

5/26 To FRANK



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

May 15, 1981

Rec'd 5/26/81

File

MEMORANDUM FOR THE VICE PRESIDENT AND THE DIRECTOR

FROM: Jim Miller

SUBJECT: Status Report on Regulatory Relief

Nine-digit Zip Code: The Regulatory Impact Analysis provided to us by the Postal Service has been reviewed by the CWPS staff. A final report on this is expected early next week, but preliminary indications suggest significant shortcomings in the adequacy of the effort.

Handicap Legislation: The Administration's version of handicapped transportation requirements was introduced as part of the Mass Transit bill, S. 1160. The proposal ends costly retrofitting of public transit services, permitting local criteria to be substituted for federal requirements.

Coal Export Policy: In cooperation with the Cabinet Council on Natural Resources and Environment, the Task Force Staff is preparing a list of regulatory relief initiatives to be released next week.

Congressional Testimony: Boyden Gray and I joined Murray Weidenbaum before the Senate Governmental Affairs Committee on May 12 and before the Senate Judiciary Committee on May 14 to testify on Senator Laxalt's procedural reform legislation, S. 1080. (See Attachments 1 and 2.)

Progress Reports: Staff reports on experience and accomplishments under the 60-day "freeze," the first 100 days of the Executive Order, and the entire regulatory relief program are nearing completion. (It is suggested that these be part of a package of materials and initiatives to be announced at a press conference either next week or the week following.)

STATEMENT
OF
JAMES C. MILLER III
ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS,
OFFICE OF MANAGEMENT AND BUDGET
AND
EXECUTIVE DIRECTOR,
PRESIDENTIAL TASK FORCE ON REGULATORY RELIEF
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
OF THE
U.S. SENATE
(May 12, 1981)

Mr. Chairman and Members of the Committee:

I am pleased to appear before you this morning to discuss long-needed changes in the regulatory process. Joining me today is C. Boyden Gray, Counsel to the Presidential Task Force on Regulatory Relief.

In recent years this Committee has made substantial progress in identifying major problems of regulatory procedure and ways of dealing with them. We have had a cordial working relationship with you and your staff and look forward to a continuation of this relationship in the future.

Before addressing the merits of the major bills before the Committee, I would like to emphasize the importance of the President's program of regulatory relief and discuss our early experience under Executive Order 12291, "Federal Regulation."

President's Program of Regulatory Relief

President Reagan has made regulatory relief one of the four cornerstones of his program of economic recovery. The first is budgetary restraint, the second is tax reduction, the third is regulatory relief, and the fourth is a stable monetary policy. All of these share the fundamental philosophical underpinning of increasing aggregate economic activity so as to increase employment opportunities, reduce inflation, and raise the real incomes of all Americans.

Budgetary reductions are a means of putting more resources in the private sector, where they are more productive. Reductions in tax rates reduce the disincentives for consumers to save and for businesses to invest.

Regulatory relief, of the type that leads to achieving regulatory goals at lower costs, increases the supply of goods and services available for satisfying other pressing needs. And a stable monetary policy reduces uncertainty and therefore leads to greater investment on the part of businesses and more thoughtful and rational expenditures on the part of consumers.

As I have already stated, the President has given regulatory relief an extraordinarily high priority since coming into office. The day after the Inauguration he asked the Vice President to chair a Cabinet-level Task Force

on Regulatory Relief, which has been charged with reviewing new regulations, assessing existing regulations, and coordinating the Administration's legislative policies in the regulatory area. As the Vice President has indicated, the charge given his Task Force is not to study regulation or study ways of reforming regulation, but to provide regulatory relief.

I think we have made significant progress under the President's program. Aided by Executive Order 12291, which I will describe in more detail in a moment, we have moved forward to address many of the more pressing problems. Almost every agency has been involved. Most notably, the Department of Energy has moved expeditiously in removing restraints on energy production and distribution. The Department of Labor—including the Occupational Safety and Health Administration—has responded to acute needs to find ways of achieving health and safety goals at lower costs. The Environmental Protection Agency has taken important initiatives to streamline its regulatory procedures and grant relief amounting to considerable savings at little or no harm to the environment. The Department of Transportation likewise has identified numerous regulations—especially those affecting the automobile—which demand prompt attention.

Although we do not yet have final figures, I can assure you that the relief measures identified thus far amount to billions of dollars per year. Moreover, what has taken place to date is only the tip of the iceberg. Much more will be forthcoming. Vice President Bush, Director Stockman,

Chairman Weidenbaum, and other Members of the Task Force have made it plain to us that their expectations for regulatory relief are very high. The President wants it, and the country demands it.

Experience under Executive Order 12291

Now, let me turn to the Administration's experience under the new Executive Order. First, I think it is important to bear in mind that Executive Order 12291 has been in place only since February 17, and therefore experience has been too short and insufficient to permit a definitive judgment as to precisely how it will work in the long run.

The Executive Order has three major parts. First, it sets forth the President's regulatory principles. These include requirements that if the agency wishes to regulate, it should do so for good reason; the benefits of the regulation should exceed the costs; the agency should choose the least costly way of securing the regulatory objective; and the regulation should maximize net benefits.

Second, the Executive Order establishes the pre-eminence of the Presidential Task Force on Regulatory Relief in matters concerning regulatory policy.

Third, the Executive Order creates a mechanism through which the Office of Management and Budget (OMB), under the overall direction of the Task Force, is to review proposed regulations and consult with agencies about them. It also calls for a mechanism for OMB to identify existing regulations which agencies must address, and for OMB and the Task Force to coordinate the development of legislative proposals in the regulatory area. Consistent with the responsibilities of my office under the Paperwork Reduction Act of 1980, we have endeavored to combine the processing of regulatory proposals as to their paperwork requirements and the substance of the regulations. Accordingly, we have developed a computerized system to monitor all regulations that are forwarded by Executive Branch agencies.

Numerous regulatory agencies--independent as well as those in the Executive Branch--have submitted rules for review under the order as shown below:

<u>Department/Agency</u>	<u>Submissions</u>
Agriculture	101
Commerce	38
Community Services Administration	1
Education	34
Energy	17
Environmental Protection Agency	161
Federal Emergency Management Agency	5
Federal Inspector for Alaska Natural Gas Transportation	4
General Services Administration	13
Health and Human Services	15
Housing and Urban Development	37
Interior	22
Justice	15
Labor	31
National Foundation on the Humanities	5
Nuclear Regulatory Commission	1
Office of Personnel Management	10
Small Business Administration	2
State	2
Transportation	110
Treasury	1
U.S. Metric Board	3
Veterans Administration	30
TOTAL	<u>658</u>

One tangible result of our efforts has been to reduce significantly the flow of new regulations from the Executive Branch agencies. As shown in the table below, the rate of issuance of new regulations--both final and proposed--is down by more than a third since January, and the number of pages printed in the Federal Register has been cut by more than half.

<u>Federal Register</u>	<u>Average Daily Number (1981)</u>				<u>Percent Change April vs. Jan.</u>
	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	
Final Rules	38	21	21	23	-39
Proposed Rules	25	14	11	16	-36
Pages Printed	461	230	231	214	-54

I want to stress, however, two points with regard to our experience under the Executive Order. First, although I have been a close student of this matter since having a responsibility for President Ford's Inflation Impact Statement Program, I continue to be amazed at the variety of issues that crop up from time to time. Thus, it is my firm belief that institutional arrangements for addressing such issues must remain flexible. No one can know in advance all the contingencies and be able to establish hard and fast rules for dealing with them.

Second, I am daily thankful for the authority contained in the Executive Order to exempt regulations. For example, we discovered quickly that a morass of detailed minor regulations would quickly clog our regulatory

review pipeline. The authority granted by the Executive Order allowed us to exempt certain classes of Internal Revenue Service, Environmental Protection Agency, and Department of Transportation regulations that threatened to bring our program to a standstill. On the other hand, our ability under the Executive Order to identify certain regulations as "major" keeps the agencies on their toes and enables us to take a close look at particularly controversial or burdensome regulations that normally would not qualify as "major."

Comments on S.1080 and S.344

Mr. Chairman and Members of the Committee, we in the Administration heartily support the basic outlines of S.1080, the proposed Regulatory Reform Act, and look forward to expeditious treatment of the bill by Congress. We wish to emphasize, however, that the business of procedural reform is a two-edged sword. Like so many things in life, a good idea pushed to extremes can be counterproductive, just as bad ideas always are. We want to work with you to ensure that in any resultant legislation the appropriate balance is struck between strengthened procedures and the necessary flexibility to implement them. I believe that by and large S.1080 strikes the appropriate balance.

We do have certain concerns with the language of S.1080, concerns we believe should be addressed in the legislative process.

Two generic points especially concern us. First, we want to make very certain that the bill would not restrain the Administration's ability to achieve regulatory relief under the Executive Order. We believe that a clear enunciation of the President's regulatory principles and the oversight role of OMB and the Task Force are crucial to the success of this effort.

Second, we note that a significant difference between the review process under Executive Order 12291 and the process that would be established by S.1080 is the role of the judiciary in achieving the purposes of the program. Under the Executive Order, there is no judicial enforcement of the additional requirements imposed upon the agencies. In other words, there can be no judicial challenges to agency rules on the grounds that a rule should or should not have been a major rule that the Regulatory Impact Analyses and reviews were inadequate, or that any other requirements of the Executive Order had not been satisfied. The Executive Order relies upon the Executive to enforce compliance with the Order, and I can assure you that we will continue to do this aggressively. It may be appropriate at some point to involve the courts in ensuring compliance with new regulatory procedures, but we must ensure that we do not create a new gauntlet of judicially reviewable procedures which could be used for purposes other than those for which regulatory reform is intended.

With just a few changes, we believe the bill before you would satisfy these concerns. Essentially, what is required is an Executive Branch oversight mechanism that permits the White House greater enforcement over major rule designations and compliance with the bill and that concomitantly reduces the courts' role in these areas. We also believe that it would be simpler to put the new procedural provisions in a new Chapter 6 of the Administrative Procedure Act, rather than run the risk of unintentionally complicating the well-understood provisions of existing Chapter 5.

With these and other minor changes, we believe that the basic provisions of the bill would result in worthwhile, long-lasting reform of the regulatory process. As our Executive Order indicates, we believe that it is essential to do benefit-cost analysis where appropriate and to insist on the most cost-effective means of achieving a statutory goal. Moreover, we believe it equally important to provide a mechanism for the review of existing rules. While we can achieve these same ends under the Executive Order, it would be useful to perpetuate these principles—many of which, we should add, were identified by this and other Committees during the last two years.

Similarly, it is important to require agencies to reveal at the outset of a proceeding precisely what data and studies they are relying upon, so that all interested parties may be able to participate more fully. Fuller participation is also insured by other provisions which prohibit final agency reliance on material not available for comment. These are important provisions and we support them.

The bill also contains a hearing modification for major rules that has come to be called hybrid rulemaking. We agree with the bill's sponsors that hybrid procedures would improve the regulatory process by strengthening the factual basis for rules, so long as the provision for judicial review is carefully circumscribed to avoid dilatory litigation over purely procedural issues. With minor technical changes, we believe S.1080 could accomplish that objective.

In connection with judicial review, we should add one point about the Bumpers Amendment. We see no serious problem in eliminating any presumption of validity with respect to an agency's assertion of power or jurisdiction beyond its statutory authorization. Indeed, under the Executive Order we shall endeavor to accomplish this same objective. But other presumptions not involving agency jurisdiction or power—such as those relating to procedural regularity, statutory interpretation of technical or scientific provisions, and an agency's own rules—serve a useful purpose in focusing judicial review on the issues of significance. Moreover, elimination of those presumptions would undo nearly half a century of precedent and create needless uncertainties and litigation.

Now let me comment briefly on S.344. This bill contains a mechanism which would allow individual committees of Congress to delay the effective dates of a "significant" regulations for 60 days or more. While the Administration supports increased Congressional oversight of regulatory agencies, it has serious constitutional concerns with respect to legislative veto devices and opposes any legislative veto that applies to Executive Branch agencies. It is not my role to discuss the constitutional or legal objections to such devices. I can say, however, that as a matter of policy the Administration could accept certain versions of a legislative veto mechanism applying only to selected "independent" agencies.

Finally, we would like to note that neither procedural legislation nor legislative veto is a substitute for reform of substantive statutes like the Clean Air Act. Passage of S.1080 would improve the regulatory process. But the organic statutes must be reexamined and we would welcome consideration of legislation that would provide for the periodic and comprehensive review of existing legislated regulatory programs.

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Mr. Chairman, Members of the Committee: that completes my prepared statement. Dr. Weidenbaum, Mr. Gray, and I shall be happy to address any questions you might have.

STATEMENT
OF
JAMES C. MILLER III
ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS,
OFFICE OF MANAGEMENT AND BUDGET
AND
EXECUTIVE DIRECTOR,
PRESIDENTIAL TASK FORCE ON REGULATORY RELIEF
BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM OF THE
COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES SENATE
(May 14, 1981)

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this morning, along with Chairman Weidenbaum, to discuss our mutual efforts to improve the regulatory process. With us today is C. Boyden Gray, Counsel to the Presidential Task Force on Regulatory Relief.

As you know, many efforts have been mounted over the past several years to improve the performance of the regulatory agencies, and this Subcommittee has performed a Herculean task in identifying problems of regulatory procedure and finding solutions. The bill before you, I know, is the product of extensive discussions involving Members of this Subcommittee, leaders of the private sector, and key officials in the Administration, including the Chairman of President Reagan's

Task Force on Regulatory Relief, Vice President George Bush. Moreover, we have had a close, cordial, and productive working relationship with you and your staff and look forward to its continuation in the future.

Before I discuss the details of S. 1080, the proposed "Regulatory Reform Act", I would like to review briefly the President's program of regulatory relief and discuss our early experience under Executive Order 12291, "Federal Regulation."

President's Program of Regulatory Relief

As one of the four cornerstones of President Reagan's economic recovery program, regulatory relief is clearly one of the top priorities of this Administration. The four cornerstones are:

- o A stringent budget policy to restrain federal spending and put more resources in the private sector where they are more productive;
- o A tax reduction program to encourage saving and investment;
- o A program of regulatory relief to achieve regulatory goals at lower costs in order to increase the supply of goods and services available for other pressing needs; and
- o A stable monetary policy to reduce uncertainty and encourage greater investment by businesses and more rational expenditures on the part of consumers.

The four components are complementary. They share the basic philosophy of increasing overall economic activity in order to increase productivity, reduce inflation and unemployment, and raise the real incomes of all Americans.

During his first months in office, the President took swift and positive action to eliminate excessive and ineffective regulations. Let me take just a minute to outline some of these actions for you.

On the day after the Inauguration, President Reagan asked the Vice President to chair a Cabinet-level Task Force on Regulatory Relief. The Task Force is responsible for reviewing new regulations, assessing existing regulations, and coordinating legislative policies in the regulatory area. As I mentioned, the Task Force is chaired by Vice President Bush, but it also includes as members: Treasury Secretary Regan, Attorney General Smith, Commerce Secretary Baldrige, Labor Secretary Donovan, Office of Management and Budget Director Stockman, Assistant to the President for Policy Development Anderson, and Council on Economic Advisers Chairman Weidenbaum. As the Vice President has noted, the charge given to his Task Force is not to study regulation or deregulation, but to provide regulatory relief.

Eight days later, on January 29, the President sent a memorandum to the heads of eleven cabinet departments and the Environmental Protection Agency, asking them to postpone for 60 days -- until March 30 -- the effective dates of all final regulations that had not yet taken effect. He also asked the agencies not to issue any additional final regulations during

this period. This action was taken to allow time for the President's appointees to familiarize themselves with the details of the so-called "midnight regulations" and other proposed new rules.

On February 17, President Reagan issued Executive Order 12291, "Federal Regulation," designed to improve regulatory performance and provide regulatory relief.

The President's program of regulatory relief goes beyond new regulations to include existing regulations. On March 25, building on the President's previous actions, Vice President Bush released a list of 27 existing regulatory programs which agencies had agreed to reassess. The Task Force and the agencies will continue to review and identify additional areas where review of existing rules and regulatory programs is necessary. The Vice President also asked the assistance of business, labor, consumer, and other groups in identifying regulations in need of rescission or modification. We have received over 200 detailed and sophisticated submissions in response to that request. In coordination with the responsible agencies, we intend to use these submissions to help establish the regulatory priorities of this Administration.

Almost every Cabinet department and agency has taken important steps to provide regulatory relief. For example, the Department of Transportation has proposed changes in a number of regulations, especially those affecting the automobile; the Department of Energy has targeted some 200 regulations for thorough review; the Department of Labor's own Regulatory Reform

Task Force has begun a careful review of regulatory proposals and existing programs to find ways of achieving health and safety goals at lower costs.

These actions are only a first step in achieving meaningful regulatory relief. Although it is too early to have final figures, preliminary results have been gratifying. I can assure you that the relief measures taken by the agencies amount to billions of dollars per year. And we are only beginning. Much more will be done in the coming months. Regulatory relief is essential to economic recovery. The President himself has made it clear that he expects real regulatory relief and we intend to carry out his mandate and that of the American people.

Executive Order 12291

Now let me address our experience under Executive Order 12291. I would like to point out that the Executive Order has only been in place since February 17, and our experience has understandably been too short to predict precisely what the final results will be. However, I can say with certainty that the first three months have been very encouraging.

The Executive Order consists of three major parts. First, it sets out the President's regulatory principles. Under these common-sense principles, an agency is directed not to regulate unless the benefits of the rule exceed the costs; the least costly alternative is chosen; and the regulation maximizes net benefits.

Second, the Presidential Task Force on Regulatory Relief is clearly established as the primary oversight body with regard to Executive-branch regulatory policy.

Third, the Executive Order creates a review process directing the Office of Management and Budget, under the direction of the Presidential Task Force, to review proposed regulations and consult with agencies about them. It calls for OMB to identify existing regulations which agencies should review and for OMB and the Task Force jointly to develop legislative proposals where needed in the regulatory area.

To date, over 658 rules have been submitted by 23 Executive and "independent" agencies:

<u>Department/Agency</u>	<u>Submissions</u>
Agriculture.....	101
Commerce.....	38
Community Services Administration.....	1
Education.....	34
Energy.....	17
Environmental Protection Agency.....	161
Federal Emergency Management Agency.....	5
Federal Inspector for Alaska Natural Gas Transportation.....	4
General Services Administration.....	13
Health and Human Services.....	15
Housing and Urban Development.....	37
Interior.....	22
Justice.....	15
Labor.....	31
National Foundation on the Humanities.....	5
Nuclear Regulatory Commission.....	1
Office of Personnel Management.....	10
Small Business Administration.....	2
State.....	2
Transportation.....	110
Treasury.....	1
U.S. Metric Board.....	3
Veterans Administration.....	30
Total.....	<u>658</u>

I might note that, taken together, the Departments of Transportation, Agriculture and the Environmental Protection Agency account for over half of these rules.

The rate at which regulations are being issued by agencies has slowed significantly as well. The number of new final and proposed regulations is down by more than a third since January, and the average number of pages published daily in the Federal Register has been cut by more than half.

With regard to our experience under the Executive Order, two points deserve particular emphasis. First, we have found that flexibility is crucial. It is simply not possible to anticipate all the issues that surface in the regulatory area. I believe that such unforeseeable situations demand flexibility on the part of the institutional arrangement assigned to address these issues. Second, the authority to waive regulations and to identify certain other regulations as "major" is another crucial element in the Executive Order. The authority granted under the order permitting us to exempt certain classes of regulations prevented the program from being brought literally to a standstill. The authority to designate rules as "major" keeps agencies on their toes and allows us to identify especially burdensome or controversial regulations for review, even if ordinarily they would not qualify as "major".

The Task Force is still learning how best to deal with the business of regulatory relief. It is important that hard and fast requirements not be imposed which could block new and effective regulatory relief measures.

Comments on S. 1080

Mr. Chairman and Members of the Subcommittee, we in the Administration heartily support the goals of S. 1080. As our Executive Order indicates, we believe it essential to perform analysis for major new and existing regulations and to choose the most cost-effective means of achieving a statutory goal. While we can achieve these goals under the Executive Order, there is a clear benefit to codifying these requirements in legislation. The basic concepts embodied in S. 1080, we believe, hold the potential for providing the long-lasting reform of the regulatory process that is vitally needed.

As with much legislation, an appropriate balance must be struck between detailed legislative provisions and the need for flexibility. For the most part, I think S. 1080 achieves this goal.

The bill addresses the pervasive problems of agency reliance on undisclosed or questionable scientific data and the current inadequacies of rulemaking files. The bill would require an agency to disclose at the outset the studies on which it intends to rely and to make those studies and all other relevant material available for public comment. These are important provisions and we support them.

The bill also provides for what has come to be known as "hybrid rulemaking" for major rules. The opportunity for oral presentation and cross-examination in major rulemakings, we believe, can strengthen the regulatory process by providing close scrutiny of matters of material fact. As the sponsors of the

bill recognized, it is also important to limit the scope of judicial review on such procedural issues, and we in fact would suggest that the provision for judicial review be even more carefully circumscribed.

The bill also contains important provisions eliminating the "race to the courthouse" problem that exists under the current venue provision and establishing a regulatory agenda and calendar. In both cases, the bill makes an important contribution towards improving administrative practice.

The centerpiece of the bill, from our perspective, is its provision requiring careful economic analysis of major rules. All too often in the past, rules were issued with little or no consideration of their economic consequences. That will not happen under this Administration, and it should not happen under any subsequent Administration. This is an area, however, where the balance between effective legislative prescriptions on the one hand and needed Executive-branch flexibility on the other is particularly difficult to accomplish. With just a few changes, we believe that S. 1080 can achieve that balance.

Essentially, what is required is an Executive-branch oversight mechanism that grants the President or his designees authority to designate major rules and to enforce compliance with provisions of the proposed legislation. This would reduce the role of the courts in these areas. We also believe that it would be simpler to put the new procedural provisions in a new Chapter 6 of the Administrative Procedure Act, rather than run the risk

of unintentionally complicating the well-understood provisions of existing Chapter 5. Finally, we think that the first definition of "major rule" should be limited to rules that would increase enforcement or compliance costs by \$100 million or more. As it now stands, a full economic impact analysis would be required for even minor changes in major existing rules.

Our concern here is two-fold. First, we want to ensure that enactment of the bill would not hamper the Administration's efforts to achieve regulatory relief. Second, we want to avoid the danger of creating opportunities for litigation -- particularly litigation over the adequacy of an agency's analysis -- that could be used to frustrate, rather than promote, regulatory relief. To the extent there is judicial review of whether a rule is "major", we believe it should be limited to the bright line test of the \$100 million increase in compliance and enforcement costs. The other two tests are too vague to permit useful judicial review.

In connection with judicial review, we should add one point about the Bumpers Amendment. We believe that the bill's provision eliminating any presumption of validity with respect to an agency's assertion of power or jurisdiction beyond its statutory authorization raises no serious problem. Indeed, under the Executive Order we are committed to achieving this same objective. But other presumptions not involving agency jurisdiction or power -- such as those relating to procedural regularity, statutory interpretation of technical or scientific

provisions, and an agency's own rules -- serve a useful purpose in focusing judicial review on the issues of significance. Moreover, elimination of those presumptions could create needless uncertainties and litigation.

With these and other minor changes, we believe that enactment of S. 1080 would result in a significant and enduring improvement in the substance and procedures of regulatory decisionmaking. The bill's approach is comprehensive and is based on a well-reasoned understanding of the nature of the regulatory problem and what can be done to correct it. In this regard, we are particularly pleased that the bill's major rulemaking provisions will not become effective until January 1, 1983. This delayed effective date does not undercut in any way the urgency of the problem, but rather evidences a realistic appreciation that it will require time for the agencies to adapt to the new demands being placed upon them. As I pointed out earlier, we are only in the initial stages of implementing the Executive Order. We are learning constantly. This bill would allow that learning process to continue, to the ultimate benefit of the regulatory process itself. Thus, we strongly support Section 8 of the bill.

Mr. Chairman, Members of the Committee, that completes my prepared statement. Mr. Weidenbaum, Mr. Gray, and I shall be happy to address any questions you might have.



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

5/26 To FRANK.

RJ file

May 22, 1981 rec'd 5/26/81

MEMORANDUM FOR THE VICE PRESIDENT AND THE DIRECTOR

FROM: ~~Jim~~ Miller

SUBJECT: ~~Status~~ Report on Regulatory Relief

Nine-digit Zip Code: OMB staff reviewed the Postal Service Regulatory Impact Analysis (RIA) and concluded that the analysis is not adequate under the terms of the Executive Order. I have sent a letter to Postmaster General Bolger requesting more information and asking the Postal Service not to publish the nine-digit Zip rule in final form until we have received and appraised the information requested. (See Attachment 1.)

Consumer Product Safety Commission: Visits were made to four members of the House Energy and Commerce Committee to explain the Administration's position on restructuring the Commission.

Correspondence: First, thank-you letters from the Vice President were sent to groups that responded to his letter of March 25. (See Attachment 2.) (Boyden and I met today with the individuals in the agencies and Executive Office who are receiving these materials to discuss the best way to handle our own responses.) Second, schedules for reviews of existing regulations have been received from most of the agencies. The exceptions are the Department of Commerce, Department of Health and Human Services and the Department of the Interior. (We have contacted those agencies and expect final schedules in the next day or so.) Finally, I reiterated to appropriate agency officials the need to alert the Task Force and Senior White House Staff of major regulatory initiatives in advance. (See Attachment 3.)



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

May 22, 1981

Honorable William F. Bolger
The Postmaster General
Washington, D.C. 20260

Dear Bill:

Accompanying your letter of April 22, 1981 was a Regulatory Impact Analysis (RIA) and proposed final rule to implement the U.S. Postal Service's ZIP + 4 code. Pursuant to Executive Order 12291, we have reviewed the RIA, as well as Volumes I and II of your "Proposal to Capital Investment Committee: Automated System for Expanded ZIP Code Program," recently made available by your staff.

In our judgment, the RIA, even supplemented by the materials provided by your staff, is not adequate under the terms of the Executive Order. Our concerns are described in more detail in the first attachment.

Regarding the view expressed in your letter of April 22 to the effect that the Postal Service is not covered by the Executive Order, we disagree. The language adopted in the Executive Order is the same as the language contained in the Paperwork Reduction Act of 1980. With regard to the Act and the Executive Order, our General Counsel has concluded that the Postal Service is indeed covered. (A legal memorandum to that effect is contained as the second attachment.)

I want to emphasize that, on the basis of information provided thus far, we cannot determine whether or not your proposal comports with the regulatory principles set out in the Executive Order. What we need is more information, of the type described in the first attachment. Until such information is received and appraised, we ask that you not publish as final the rule and the RIA.

Sincerely yours,

James C. Miller III
Administrator
Information and
Regulatory Affairs

Enclosure



THE VICE PRESIDENT
WASHINGTON

May 19, 1981

Dear _____:

I just wanted to let you know that we have received your suggestions concerning regulations in need of review and revision, and that the Task Force on Regulatory Relief and others in the Administration will be taking your comments into account as we establish our priorities.

Your input is a valued contribution to our efforts to eliminate excessive and inefficient regulation and we very much appreciate the quickness and depth of your response. By getting the views of those who are directly affected by such regulations, we now have a head start on correcting these problems.

Members of my staff or others in the Administration may be in contact with you in the near future if they have particular questions regarding your suggestions. In any event, I encourage you to continue to address your regulatory problems to the relevant agencies and to apprise the Task Force staff of the results.

Sincerely,

George Bush



OFFICE OF THE VICE PRESIDENT
WASHINGTON

May 22, 1981

Honorable John Fowler
General Counsel
Department of Transportation
NASSIF Building
400 7th Street, S.W.
Washington, D.C. 20590

Dear John:

On March 12 I sent you a letter requesting that your agency coordinate its major regulatory actions with the Task Force on Regulatory Relief by close of business on Thursday of the week before such actions are contemplated.

With a few notable exceptions (e.g., the Department of Energy), agencies have not complied fully with that request. As a result, Members of the Task Force and members of the Senior White House Staff have not received advance notice of many important regulatory initiatives.

I want to reiterate that this procedure is absolutely necessary and that you are responsible for your agency's compliance with it. I understand that final drafts of the relevant instruments may not always be available, and that compliance with the procedure may well require better planning than is currently taking place. But I know you will recognize the importance of keeping the Vice President, other members of the Task Force, and the Senior White House Staff informed of your planned actions.

We have had no major problems to date with the substance of the regulatory relief measures taken; indeed, the progress has been very substantial, and we do not want to hinder it in any way. But if the coordination process breaks down, sooner or later mistakes will be made that could have been averted and the President's program will suffer. I am sure we can depend on your cooperation.

Sincerely yours,

James C. Miller III
Executive Director
Presidential Task Force
on Regulatory Relief

c: The Vice President



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Office of Information and Regulatory Affairs

Date: 5/16/81

TO: Frank Hodson, West Wing

ACTION:

- | | |
|---|---|
| <input type="checkbox"/> FYI | <input type="checkbox"/> Please Comment |
| <input type="checkbox"/> Appropriate Action | <input type="checkbox"/> Draft Response |
| <input type="checkbox"/> Let's Discuss | <input type="checkbox"/> |

REMARKS:

Hope you had no
problems with the drafts.

Jim
2

STATEMENT
OF
JAMES C. MILLER III
ADMINISTRATOR FOR INFORMATION AND REGULATORY AFFAIRS,
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(May 12, 1981)

*File
Reg Reform*

Mr. Chairman and Members of the Committee:

I am pleased to appear before you this morning to discuss long-needed changes in the regulatory process. Joining me today is C. Boyden Gray, Counsel to the Presidential Task Force on Regulatory Relief.

In recent years this Committee has made substantial progress in identifying major problems of regulatory procedure and ways of dealing with them. We have had a cordial working relationship with you and your staff and look forward to a continuation of this relationship in the future.

Before addressing the merits of the major bills before the Committee, I would like to emphasize the importance of the President's program of regulatory relief and discuss our early experience under Executive Order 12291, "Federal Regulation."

President's Program of Regulatory Relief

President Reagan has made regulatory relief one of the four cornerstones of his program of economic recovery. The first is budgetary restraint, the second is tax reduction, the third is regulatory relief, and the fourth is a stable monetary policy. All of these share the fundamental philosophical underpinning of increasing aggregate economic activity so as to increase employment opportunities, reduce inflation, and raise the real incomes of all Americans.

Budgetary reductions are a means of putting more resources in the private sector, where they are more productive. Reductions in tax rates reduce the disincentives for consumers to save and for businesses to invest.

Regulatory relief, of the type that leads to achieving regulatory goals at lower costs, increases the supply of goods and services available for satisfying other pressing needs. And a stable monetary policy reduces uncertainty and therefore leads to greater investment on the part of businesses and more thoughtful and rational expenditures on the part of consumers.

As I have already stated, the President has given regulatory relief an extraordinarily high priority since coming into office. The day after the Inauguration he asked the Vice President to chair a Cabinet-level Task Force

on Regulatory Relief, which has been charged with reviewing new regulations, assessing existing regulations, and coordinating the Administration's legislative policies in the regulatory area. As the Vice President has indicated, the charge given his Task Force is not to study regulation or study ways of reforming regulation, but to provide regulatory relief.

I think we have made significant progress under the President's program. Aided by Executive Order 12291, which I will describe in more detail in a moment, we have moved forward to address many of the more pressing problems. Almost every agency has been involved. Most notably, the Department of Energy has moved expeditiously in removing restraints on energy production and distribution. The Department of Labor—including the Occupational Safety and Health Administration—has responded to acute needs to find ways of achieving health and safety goals at lower costs. The Environmental Protection Agency has taken important initiatives to streamline its regulatory procedures and grant relief amounting to considerable savings at little or no harm to the environment. The Department of Transportation likewise has identified numerous regulations—especially those affecting the automobile—which demand prompt attention.

Although we do not yet have final figures, I can assure you that the relief measures identified thus far amount to billions of dollars per year. Moreover, what has taken place to date is only the tip of the iceberg. Much more will be forthcoming. Vice President Bush, Director Stockman,

Chairman Weidenbaum, and other Members of the Task Force have made it plain to us that their expectations for regulatory relief are very high. The President wants it, and the country demands it.

Experience under Executive Order 12291

Now, let me turn to the Administration's experience under the new Executive Order. First, I think it is important to bear in mind that Executive Order 12291 has been in place only since February 17, and therefore experience has been too short and insufficient to permit a definitive judgment as to precisely how it will work in the long run.

The Executive Order has three major parts. First, it sets forth the President's regulatory principles. These include requirements that if the agency wishes to regulate, it should do so for good reason; the benefits of the regulation should exceed the costs; the agency should choose the least costly way of securing the regulatory objective; and the regulation should maximize net benefits.

Second, the Executive Order establishes the pre-eminence of the Presidential Task Force on Regulatory Relief in matters concerning regulatory policy.

Third, the Executive Order creates a mechanism through which the Office of Management and Budget (OMB), under the overall direction of the Task Force, is to review proposed regulations and consult with agencies about them. It also calls for a mechanism for OMB to identify existing regulations which agencies must address, and for OMB and the Task Force to coordinate the development of legislative proposals in the regulatory area. Consistent with the responsibilities of my office under the Paperwork Reduction Act of 1980, we have endeavored to combine the processing of regulatory proposals as to their paperwork requirements and the substance of the regulations. Accordingly, we have developed a computerized system to monitor all regulations that are forwarded by Executive Branch agencies.

Numerous regulatory agencies—-independent as well as those in the Executive Branch—have submitted rules for review under the order as shown below:

<u>Department/Agency</u>	<u>Submissions</u>
Agriculture	101
Commerce	38
Community Services Administration	1
Education	34
Energy	17
Environmental Protection Agency	161
Federal Emergency Management Agency	5
Federal Inspector for Alaska Natural Gas Transportation	4
General Services Administration	13
Health and Human Services	15
Housing and Urban Development	37
Interior	22
Justice	15
Labor	31
National Foundation on the Humanities	5
Nuclear Regulatory Commission	1
Office of Personnel Management	10
Small Business Administration	2
State	2
Transportation	110
Treasury	1
U.S. Metric Board	3
Veterans Administration	30
TOTAL	<u>658</u>

One tangible result of our efforts has been to reduce significantly the flow of new regulations from the Executive Branch agencies. As shown in the table below, the rate of issuance of new regulations--both final and proposed--is down by more than a third since January, and the number of pages printed in the Federal Register has been cut by more than half.

<u>Federal Register</u>	<u>Average Daily Number (1981)</u>				<u>Percent Change April vs. Jan.</u>
	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>	
Final Rules	38	21	21	23	-39
Proposed Rules	25	14	11	16	-36
Pages Printed	461	230	231	214	-54

I want to stress, however, two points with regard to our experience under the Executive Order. First, although I have been a close student of this matter since having a responsibility for President Ford's Inflation Impact Statement Program, I continue to be amazed at the variety of issues that crop up from time to time. Thus, it is my firm belief that institutional arrangements for addressing such issues must remain flexible. No one can know in advance all the contingencies and be able to establish hard and fast rules for dealing with them.

Second, I am daily thankful for the authority contained in the Executive Order to exempt regulations. For example, we discovered quickly that a morass of detailed minor regulations would quickly clog our regulatory

review pipeline. The authority granted by the Executive Order allowed us to exempt certain classes of Internal Revenue Service, Environmental Protection Agency, and Department of Transportation regulations that threatened to bring our program to a standstill. On the other hand, our ability under the Executive Order to identify certain regulations as "major" keeps the agencies on their toes and enables us to take a close look at particularly controversial or burdensome regulations that normally would not qualify as "major."

Comments on S.1080 and S.344

Mr. Chairman and Members of the Committee, we in the Administration heartily support the basic outlines of S.1080, the proposed Regulatory Reform Act, and look forward to expeditious treatment of the bill by Congress. We wish to emphasize, however, that the business of procedural reform is a two-edged sword. Like so many things in life, a good idea pushed to extremes can be counterproductive, just as bad ideas always are. We want to work with you to ensure that in any resultant legislation the appropriate balance is struck between strengthened procedures and the necessary flexibility to implement them. I believe that by and large S.1080 strikes the appropriate balance.

We do have certain concerns with the language of S.1080, concerns we believe should be addressed in the legislative process.

Two generic points especially concern us. First, we want to make very certain that the bill would not restrain the Administration's ability to achieve regulatory relief under the Executive Order. We believe that a clear enunciation of the President's regulatory principles and the oversight role of OMB and the Task Force are crucial to the success of this effort.

Second, we note that a significant difference between the review process under Executive Order 12291 and the process that would be established by S.1080 is the role of the judiciary in achieving the purposes of the program. Under the Executive Order, there is no judicial enforcement of the additional requirements imposed upon the agencies. In other words, there can be no judicial challenges to agency rules on the grounds that a rule should or should not have been a major rule that the Regulatory Impact Analyses and reviews were inadequate, or that any other requirements of the Executive Order had not been satisfied. The Executive Order relies upon the Executive to enforce compliance with the Order, and I can assure you that we will continue to do this aggressively. It may be appropriate at some point to involve the courts in ensuring compliance with new regulatory procedures, but we must ensure that we do not create a new gauntlet of judicially reviewable procedures which could be used for purposes other than those for which regulatory reform is intended.

With just a few changes, we believe the bill before you would satisfy these concerns. Essentially, what is required is an Executive Branch oversight mechanism that permits the White House greater enforcement over major rule designations and compliance with the bill and that concomitantly reduces the courts' role in these areas. We also believe that it would be simpler to put the new procedural provisions in a new Chapter 6 of the Administrative Procedure Act, rather than run the risk of unintentionally complicating the well-understood provisions of existing Chapter 5.

With these and other minor changes, we believe that the basic provisions of the bill would result in worthwhile, long-lasting reform of the regulatory process. As our Executive Order indicates, we believe that it is essential to do benefit-cost analysis where appropriate and to insist on the most cost-effective means of achieving a statutory goal. Moreover, we believe it equally important to provide a mechanism for the review of existing rules. While we can achieve these same ends under the Executive Order, it would be useful to perpetuate these principles—many of which, we should add, were identified by this and other Committees during the last two years.

Similarly, it is important to require agencies to reveal at the outset of a proceeding precisely what data and studies they are relying upon, so that all interested parties may be able to participate more fully. Fuller participation is also insured by other provisions which prohibit final agency reliance on material not available for comment. These are important provisions and we support them.

The bill also contains a hearing modification for major rules that has come to be called hybrid rulemaking. We agree with the bill's sponsors that hybrid procedures would improve the regulatory process by strengthening the factual basis for rules, so long as the provision for judicial review is carefully circumscribed to avoid dilatory litigation over purely procedural issues. With minor technical changes, we believe S.1080 could accomplish that objective.

In connection with judicial review, we should add one point about the Bumpers Amendment. We see no serious problem in eliminating any presumption of validity with respect to an agency's assertion of power or jurisdiction beyond its statutory authorization. Indeed, under the Executive Order we shall endeavor to accomplish this same objective. But other presumptions not involving agency jurisdiction or power—such as those relating to procedural regularity, statutory interpretation of technical or scientific provisions, and an agency's own rules—serve a useful purpose in focusing judicial review on the issues of significance. Moreover, elimination of those presumptions would undo nearly half a century of precedent and create needless uncertainties and litigation.

Now let me comment briefly on S.344. This bill contains a mechanism which would allow individual committees of Congress to delay the effective dates of a "significant" regulations for 60 days or more. While the Administration supports increased Congressional oversight of regulatory agencies, it has serious constitutional concerns with respect to legislative veto devices and opposes any legislative veto that applies to Executive Branch agencies. It is not my role to discuss the constitutional or legal objections to such devices. I can say, however, that as a matter of policy the Administration could accept certain versions of a legislative veto mechanism applying only to selected "independent" agencies.

Finally, we would like to note that neither procedural legislation nor legislative veto is a substitute for reform of substantive statutes like the Clean Air Act. Passage of S.1080 would improve the regulatory process. But the organic statutes must be reexamined and we would welcome consideration of legislation that would provide for the periodic and comprehensive review of existing legislated regulatory programs.

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Mr. Chairman, Members of the Committee: that completes my prepared statement. Dr. Weidenbaum, Mr. Gray, and I shall be happy to address any questions you might have.

STATEMENT
OF
JAMES C. MILLER III
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OFFICE OF MANAGEMENT AND BUDGET
AND
EXECUTIVE DIRECTOR,
PRESIDENTIAL TASK FORCE ON REGULATORY RELIEF
BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM OF THE
COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES SENATE
(May 14, 1981)

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this morning, along with Chairman Weidenbaum, to discuss our mutual efforts to improve the regulatory process. With us today is C. Boyden Gray, Counsel to the Presidential Task Force on Regulatory Relief.

As you know, many efforts have been mounted over the past several years to improve the performance of the regulatory agencies, and this Subcommittee has performed a Herculean task in identifying problems of regulatory procedure and finding solutions. The bill before you, I know, is the product of extensive discussions involving Members of this Subcommittee, leaders of the private sector, and key officials in the Administration, including the Chairman of President Reagan's

Task Force on Regulatory Relief, Vice President George Bush. Moreover, we have had a close, cordial, and productive working relationship with you and your staff and look forward to its continuation in the future.

Before I discuss the details of S. 1080, the proposed "Regulatory Reform Act", I would like to review briefly the President's program of regulatory relief and discuss our early experience under Executive Order 12291, "Federal Regulation."

President's Program of Regulatory Relief

As one of the four cornerstones of President Reagan's economic recovery program, regulatory relief is clearly one of the top priorities of this Administration. The four cornerstones are:

- o A stringent budget policy to restrain federal spending and put more resources in the private sector where they are more productive;
- o A tax reduction program to encourage saving and investment;
- o A program of regulatory relief to achieve regulatory goals at lower costs in order to increase the supply of goods and services available for other pressing needs; and
- o A stable monetary policy to reduce uncertainty and encourage greater investment by businesses and more rational expenditures on the part of consumers.

The four components are complementary. They share the basic philosophy of increasing overall economic activity in order to increase productivity, reduce inflation and unemployment, and raise the real incomes of all Americans.

During his first months in office, the President took swift and positive action to eliminate excessive and ineffective regulations. Let me take just a minute to outline some of these actions for you.

On the day after the Inauguration, President Reagan asked the Vice President to chair a Cabinet-level Task Force on Regulatory Relief. The Task Force is responsible for reviewing new regulations, assessing existing regulations, and coordinating legislative policies in the regulatory area. As I mentioned, the Task Force is chaired by Vice President Bush, but it also includes as members: Treasury Secretary Regan, Attorney General Smith, Commerce Secretary Baldrige, Labor Secretary Donovan, Office of Management and Budget Director Stockman, Assistant to the President for Policy Development Anderson, and Council on Economic Advisers Chairman Weidenbaum. As the Vice President has noted, the charge given to his Task Force is not to study regulation or deregulation, but to provide regulatory relief.

Eight days later, on January 29, the President sent a memorandum to the heads of eleven cabinet departments and the Environmental Protection Agency, asking them to postpone for 60 days -- until March 30 -- the effective dates of all final regulations that had not yet taken effect. He also asked the agencies not to issue any additional final regulations during

this period. This action was taken to allow time for the President's appointees to familiarize themselves with the details of the so-called "midnight regulations" and other proposed new rules.

On February 17, President Reagan issued Executive Order 12291, "Federal Regulation," designed to improve regulatory performance and provide regulatory relief.

The President's program of regulatory relief goes beyond new regulations to include existing regulations. On March 25, building on the President's previous actions, Vice President Bush released a list of 27 existing regulatory programs which agencies had agreed to reassess. The Task Force and the agencies will continue to review and identify additional areas where review of existing rules and regulatory programs is necessary. The Vice President also asked the assistance of business, labor, consumer, and other groups in identifying regulations in need of rescission or modification. We have received over 200 detailed and sophisticated submissions in response to that request. In coordination with the responsible agencies, we intend to use these submissions to help establish the regulatory priorities of this Administration.

Almost every Cabinet department and agency has taken important steps to provide regulatory relief. For example, the Department of Transportation has proposed changes in a number of regulations, especially those affecting the automobile; the Department of Energy has targeted some 200 regulations for thorough review; the Department of Labor's own Regulatory Reform

Task Force has begun a careful review of regulatory proposals and existing programs to find ways of achieving health and safety goals at lower costs.

These actions are only a first step in achieving meaningful regulatory relief. Although it is too early to have final figures, preliminary results have been gratifying. I can assure you that the relief measures taken by the agencies amount to billions of dollars per year. And we are only beginning. Much more will be done in the coming months. Regulatory relief is essential to economic recovery. The President himself has made it clear that he expects real regulatory relief and we intend to carry out his mandate and that of the American people.

Executive Order 12291

Now let me address our experience under Executive Order 12291. I would like to point out that the Executive Order has only been in place since February 17, and our experience has understandably been too short to predict precisely what the final results will be. However, I can say with certainty that the first three months have been very encouraging.

The Executive Order consists of three major parts. First, it sets out the President's regulatory principles. Under these common-sense principles, an agency is directed not to regulate unless the benefits of the rule exceed the costs; the least costly alternative is chosen; and the regulation maximizes net benefits.

Second, the Presidential Task Force on Regulatory Relief is clearly established as the primary oversight body with regard to Executive-branch regulatory policy.

Third, the Executive Order creates a review process directing the Office of Management and Budget, under the direction of the Presidential Task Force, to review proposed regulations and consult with agencies about them. It calls for OMB to identify existing regulations which agencies should review and for OMB and the Task Force jointly to develop legislative proposals where needed in the regulatory area.

To date, over 658 rules have been submitted by 23 Executive and "independent" agencies:

<u>Department/Agency</u>	<u>Submissions</u>
Agriculture.....	101
Commerce.....	38
Community Services Administration.....	1
Education.....	34
Energy.....	17
Environmental Protection Agency.....	161
Federal Emergency Management Agency.....	5
Federal Inspector for Alaska Natural Gas Transportation.....	4
General Services Administration.....	13
Health and Human Services.....	15
Housing and Urban Development.....	37
Interior.....	22
Justice.....	15
Labor.....	31
National Foundation on the Humanities.....	5
Nuclear Regulatory Commission.....	1
Office of Personnel Management.....	10
Small Business Administration.....	2
State.....	2
Transportation.....	110
Treasury.....	1
U.S. Metric Board.....	3
Veterans Administration.....	30
Total.....	<u>658</u>

I might note that, taken together, the Departments of Transportation, Agriculture and the Environmental Protection Agency account for over half of these rules.

The rate at which regulations are being issued by agencies has slowed significantly as well. The number of new final and proposed regulations is down by more than a third since January, and the average number of pages published daily in the Federal Register has been cut by more than half.

With regard to our experience under the Executive Order, two points deserve particular emphasis. First, we have found that flexibility is crucial. It is simply not possible to anticipate all the issues that surface in the regulatory area. I believe that such unforeseeable situations demand flexibility on the part of the institutional arrangement assigned to address these issues. Second, the authority to waive regulations and to identify certain other regulations as "major" is another crucial element in the Executive Order. The authority granted under the order permitting us to exempt certain classes of regulations prevented the program from being brought literally to a standstill. The authority to designate rules as "major" keeps agencies on their toes and allows us to identify especially burdensome or controversial regulations for review, even if ordinarily they would not qualify as "major".

The Task Force is still learning how best to deal with the business of regulatory relief. It is important that hard and fast requirements not be imposed which could block new and effective regulatory relief measures.

Comments on S. 1080

Mr. Chairman and Members of the Subcommittee, we in the Administration heartily support the goals of S. 1080. As our Executive Order indicates, we believe it essential to perform analysis for major new and existing regulations and to choose the most cost-effective means of achieving a statutory goal. While we can achieve these goals under the Executive Order, there is a clear benefit to codifying these requirements in legislation. The basic concepts embodied in S. 1080, we believe, hold the potential for providing the long-lasting reform of the regulatory process that is vitally needed.

As with much legislation, an appropriate balance must be struck between detailed legislative provisions and the need for flexibility. For the most part, I think S. 1080 achieves this goal.

The bill addresses the pervasive problems of agency reliance on undisclosed or questionable scientific data and the current inadequacies of rulemaking files. The bill would require an agency to disclose at the outset the studies on which it intends to rely and to make those studies and all other relevant material available for public comment. These are important provisions and we support them.

The bill also provides for what has come to be known as "hybrid rulemaking" for major rules. The opportunity for oral presentation and cross-examination in major rulemakings, we believe, can strengthen the regulatory process by providing close scrutiny of matters of material fact. As the sponsors of the

bill recognized, it is also important to limit the scope of judicial review on such procedural issues, and we in fact would suggest that the provision for judicial review be even more carefully circumscribed.

The bill also contains important provisions eliminating the "race to the courthouse" problem that exists under the current venue provision and establishing a regulatory agenda and calendar. In both cases, the bill makes an important contribution towards improving administrative practice.

The centerpiece of the bill, from our perspective, is its provision requiring careful economic analysis of major rules. All too often in the past, rules were issued with little or no consideration of their economic consequences. That will not happen under this Administration, and it should not happen under any subsequent Administration. This is an area, however, where the balance between effective legislative prescriptions on the one hand and needed Executive-branch flexibility on the other is particularly difficult to accomplish. With just a few changes, we believe that S. 1080 can achieve that balance.

Essentially, what is required is an Executive-branch oversight mechanism that grants the President or his designees authority to designate major rules and to enforce compliance with provisions of the proposed legislation. This would reduce the role of the courts in these areas. We also believe that it would be simpler to put the new procedural provisions in a new Chapter 6 of the Administrative Procedure Act, rather than run the risk

of unintentionally complicating the well-understood provisions of existing Chapter 5. Finally, we think that the first definition of "major rule" should be limited to rules that would increase enforcement or compliance costs by \$100 million or more. As it now stands, a full economic impact analysis would be required for even minor changes in major existing rules.

Our concern here is two-fold. First, we want to ensure that enactment of the bill would not hamper the Administration's efforts to achieve regulatory relief. Second, we want to avoid the danger of creating opportunities for litigation -- particularly litigation over the adequacy of an agency's analysis -- that could be used to frustrate, rather than promote, regulatory relief. To the extent there is judicial review of whether a rule is "major", we believe it should be limited to the bright line test of the \$100 million increase in compliance and enforcement costs. The other two tests are too vague to permit useful judicial review.

In connection with judicial review, we should add one point about the Bumpers Amendment. We believe that the bill's provision eliminating any presumption of validity with respect to an agency's assertion of power or jurisdiction beyond its statutory authorization raises no serious problem. Indeed, under the Executive Order we are committed to achieving this same objective. But other presumptions not involving agency jurisdiction or power -- such as those relating to procedural regularity, statutory interpretation of technical or scientific

provisions, and an agency's own rules -- serve a useful purpose in focusing judicial review on the issues of significance. Moreover, elimination of those presumptions could create needless uncertainties and litigation.

With these and other minor changes, we believe that enactment of S. 1080 would result in a significant and enduring improvement in the substance and procedures of regulatory decisionmaking. The bill's approach is comprehensive and is based on a well-reasoned understanding of the nature of the regulatory problem and what can be done to correct it. In this regard, we are particularly pleased that the bill's major rulemaking provisions will not become effective until January 1, 1983. This delayed effective date does not undercut in any way the urgency of the problem, but rather evidences a realistic appreciation that it will require time for the agencies to adapt to the new demands being placed upon them. As I pointed out earlier, we are only in the initial stages of implementing the Executive Order. We are learning constantly. This bill would allow that learning process to continue, to the ultimate benefit of the regulatory process itself. Thus, we strongly support Section 8 of the bill.

Mr. Chairman, Members of the Committee, that completes my prepared statement. Mr. Weidenbaum, Mr. Gray, and I shall be happy to address any questions you might have.