in a separate biannual reporting requirement that is specific, but not tied to particular regulations. We can make some more drafting changes to frame the analytical requirements to help provide context when agencies must make and explain difficult choices. At bottom, however, the choice will remain over whether to require an additional analytical step in the rulemaking process.

Wes Warner - 3/12/92

Other
stuff
too

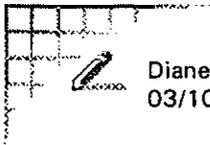
1. TRI rulemaking - rt-to-know stuff
impact ^{blw} to OMTS / EPA - how much will be brought in
2. TRI legislative - labelling reqs.
3. Omnibus toxic protection leg - follows to Kalamazoo

3 issues

1. Kick me-priority ~~is~~ - (c)
2. "most" / "more"
most problematic
3. Kick out net to public

Proposed NEC rewrite as
1st altern - OK

Other alterns - permutatio.



Diane C. Regas
03/10/97 11:56:24 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: Kids EO

Attached are the options that Elgie and I came up with. I recommend the following process (on which we would seek NEC and CEQ agreement):

1. White House discussion of options. The purpose of these discussions would be to agree to which are worth putting on the table. One important goal of this process would be to identify which (if any) options would address OIRA's concerns. Tues/Weds.
2. Jointly-called (DPC,NEC,CEQ) Deputies meeting to attempt to resolve remaining issues. Friday
3. Draft memo to President. Monday
4. Jointly-called Principals meeting to seek resolution or narrow views and arguments that will be in a memo.Tues/Weds.
5. Send memo to President.

----- Forwarded by Diane C. Regas/OPD/EOP on 03/10/97 11:47 PM -----



Elwood J. Holstein
03/10/97 01:20:55 PM

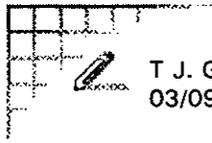


Record Type: Record

To: See the distribution list at the bottom of this message
cc: McGavock D. Reed/OMB/EOP, Bradley M. Campbell/CEQ/EOP
Subject: Kids EO



We ha KIDS310. ve agreed to defer announcement of the EO beyond Wednesday in hopes of expeditiously resolving outstanding agency disagreements. The interagency meeting to contiune wordsmithing will still take place this afternoon at 4pm in room 248, as scheduled, but we anticipate the need for additional meetings in the near future to address remaining differences, especially those regarding Section 5. In the meantime, attached are some options we can begin to think about within the White House as alternative approaces to that section.



T J. Glauthier
03/09/97 12:30:47 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Children's Health EO

I have reviewed a recent draft of the EO that has been under development for several weeks. I do not know the results of your meeting on Friday, but understand the process is moving along. I will not be able to attend your Tuesday meeting either, but will be sure that Carrie or someone on our staff is present.

I continue to support the overall objective of this proposed EO, but also continue to have difficulty with some of its specifics. Let me mention three:

- Section 304 -- is the requirement more exhaustive than it need be? This asks agencies to identify and report "all data needs that have arisen". Can't we be more flexible and ask them to report in a more general way, such as to report "key data needs that have arisen", or some other phrase?
- Section 4 -- this sounds like it could be a massive database undertaking. Has anyone estimated how big it will be, how much it will cost, and who will be responsible for it? I worry, too, that it could be duplicative of other databases. This is described in very comprehensive terms, covering all federally-sponsored research in the area, as well as aiming to include private and academic research, and making it all available to the public.
- Section 501 -- do we want this worded the way it is? I will defer to Sally Katzen and OIRA, but this seems to be structured to imply that we are not choosing the most protective alternatives, and therefore that we need to identify more protective alternatives and explain why we did not select them. Couldn't we do this in a more positive manner, and perhaps cause less new work for the agencies, by directing that they explain how the proposed action provides appropriate protection for children and what alternatives were evaluated and why they were rejected. This formulation is more positive and would allow agencies to explain that they rejected less strict alternatives, too.
- Section 603 -- Now that I see the substance of the prior EO, 12606, I do not think we should revoke it as part of this action. I had supported that before on the understanding that this one really did replace the old one, but it is clear from the details that EO12606 is broader and covers a number of subjects related to families that are not dealt with in this new draft EO at all.

Message Copied To:

Bradley M. Campbell/CEQ/EOP
Sally Katzen/OMB/EOP
Ronald M. Cogswell/OMB/EOP
Robert S. Fairweather/OMB/EOP
Carline M Jelsma/OMB/EOP
Alecia Ward/OMB/EOP

Section 5 Alternatives

1. Re-write 5(b) as follows: "An assessment of potentially effective and reasonably feasible alternatives to the covered regulatory action that have been identified by the agency or the public. This assessment shall include the relative effectiveness of the alternatives in reducing or mitigating risks to children; and"

Explanation: This option provides agencies with flexibility to explain the spectrum of choices they considered instead of highlighting only those options that are more protective of children. This spectrum will provide more context to any public debate about the appropriateness of the agency's choice. At the same time, this option preserves the goal of openness on the record about how agency rulemakings protect children.

Also Ok in comments

2. Delete 5(c).

Explanation: This would reduce, but probably not eliminate, the obligation agencies would have to explain why their proposed regulatory approach is preferable to an alternative more protective of children.

3. Delete 5(c) and, in 5(b), delete the opportunity for members of the public to identify reasonably feasible alternatives.

Explanation: In addition to reducing the burden of explaining why a potentially more protective alternative was not adopted, this option would enhance agency discretion by eliminating the requirement that they assess alternatives proposed by members of the public.

4. Delete section 5 entirely.





DEPARTMENT OF HEALTH & HUMAN SERVICES

Chief of Staff

Washington, D.C. 20201

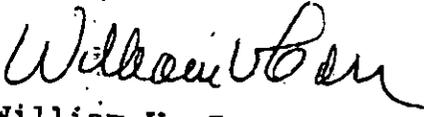
MAR 10 1997

MEMORANDUM FOR ROBERT G. DAMUS

Subject: Comments on Revised Proposed Executive Order,
"Protection of Children from Environmental Health and
Safety Hazards"

We appreciate the opportunity offered by the Director to comment on the revised proposed Executive Order, "Protection of Children from Environmental Health and Safety Hazards". As part of its public health mission, this Department works constantly to reduce risks to children that result from environmental health or safety hazards. However, we cannot concur with the Executive Order as currently drafted.

We have a number of serious concerns about the proposed draft that prevent us from concurring in it. These concerns are reflected in text-specific changes and more general views that we offer in the attachment. We recommend that these views be considered before further action is taken.


William V. Corr

Attachment

cc: Bradley Campbell, CEQ

HHS Comments on Revised Proposed Executive Order, "Protection of Children from Environmental Health and Safety Hazards"

I. COMMENTS ON SPECIFIC SECTIONS

- **Section 2-204.** The definition of "environmental health and safety risk" contains elements encompassing several broad public policy issues. We believe that the risks encompassed by the definition should be limited to those risks that are both anthropogenic and involuntary. Although the elements listed may encompass the "environment," their listing in a definition of environmental health and safety risk is inappropriate for purposes of this Order.

Recommended Action: Replace the current definition with "Environmental health and safety risk means a risk to health or safety that is attributable to: industrial, household or agricultural chemicals (including those added to food); physical agents (e.g., heat, radiation); and by-products of combustion or industrial processes.

- **Section 3-303 Task Force Membership.** Listing of HHS participation includes only some of the relevant HHS entities and is not consistent with that of other agencies.

Recommended Action: Delete sections 3-303 (k) Commissioner of the Food and Drug Administration, (l) Director of the Centers for Disease Control and Prevention, and (m) Director of the National Institutes of Health. That will leave "Secretary of Health and Human Services who shall serve as a Chair of the Council" as the only HHS entity listed.

- **Section 3-303 and 3-304 Task Force.** As stated, the prescribed functions of the Task Force are overly rigid and not in keeping with the tone of an Executive Order issued by the President. Moreover, Executive Orders are difficult to amend after issuance, and adequate latitude should be given to allow for needed refinements in keeping with the framework of the Order. We believe greater flexibility would be more appropriate, with specific elements left to the discretion of the Cabinet-level Task Force members. In addition, several provisions in these sections are ill-advised.

Several examples of specific ways to address these concerns are:

Recommended Action: 3-303 (b) replace "for a cross-cutting budget that reflects investments of Task Force members to

accomplish this research" with "identify opportunities for a cross-cutting budget initiative." This substitute language also avoids a situation in which budget priorities are proposed outside of regular budget channels without sufficient attention to the reality of resource constraints.

Recommended Action: 304 Delete entire section and replace with: "The Task Force shall biennially prepare a report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health and safety risks to children. The Task Force shall collaborate with the National Science and Technology Council in the development of this Report."

Rationale: This change is proposed to address specific concerns: (a) periodicity of the report is overly burdensome with little return; (b) description of all data needs is prohibitive and would be of little benefit; (c) incorporation of agency submissions as received runs the risk of formulating a non-prioritized "wish list" that is not in keeping with Administration priorities; (d) the Executive Order needs to build on existing NSTC initiatives; (e) The report that was called for under section 3-304 would have required agencies publicly to disclose enforcement and regulatory plans and possible weaknesses in those plans. This sort of strategic information is usually not disclosed, because it often is considered to be deliberative-process, law-enforcement, sensitive/confidential/financial, or attorney-client privileged material. This revision ensures that the proposed Order does not result in the premature disclosure of the described information. In addition, the requirement to disclose a lack of information related to enforcement and regulatory actions may be used by parties opposing the Administration in a legal challenge of the adequacy of the factual record supporting the action. The result could be that actions designed to protect the public health may be delayed or judicially invalidated.

Section 5-501 (b). Replace section with "An assessment of additional effective and reasonably feasible alternatives to the covered regulatory action that have been identified by the agency or the public and that may mitigate or reduce the identified risks to children: and..."

Rationale: Requiring agencies to label alternatives as more or less effective in mitigating risks to children will place Cabinet officials and the President in an untenable position when it comes to defending their choices.

II. GENERAL COMMENTS

The following comments are of a more general nature:

- With the exception of chemicals added to food, FDA should be explicitly exempt from the proposed Executive Order.

FDA recognizes the need to consider and protect children, along with other potentially sensitive or special subpopulations, and has recently taken a number of actions within its organic statutory authority which are directly protective of children. However, the vast majority of products that FDA regulates cannot be conceived of as posing the risks that should be the subject of this Executive Order. Medical products in particular should not be covered, because consumer exposure is not involuntary. Rather, exposure to medical products is the result of consultation with a physician. Thus, we do not believe that the process established by the proposed Executive Order adds value to FDA's activities. Indeed, if applied to FDA, the proposed Executive Order would not produce discernible benefit for children's health, and would place new burdens on the agency and the regulated industries.

We note that, after 20 years of experience in applying the analogous requirements of the National Environmental Policy Act of 1969 (NEPA) to FDA-regulated products, FDA, in consultation with the Council on Environmental Quality, has concluded that the compliance of its regulated manufacturers with NEPA has rarely produced any benefit to the environment, and has placed unnecessary and unreasonable regulatory burdens on the regulated industry and the agency. Consequently, as part of the President's reinventing government initiatives, FDA is drastically reducing the number of situations to which NEPA requirements will apply.

Having just determined that the requirements of NEPA produce so little benefit for one of its most important product areas, we are concerned that the requirements of the proposed Executive Order, while potentially useful in other settings, will likewise result in no benefits to children's health.

- The Executive Order creates unrealistic expectation that agencies cannot satisfy in the current fiscal climate.

A number of our text-specific changes are designed to preserve the goal of better protecting children without framing the issues in a way that identifies and emphasizes what is not (and cannot) be done, rather than what is being accomplished.

- The increased burdens imposed on government and industry alike and a "one-size-fits all" approach of the proposed

Order could be used against the Administration by advocates for regulatory reform legislation.

While HHS supports the goals of providing greater public health protection for children, as well as for other sensitive or special subpopulations, we are concerned that aspects of the proposed Executive Order, in particular the private- and public-sector resource implications for data-gathering, could prompt renewed cries for "regulatory reform" in the Congress. The Administration might be vulnerable to charges that we have not demonstrated the benefits that would ensue in relation to costs we would be imposing.

- Complying with the proposed Executive Order will slow the regulatory process and make it more difficult to issue covered regulatory actions, thus reducing, rather than increasing, our ability to protect the public health, including the health of children.

This proposed Executive Order subjects agencies to requirements in addition to the provisions of the Administrative Procedure Act and Executive Order 12866. Complying with these additional requirements could significantly lengthen the rulemaking process and delay the issuance of regulations protecting the public health. We are also concerned that interests outside the government could use the proposed Executive Order to provide agencies with descriptions of numerous regulatory options in an effort to delay the issuance of regulations. Failure to conduct an exhaustive analysis of all proposed alternatives could also subject agencies to additional Congressional criticism.

The proposed Order also does not adequately recognize that many agencies have already built consideration of children's health, environmental and otherwise, into their activities, and indeed have taken many actions protective of children. The one size-fits-all approach in the proposal could interfere with existing systems that HHS agencies have in place that fully consider the effects of the agency's policies and actions on children's health.

DISCUSSION DRAFT -- DO NOT CITE OR RELEASE

**PROTECTION OF CHILDREN
IN FEDERAL ENVIRONMENTAL, HEALTH, AND SAFETY ACTIONS**

America's children are this country's future. Preparing our children for the 21st century is among our most important national priorities. To fulfill this task we must recognize that America's children face significant and unique threats from an array of hazards. A growing body of scientific knowledge demonstrates that children are particularly at risk from environmental hazards:

- Children's immunological, digestive and other bodily systems are still developing, making them more susceptible to toxic pollutants and other environmental hazards;
- Children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults, and spend more time outside in play, so they may be more exposed to toxic pollutants and other environmental hazards;
- Children are less able than adults to recognize and to protect themselves from exposure to toxic pollutants and other environmental hazards, and
- Children face potential exposures to toxic pollutants over their entire lifetime, with the possibility of more significant health impacts.

Our experience tells us that children have different needs when we act to protect health and safety:

- Children's size and weight can affect how well they are protected by safety features;
- Children have activity patterns that are different from those of adults, which affects their exposure to health and safety risks;
- Children are less able to protect themselves from risk, and less responsive to warning regimes.

While responsible Federal agencies consider the effect of their work on children, existing standards were derived in many instances principally from data on adults. The array and complexity of environmental, health, and safety threats facing children today, and the uncertainties in the adequacy of existing protections derived principally to protect adults, pose a significant challenge to our ability to protect our children's health and safety.

The Federal government is responding vigorously to this challenge, acting to address threats to

children's environmental health in the new Food Quality Protection Act, accounting for children in the development of new standards for passive restraints in cars, and taking administrative action to protect children from tobacco, lead, and other hazards. But we should do more. The Federal government must establish a national policy to protect the health of American children from environmental, health, and safety hazards, and apply its resources, including its scientific research capabilities, in a coordinated and efficient manner to address these threats to children.

Only by tailoring governmental actions, including the setting of health and safety standards, to recognize and address the oftentimes greater impact that environmental pollutants and other health and safety hazards have upon the health of our children, can we ensure our children's healthy and productive futures. The task before us is large -- developing the basic scientific knowledge of how toxic chemicals and other environmental, health, and safety hazards may differentially impact on children may take years. But the need to act, and to act promptly, to protect the future of our nation cannot be disregarded.

NOW, THEREFORE, to establish a coordinated federal strategy for the protection of children from the risks of exposure to toxic pollutants and other environmental, health, and safety hazards, and by the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy.

1-101. The head of each Federal agency shall, to the greatest extent practicable, permitted by law, and consistent with the agency's mission, establish the protection of children from environmental, health, and safety hazards as a priority for that agency.

1-102. The head of each Federal agency shall ensure that the potential impacts upon children of environmental, health, or safety hazards arising from or related to the activities of that agency are considered and addressed by that agency to the fullest extent permitted by that agency's statutory authority.

Section 2. Definitions. The following definitions shall apply to this order.

2-201. Federal agency means an Executive agency, as defined in 5 U.S.C. 105. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-202. Significant regulatory action means any regulatory action that is likely to result in a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity,

- competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (b) Create a serious inconsistency or otherwise interfere with an action planned or taken by another agency;
 - (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; **or**
 - (d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

[NOTE: 2-202 is taken verbatim from EO 12866]

Section 3. Children's Environmental Health IWG.

3-301. Within 60 days of the signing of this order, there shall be established an interagency working group (IWG) on Children's Health IWG, which shall have general oversight of the implementation of this order.

3-302. The IWG shall be comprised of representatives of Federal agencies and White House offices with responsibility for the regulation of risks from toxic pollutants or other environmental, health, or safety hazards, or whose activities may substantially affect such hazards, or which conducts scientific or medical research related to such risks or hazards. Member agencies shall include, but are not limited to, the Consumer Product Safety Commission (CPSC); the Council on Environmental Quality (CEQ); the Department of Agriculture (USDA); the Department of Health and Human Services (HHS), including, the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH); the Department of Justice (DOJ); the Domestic Policy Council (DPC); the Environmental Protection Agency (EPA); the Office of Management and Budget (OMB); and the Office of Science and Technology Policy (OSTP).

3-303. The IWG shall develop a coordinated Federal strategy for Children's Health and Safety, to include at least the following elements:

- (a) Statements of guiding principles, general policy, and targeted annual priorities that will govern the Federal approach to achieving the goals of this order.
- (b) A coordinated research agenda for the Federal government, including steps to implement the plan for the consolidated research database developed pursuant to section 4 of this order, and a preparation of a cross-cutting budget to accomplish this research. This agenda shall address future research needs, including addressing multiple exposures and cumulative health risks facing infants and children. It should explore appropriate partnerships between the Federal government and other branches of government and the private, academic, and non-profit sectors.
- (c) Recommendations for public outreach and information-sharing to assist families in evaluating risks to infants and children in making informal consumer choices,

and to establish private-sector partnerships for cooperatively achieving the goals of this order. As part of this effort, the IWG shall publish a joint pamphlet for distribution to families assessing children's environmental, health, or safety threats, and providing practical tips for family protection and additional sources of governmental information.

- (d) An identification of ten high-priority initiatives for the Federal government to undertake in advancing protection of children's health and safety.
- (e) A statement regarding the desirability of new legislation to ensure that the purposes of this Executive Order are carried out.

3-304. The IWG shall be composed of the Secretary or head of each of the member agencies, or their designees at the Assistant Secretary level or its equivalent.

3-305. The IWG may establish subcommittees and working groups as appropriate to assist the IWG in carrying out its obligations and responsibilities under this order.

3-306. The Administrator of the Environmental Protection Agency shall serve as interim chair of the IWG with responsibility for arranging the first meeting. At the first meeting, the IWG shall elect a permanent chair, who will serve for a period of one year. Subsequent chairs shall be elected by the IWG to serve for one-year terms, with no one member agency holding the chairmanship of the IWG for more than two consecutive one-year periods.

3-307. The IWG shall exist for a period of four years. At least six months prior to the expiration of that period, the member agencies shall assess the need for continuation of the IWG or its functions, and make appropriate recommendations to the President.

Section 4. Research Coordination and Integration

4-401. Within six months of the date of signature of this order, the White House Office of Science and Technology Policy and the National Science and Technology Committee shall present to the IWG a proposed plan for establishing, maintaining, and keeping current a consolidated research data base that lists and describes all research conducted or funded by the Federal government that is related to adverse health effects in children and infants resulting from exposure to toxic pollutants or other environmental, health, or safety hazards. This plan shall include recommendations to ensure that the activities of the IWG and other requirements of this Executive order are fully integrated with, and not duplicative of, other current or planned initiatives with respect to children's health and safety.

4-402. The proposed plan shall promote the submission of information on academic and other private research for inclusion in the data base.

4-403. The plan shall include provisions to ensure that the consolidated research data base is available to the public, to the scientific and academic communities, and to all Federal

agencies.

Section 5. Data Needs

5-501. Annual Report on Data Needs. The head of each agency subject to this Executive Order shall present an annual report to the IWG on research, data, or other information that should be developed to enhance the agency's ability to understand, analyze, and respond to environmental, health, and safety risks to children. This report shall include particular data needs that have been identified in the course of the agency's programs and activities, and shall be provided to the White House Office of Science and Technology Policy and the National Science and Technology Committee for consideration in establishing research priorities.

Section 6. Agency environmental, health, or safety regulations.

6-601. For each significant regulatory action addressing the environment, health, or safety, each agency shall provide the following information, developed as part of the agency's decisionmaking process (unless prohibited by law):

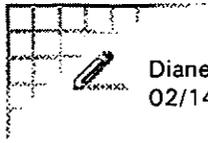
- (a) An evaluation of whether the proposed regulatory action addresses an area in which children may be at greater risk than the general population;
- (b) An assessment of potentially effective and reasonably feasible alternatives to the proposed regulatory action that have been identified by the agency or the public and that may be more protective of children; and
- (c) An explanation of why the proposed regulatory action is preferable to the identified potential alternative(s).

Section 7. General Provisions.

7-701. This order is not intended, and should not be construed to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

7-702. Federal agencies should implement this order consistent with, and to the extent permitted by, existing law.

7-703. This order shall be effective immediately and shall continue to be in effect until revoked.



Diane C. Regas
02/14/97 10:20:34 AM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Jeanine D. Smartt/OPD/EOP
Subject: Info for 1:30 meeting - Status of kids order

Let me know if you want me to be at the 1:30 meeting. I expect the Kids Health E.O. will come up, Here is a summary of where we are:

We are going to circulate another draft late next week or early the following week. We have made good progress in setting up the committee as we talked about last Thursday, there is enthusiasm for doing it this way among the agencies.

The analytical requirements are still giving some discomfort to individual agencies. Therefore I am convening discussions individually (and as informally as possible) with policy leadership at HHS and Labor to talk through implementation issues. My goal is to determine whether the agency discomfort is based on serious policy problems or whether it stems more from inertia. I hope that these meetings will happen late next week.

OMB is interested in bringing into this E.O. the idea of a statistical look at the status of families.

I have not yet sat down with the First Lady's office, because of conflicting schedules. They have a draft of the order and know that we are trying to brief them on it.