

THE WHITE HOUSE

WASHINGTON

December 9, 1994

MEMORANDUM FOR JACK GIBBONS AND SALLY KATZEN

FROM: CAROL RASCO *CR*  
BRIAN BURKE

SUBJ: Administration Position on Risk Legislation *file*

Our comments on your December 7, memorandum regarding the administration's position on risk legislation are set forth below.

While the unfunded mandates strategy of following general principles during negotiations was effective, in the context of the upcoming risk debate, we must also be prepared to influence the Contract's specific language as the opportunities arise. As your memorandum states correctly, it would be unwise to (1) oppose any risk legislation, (2) draft our own risk legislation, or (3) buy into specific statutory language before the Contract language has been introduced. We must recognize that principles are only a first step in the negotiating process, and as in the unfunded mandates process we should be prepared to sit down and negotiate the details. Especially in the context of the risk debate, the devil is in the details of the legislative language.

Your recommendation for an administration white paper is a good one. In addition to those items already identified for the paper, it would be persuasive to include a discussion of the budgetary and programmatic impact that would result if the Contract's risk language were to pass. In short, the paper could demonstrate how the Contract will (1) impose unreasonable reporting and judicial burdens on agencies; (2) specify methods of or assumptions for the performance of risk assessments, effectively freezing science and possibly making judicially reviewable all risk assessments (including back-of-the-envelope calculations); and (3) require broad comparative risk analysis. Also worth including in the white paper are illustrative examples of the potential human health consequences that would result from passing the Contract's risk language.