

APPENDIX

Reagan Memorandum

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Memorandum Postponing Pending Federal Regulations
January 29, 1981

Memorandum for The Secretary of the Treasury
The Attorney General
The Secretary of the Interior The Secretary of Agriculture
The Secretary of Commerce The Secretary of Labor
The Secretary of Health and Human Services
The Secretary of Housing and Urban Development
The Secretary of Transportation
The Secretary of Energy The Secretary of Education
The Administrator of the Environmental Protection Agency
Subject: Postponement of Pending Regulations

Among my priorities as President is the establishment of a new regulatory oversight process that will lead to less burdensome and more rational federal regulation. I am now directing certain measures that will give this Administration, through the Task Force on Regulatory Relief, sufficient time to implement that process, and to subject to full and appropriate review many of the prior Administration's last-minute decisions that would increase rather than relieve the current burden of restrictive regulation. This review is especially necessary in the economic climate we have inherited.

1. Postponement of Pending Final Regulations. To the extent permitted by law, your agency shall, by notice in the Federal Register, postpone for 60 days from the date of this memorandum the effective date of all regulations that your agency has promulgated in final form and that are scheduled to become effective during such 60-day period.

2. Postponement of Proposed Regulations. To the extent permitted by law, your agency shall refrain, for 60 days following the date of this memorandum, from promulgating any final rule.

3. Emergency Regulations and Regulations Subject to Short-Term Deadlines. Your agency shall not postpone regulations that respond to emergency situations or for which a postponement pursuant to this memorandum would conflict with a statutory or judicial deadline.

4. Consultation with the Office of Management and Budget.

(a) Your agency shall report to the Director of the Office of Management and Budget all regulations that cannot legally be postponed under paragraphs 1 and 2 of this memorandum, and all regulations that will not be postponed under paragraph 3 of this memorandum, including a brief explanation of the legal or other reasons why the effective date of any such regulation will not be postponed.

(b) After consultation with the Director, or the Director's designee, your agency may decide to postpone the effective date or promulgation of a regulation for fewer than 60 days from the date of this memorandum, if circumstances warrant a shorter period of postponement.

5. Exemptions. This memorandum shall not apply to:

(a) regulations issued in accordance with the formal rule-making provisions of the Administrative Procedure Act, 5 U.S.C. 556, 557;

(b) regulations issued with respect to a military or foreign affairs function of the United States;

(c) regulations related to Federal government procurement;

(d) matters related to agency organization, management, or personnel; or

(e) regulations issued by the Internal Revenue Service.

6. Definition. For purposes of this memorandum, "regulation" or "rule" shall mean an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency.

RONALD REAGAN

NOTICES

OFFICE OF MANAGEMENT AND BUDGET

Regulatory Review

Monday, January 25, 1993

58 FR 6074

AGENCY: Office of Management and Budget.

ACTION: Request to Agencies.

SUMMARY: On January 22, 1993, the Office of Management and Budget issued a memorandum to regulatory agencies requesting that President Clinton's appointees have an opportunity to review and approve new regulations.

FOR FURTHER INFORMATION CONTACT:

James B. MacRae, Jr., Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs, (202) 395-5897.

SUPPLEMENTARY INFORMATION: The Director of the Office of Management and Budget issued the following memorandum, requesting the agencies to take certain actions with respect to regulatory activities. This memorandum is printed below in its entirety.

John B. Arthur,

Assistant Director for Administration.

Memorandum For the Heads and Acting Heads of Agencies Described in Section 1(d) of Executive Order 12291

From: Leon E. Panetta, Director.

Subject: Regulatory Review.

It is important that President Clinton's appointees have an opportunity to review and approve new regulations. Therefore, at the direction of the President, I am requesting that you please implement the following, effective immediately:

1. Subject to such exceptions as the Director of the Office of Management and Budget (the "Director") may determine for emergency situations or otherwise, no proposed or final

regulation should be sent to the Federal Register for publication until it has been approved by an agency head or the delegee of an agency head who, in either case, is a person appointed by President Clinton and confirmed by the Senate.

2. You are requested to withdraw from the Federal Register for approval in accordance with paragraph 1, all regulations that have not yet been published in the Federal Register and that may be withdrawn under existing procedures of the Office of the Federal Register.

3. The requirements set out above do not apply to regulations that must be issued immediately because of a statutory or judicial deadline. Please notify the Director promptly of any such regulations.

4. If there are other regulations that you believe should not be subject to these requirements, please notify the Director immediately in the case of any regulations that have been submitted to the Federal Register and in a timely manner for any other regulations so that the Director may consider whether an exception to the requirements set out above may be appropriate.

5. Pending completion of a review, existing Executive Orders on regulatory management will continue to apply.

6. The term "regulation" in this memorandum has the meaning set forth in section 1(a) of Executive Order 12291, except that it includes regulations related to agency organization, management, or personnel.

This memorandum shall be published in the Federal Register.

(FR Doc. 93-1969 Filed 1-22-93; 12:05 pm)

BILLING CODE 3110-01-M

Memorandum

January 20, 2001

Memorandum for the Heads and Acting Heads of Executive Departments and Agencies

FROM: Andrew H Card, Jr.
*Assistant to the President and
Chief of Staff.*

SUBJECT: Regulatory Review Plan.

The President has asked me to communicate to each of you his plan for managing the Federal regulatory process at the outset of his Administration. In order to ensure that the President's appointees have the opportunity to review any new or pending regulations, I ask on behalf of the President that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the "OMB Director") allows for emergency or other urgent situations relating to health and safety, send no proposed or final regulation to the Office of the Federal Register (the "OFR") unless and until a department or agency head appointed by the President after noon on January 20, 2001, reviews and approves the regulatory action. The department or agency head may delegate this power of review and approval to any other person so appointed by the President, consistent with applicable law.

2. With respect to regulations that have been sent to the OFR but not published in the Federal Register, withdraw them from OFR for review and approval as described in paragraph 1, subject to exception as described in paragraph 1. This withdrawal must be conducted consistent with the OFR procedures.

3. With respect to regulations that have been published in the OFR but have not taken effect, temporarily postpone the effective date of the regulations for 60 days, subject to exception as described in paragraph 1.

4. Exclude from the requested actions in paragraphs 1-3 any regulations promulgated pursuant to statutory or judicial deadlines and identify such exclusions to the OMB Director as soon as possible.

5. Notify the OMB Director promptly of any regulations that, in your view, impact critical health and safety functions of the agency and therefore should be also excluded from the directives in paragraphs 1-3. The Director will review any such notifications and determine whether exception is appropriate under the circumstances.

6. Continue in all instances to comply with Executive Order 12866, pending our review of that order, as well as any other applicable Executive Orders concerning regulatory management.

As used in this memorandum, "regulation" has the meaning set out in section 3(e) of Executive Order 12866. That is, this plan covers "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking."

This regulatory review will be implemented by the Director or Acting Director of the OMB. Communications regarding exceptions to the review, or questions regarding the review generally, should be addressed to that individual.

Finally, in the interest of sound regulatory practice and the avoidance of costly, burdensome, or unnecessary regulation, independent agencies are encouraged to participate voluntarily in this review.

This memorandum shall be published in the Federal Register.
Card Memorandum, 66 Fed. Reg. 7702, 7702 (Jan. 20, 2001).

January 26, 2001

M-01-09

MEMORANDUM FOR THE HEADS AND ACTING HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES

FROM: Mitchell E. Daniels, Jr.
Director

SUBJECT: Effective Regulatory Review

To ensure effective implementation of the memorandum of January 20, 2001, from the Chief of Staff, entitled "Regulatory Review Plan," and to coordinate that implementation with Executive regulatory review carried out under Executive Order No. 12866, we ask you to take the following steps:

1. Promptly withdraw from review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) under E.O. 12866 any regulatory action submitted to OIRA on or before January 20, 2001. In accordance with the January 20th memorandum, this will assure that the action is reviewed and approved by an agency head (or delegate) appointed by President Bush. "Regulatory action" is defined in section 3(e) of E.O. 12866.

If you believe that any regulatory action pending at OIRA should continue under OIRA review, identify the action to the appropriate OIRA Desk Officer (with a short summary of the action and the exception category). OIRA will discuss with the agency whether the action should continue under review or be withdrawn.

2. All regulatory actions subject to this memorandum are actions that must either (1) be reviewed and approved by an official appointed by President Bush; or (2) fall into several categories of exception, including actions that respond to emergencies or other urgent situations relating to health and safety; actions that impact critical health and safety functions of your agency; or are actions promulgated pursuant to statutory or judicial deadlines. In the case of regulatory actions that fall into the exception categories, agencies should strive to apply the agency review and approval criteria of the January 20th memorandum if at all practicable.
3. For all regulatory actions referred to in paragraph 2, the procedures and practices of E.O. 12866 continue to apply. Agencies should submit to OMB for E.O. 12866 review only those "significant" regulatory actions (as defined by section 6(a)(3)(A) of E.O. 12866) that (1) have been reviewed and approved by an official appointed by President Bush, or (2) are otherwise excepted by the January 20th memorandum.

4. For regulatory actions referred in paragraph 2 that are not considered “significant” under E.O. 12866, agencies should send a list identifying such regulatory actions to OIRA prior to submitting such actions to the *Federal Register* for publication. The list should be sent to the appropriate OIRA Desk Officer and should include a short summary of each regulatory action and a statement of the need for publication (with reference, as appropriate, to the categories for exception described in the January 20th memorandum). Agencies should not submit such actions to the *Federal Register* until OIRA has conferred with the agency. OMB will work closely and expeditiously with agencies regarding their regulatory actions.

If emergency circumstances make the procedures in paragraph 4 impractical, agencies should submit the regulatory action for publication by the *Federal Register*, and should simultaneously notify OIRA. Paragraph 4 does not apply to regulatory actions that are exempt from centralized regulatory review (as provided in OMB Memorandum M-94-3, “Guidance for Implementing E.O. 12866” (October 13, 1993), Appendices A and C).


Thank you.

THE WHITE HOUSE

WASHINGTON

May 9, 2008

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES
THE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS

FROM: JOSHUA B. BOLTEN 
CHIEF OF STAFF

SUBJECT: Issuance of Agency Regulations at the End of the Administration

Over the last seven years, our Administration has worked to achieve through regulation important public benefits while minimizing regulatory costs on the American people. The President has emphasized that the American people deserve a regulatory system that protects and improves their health, safety and environment, secures their rights, and ensures a fair and competitive economic system, while respecting their prerogative to make their own decisions and not imposing unnecessary costs. We need to continue this principled approach to regulation as we sprint to the finish, and resist the historical tendency of administrations to increase regulatory activity in their final months. We must recognize that the burden imposed by new regulations is cumulative and has a significant effect on all Americans.

Every regulatory agency and department has a responsibility for continuing to ensure regulations issued in this final year are in the best interests of the American public. To the extent permitted by law, the heads of executive departments and agencies should continue to minimize costs and maximize benefits for each of their upcoming regulations, and should avoid issuing regulations that are unnecessary. Except in extraordinary circumstances, regulations to be finalized in this Administration should be proposed no later than June 1, 2008, and final regulations should be issued no later than November 1, 2008.

To ensure we continue to serve the American people through carefully-designed regulations, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) will coordinate an effort to complete Administration priorities in this final year while providing for an appropriately open and transparent process and controlling regulatory costs. In this effort, OIRA will work closely with the heads of the President's policy councils, and rely on its centralized review authority under Executive Order 12866.

Pursuant to Executive Order 12866, agencies shall continue to assess the need for regulation, examine alternatives, design regulations in the most cost-effective manner to achieve regulatory objectives, and assess both the costs and benefits of intended regulations. Circular A-4 provides guidance to agencies for analyzing the effects of regulation. Agencies should view each regulation as part of a broader regulatory framework and, in cooperation with OIRA, make careful and coordinated policy choices that do not impose undue regulatory burdens on the American people.

Agencies should examine the regulations they intend to promulgate before the end of this Administration for compliance with this memorandum and provide all information and assistance requested by the Administrator of OIRA in this important endeavor. In identifying priorities and establishing schedules, agencies should provide adequate time for necessary analysis, interagency consultation, robust public comment, and a careful evaluation of and response to those comments. However, I also want to emphasize that nothing in this memorandum alters or impedes the ability of the executive departments and agencies to perform their responsibilities under existing law.

Finally, the OIRA Administrator will report on a regular basis regarding agency compliance with this memorandum.

cc:

Chairman of the Council on Environmental Quality
Chairman of the Council of Economic Advisors
Director, Office of Science and Technology Policy
Assistants to The President

THE WHITE HOUSE

WASHINGTON

January 20, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Rahm Emanuel
Assistant to the President and Chief of Staff
SUBJECT: Regulatory Review

President Obama has asked me to communicate to each of you his plan for managing the Federal regulatory process at the beginning of his Administration. It is important that President Obama's appointees and designees have the opportunity to review and approve any new or pending regulations. Therefore, at the direction of the President, I am requesting that you immediately take the following steps:

1. Subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the Director") allows for emergency situations or other urgent circumstances relating to health, safety, environmental, financial, or national security matters, or otherwise, no proposed or final regulation should be sent to the Office of the Federal Register (the "OFR") for publication unless and until it has been reviewed and approved by a department or agency head appointed or designated by the President after noon on January 20, 2009, or in the case of the Department of Defense, the Secretary of Defense. The department or agency head may delegate this review and approval power to any other person so appointed or designated by the President, consistent with applicable law.

2. Withdraw from the OFR all proposed or final regulations that have not been published in the *Federal Register* so that they can be reviewed and approved by a department or agency head as described in paragraph 1. This withdrawal is subject to the exceptions described in paragraph 1 and must be conducted consistent with OFR procedures.

3. Consider extending for 60 days the effective date of regulations that have been published in the *Federal Register* but not yet taken effect, subject to the exceptions described in paragraph 1, for the purpose of reviewing questions of law and policy raised by those regulations. Where such an extension is made for this purpose, you should immediately reopen the notice-and-

comment period for 30 days to allow interested parties to provide comments about issues of law and policy raised by those rules. Following the 60-day extension:

a. for those rules that raise no substantial questions of law or policy, no further action needs to be taken; and

b. for those rules that raise substantial questions of law or policy, agencies should notify the OMB Director and take appropriate further action.

4. The requested actions set forth in paragraphs 1-3 do not apply to any regulations subject to statutory or judicial deadlines. Please immediately notify the OMB Director of any such regulations.

5. Notify the OMB Director promptly of any regulations that you believe should not be subject to the directives in paragraphs 1-3 because they affect critical health, safety, environmental, financial, or national security functions of the department or agency, or for some other reason. The OMB Director will review all such notifications and determine whether an exception is appropriate.

6. Continue in all instances to comply with any applicable Executive Orders concerning regulatory management.

As used in this memorandum, "regulation" has the meaning set forth in section 3(e) of Executive Order 12866 of September 30, 1993, as amended; this memorandum covers substantive action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking."

This regulatory review will be implemented by the OMB Director, and communications regarding any matters pertaining to this review should be addressed to that official.

The OMB Director is authorized and directed to publish this memorandum in the *Federal Register*.



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

THE DIRECTOR

January 21, 2009

M-09-08

MEMORANDUM FOR THE HEADS AND ACTING HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES

FROM:

Peter R. Orszag
Director

SUBJECT:

Implementation of Memorandum Concerning Regulatory Review

This Memorandum provides guidance on implementing paragraph 3 of the Memorandum of January 20, 2009, concerning "Regulatory Review." That paragraph describes this option:

"Consider extending for 60 days the effective date of regulations that have been published in the Federal Register but not yet taken effect, subject to the exceptions described in paragraph 1, for the purpose of reviewing questions of law and policy raised by those regulations. Where such an extension is made for this purpose, you should immediately reopen the notice-and-comment period for 30 days to allow interested parties to provide comments about issues of law and policy raised by those rules. Following the 60-day extension:

- a. for those rules which raise no substantial questions of law or policy, no further action needs to be taken; and
- b. for those rules which raise substantial questions of law or policy, agencies should notify the OMB Director and take appropriate further action."

Your agency staff has, or may shortly identify, rules that have not yet taken effect and about which significant concerns involving law or policy have been raised. For such rules, you should consider postponing the effective dates for 60 days and reopening your rulemaking processes. Your decision for each such rule should be based on the following considerations: (1) whether the rulemaking process was procedurally adequate; (2) whether the rule reflected proper consideration of all relevant facts; (3) whether the rule reflected due consideration of the agency's statutory or other legal obligations; (4) whether the rule is based on a reasonable judgment about the legally relevant policy considerations; (5) whether the rulemaking process was open and transparent; (6) whether objections to the rule were adequately considered, including whether interested parties had fair opportunities to present contrary facts and arguments; (7) whether interested parties had the benefit of access to the facts, data, or other analyses on which the agency relied; and (8) whether the final rule found adequate support in the rulemaking record.

If in your considered judgment the identified rules already satisfy these standards, you need do nothing further. However, if any of these rules do not satisfy these standards, you should consider extending their effective date for 60 days for the purpose of enabling further review. In no event should you extend the effective date of rules indefinitely.

If you determine that you want to extend the effective date for purposes of enabling further review, you should promptly provide a 30-day notice-and-comment period, seeking public comment about both your contemplated extension of the effective date and the rule in question. Following the comment period, you should take appropriate steps to ensure fair evaluation of (a) whether to extend the effective date and (b) the rule in question, which you may wish to amend. If in light of the comments, you decide that an extension of the effective date is appropriate, you should consult with the Department of Justice's Office of Legal Counsel (OLC) and the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) about your decision before taking action to extend the effective date. In addition, if the rule will take effect before there is sufficient time to solicit and review comments on the extension of the effective date, you should consult immediately with OLC and OIRA about the appropriate course of action.

The Administrative Procedure Act provides that you may also postpone the effective date of an agency action pending judicial review where justice so requires. *See* 5 U.S.C. §705. If one of these rules is challenged in court before it becomes effective, you should consider the appropriateness of relying on this provision to suspend the rule's effective date pending judicial review. In special cases, and only upon further consultation with OLC and OIRA, you may consider the appropriateness of not defending a legally doubtful rule in the face of a judicial challenge.