

CLOSE HOLD

Document No. _____

WHITE HOUSE STAFFING MEMORANDUM

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

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

SUBJECT: _____

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MONTOYA	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NUSSBAUM	<input checked="" type="checkbox"/>	<input type="checkbox"/>
GEARAN	<input type="checkbox"/>	<input type="checkbox"/>	PASTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NEEL	<input type="checkbox"/>	<input type="checkbox"/>	RASCO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RUBIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input type="checkbox"/>	<input type="checkbox"/>	SEGAL	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HALE	<input type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	VARNEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LAKE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WATKINS	<input type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
McGINTY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

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.

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 existing 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.

Only a final plan as contrasted to?

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.

*Why not
knock out
private
sector
entirely?*

SECTION 8: PUBLICATION

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

*Will
agencies
use the
new "sig-
rule" review
only to get
around Sec. 8?*

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.

A handwritten signature in cursive script, appearing to read "Jack P.", is positioned to the right of the main text block.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 16, 1993

MEMORANDUM FOR CAROL RASCO

FROM: Paul Weinstein

SUBJECT: Regulatory Review and Planning
Executive Order

You may receive a phone call from either Leon Panetta or Alice Rivlin regarding the draft Executive Order on Regulatory Review. The purpose of the call will be to ask your opinion on the following: whether the Office of Regulatory Information and Regulatory Affairs (OIRA), should be granted authority to postpone the publishing of new regulations until a disagreement with OIRA and an agency is resolved, or to instead allow the agency to publish the regulation after a period of time (60 to 90 days in most cases), even if the conflict has not been resolved.

Obviously, Director Panetta and Deputy Director Rivlin will want you to back the first option, since it gives OIRA greater authority. Essentially, this comes down to an issue of who will insure that regulations are most consistent with the President's policies, OMB or the agencies.

I should note that neither option precludes the Vice President's regulatory review working group, of which you are a member, from resolving any disagreement between OIRA and a agency.

cc: Bruce Reed
Kathi Way

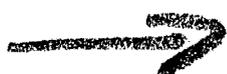
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Document No. _____

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	MONTOYA	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NUSSBAUM	<input checked="" type="checkbox"/>	<input type="checkbox"/>
GEARAN	<input type="checkbox"/>	<input type="checkbox"/>	PASTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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McGINTY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

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~~ *Re*

03 JUL 3 09:48

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

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~~^{RS}

(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.

July 2, 1993

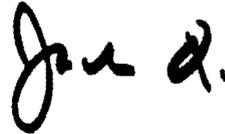
MEMORANDUM FOR THE REGULATORY REVIEW WORKING GROUP

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.



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 ✓

(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.

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(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.