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AFL-CIO Briefing Book for Gene Sperling [binder] [6]

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Divider Title: **P**

THE WHITE HOUSE

WASHINGTON

January 19, 1997

TO: MICHAEL WARREN

FROM: MARK MAZUR

SUBJECT: COMMERCE REPORT ON PRICING OUTLOOK

You asked whether Gene Sperling should see the memo from Secretary Kantor on the Commerce Working Group on the Pricing Outlook. I think it would be helpful for Gene to review this information as the Secretary sends it over because it provides a shorthand description of potential price level problems. While inflation is quiet now, this report could be extremely useful if price pressures increase. Moreover, it might give advance warning for upcoming price increases in specific industries.

It is not necessary for Gene to review the entire report. Rather, the front page plus a summary should suffice. The summary should list in two columns those industries with upward price pressure and those with stable or declining prices and include a sentence on labor costs. For this month's report, the summary would look like:

Industries with Upward Price Pressure	**Industries with Stable or Declining Prices**
Steel	Automobiles
Aluminum	Aerospace
Zinc	Medical devices and instruments
Petroleum products	Semiconductors
(e.g., heating oil, gasoline)	Computer equipment
Natural gas	Textiles and apparel
	Chemicals
	Copper
	Coal
	Electricity

Labor Costs: Labor costs are beginning to increase for non-farm business as a whole, but labor costs in manufacturing are still declining.

NEC STAFFING MEMORANDUM

Date: 1/17 ~~Action~~/Concurrence/Comment Due By: 1/21

Subject: November Report of the Common Working Group on the Industry-Level Pricing Outlook

	ACTION	FYI		ACTION	FYI
Gene Sperling	☐	☐	Elaine Mitsler	☐	☐
Dan Tarullo	☐	☐	Kristen Panerali	☐	☐
Tom O'Donnell	☐	☐	Dorothy Robyn	☐	☐
Pauline Abernathy	☐	☐	Ellen Seidman	☐	☐
Lael Brainard	☐	☐	Kevin Varney	☐	☐
Paul Dimond	☐	☐	Helen Walsh	☐	☐
Chris Dorval	☐	☐	Michael Warren	☐	☐
Wendy Einhellig	☐	☐	Dena Weinstein	☐	☐
Melissa Green	☐	☐			
Jason Goldberg	☐	☐			
Elgie Holstein	☐	☐	______	☐	☐
Gay Joshlyn	☐	☐	______	☐	☐
Tom Kalil	☐	☐	______	☐	☐
Bob Kyle	☐	☐	______	☐	☐
Malcolm Lee	☐	☐	______	☐	☐
Sonyia Matthews	☐	☐	______	☐	☐
Mark Mazur	☑	☐			

Remarks: Does Gene need to see? Please advise

Response: ______

Michael Warren
456-5807

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

JAN 7 1997

MEMORANDUM FOR THE HONORABLE LAURA TYSON
ASSISTANT TO THE PRESIDENT
FOR ECONOMIC POLICY

FROM: Michael Kantor

SUBJECT: November Report of the Commerce Working Group on the Industry-Level Pricing Outlook

At the November 15 meeting of the Commerce Working Group on the Pricing Outlook, industry experts reported that inflationary pressures remained minimal. Industries with stable to declining prices include: autos, aerospace, medical devices and instrumentation, semiconductors, computer equipment, textiles and apparel, chemicals, copper, coal, and electricity. These industries account for nearly 60 percent of overall private industry output and continue to far outweigh those experiencing upward price pressure.

Industry analysts expect steel, aluminum, and zinc prices to experience some upward pressure in the near future. In addition, heating oil, natural gas, oil, and gasoline could experience at least some temporary price pressure. Some raw materials used in fabrics for home furnishings are also beginning to see some upward price movement as supplies tighten.

Unit labor costs (which adjust increases in compensation for productivity improvements) are beginning to increase for non-farm business, as a whole, but those for the manufacturing sector continue to decline.

Enclosure

cc: Jared Bernstein
Joseph Minarik
Alicia Munnell
Joseph Stiglitz

INDUSTRY-LEVEL PRICING OUTLOOK

November 1996

U.S. Department of Commerce
Economics and Statistics Administration
International Trade Administration
Washington, D.C. 20230
Contact: (202) 482-0096 or (202) 482-2056

At the November 15 meeting of the Commerce Working Group on the Pricing Outlook, industry experts reported that inflationary pressures remained minimal (Tables 1 and 2).[1] Industries with stable to declining prices include: autos, aerospace, medical devices and instrumentation, semiconductors, computer equipment, textiles and apparel, chemicals, copper, coal, and electricity. These industries account for nearly 60 percent of overall private industry output and continue to far outweigh those experiencing upward price pressure (Figures 1 and 2, and Table 3).

Industry analysts expect steel, aluminum, and zinc prices to experience some upward pressure in the near future. In addition, heating oil, natural gas, oil, and gasoline could experience at least some temporary price pressure. Some raw materials used in fabrics for home furnishings are also beginning to see some upward price movement as supplies tighten.

Figures 3 and 4, incorporating data through the third quarter of 1996, show unit labor costs (which adjust increases in compensation for productivity improvements) beginning to increase for non-farm business, as a whole, but those for the manufacturing sector continue to decline.

INDUSTRIES

Autos

Industry experts expect little or no upward price pressures as strong competition continues throughout the vehicle market. The weakening of the yen has given the Japanese increased flexibility to maintain or reduce prices in the U.S. to maintain or even increase market share. The only pressure for price increases will come from suppliers that are increasingly operating at

The Commerce Working Group on the Pricing Outlook consists primarily of DOC industry specialists and experts from other agencies, who provide judgments on the pricing outlook in the industries they monitor. This report reflects the Department's judgment that developments at the industry level, including dynamic new management, continuing cost cutting, on-going deregulation, new technologies, increasing competition, and globalization affect the pricing outlook, productivity, and prospects for economic growth. Moreover, this report is designed to be prospective and supports the conventional price indexes, which are retrospective.

capacity. Even if suppliers increase prices, however, auto manufacturers probably will not be able to pass these through to consumers.

Aerospace

Commerce experts noted a sharp rebound in sales and orders in the civilian transport market, but competition from Airbus and continuing excess capacity should hold price increases down. The military market is flat.

Medical devices and instrumentation

Industry experts foresee no price increases in the medical devices industry. The U.S. industry is operating at below full capacity, with some consolidation of companies. Cost-consciousness among primary and secondary consumers of medical products will continue to restrain prices.

Downward pressure on pricing for instrumentation should continue according to industry experts. Heavy discounting reflects industry consolidation, declining demand, excess capacity, and demand for products with fewer options and features.

Semiconductors

Industry analysts expect prices to continue to decline moderately through the end of the year. Prices for dynamic random access memory chips (DRAMS) tumbled at the end of October and early November, following a brief uptick due to demand by PC manufacturers gearing up for the holiday buying season. Commerce experts do not anticipate a major shortage of DRAMs or a long-term price increase because of large investment in new capacity.

Computer equipment

Industry experts report price declines of 20 to 26 percent in personal computers due to lower component costs and fierce competition for market share from Japanese producers entering the market for desktop personal computers. Prices for microprocessors have declined 20 percent since April and DRAMs prices have been cut 50 percent since last year.

Textiles and apparel

Costs for textile raw materials have been declining for the past few months. Recently, however, supply is tightening for many types of fabric and prices have begun to firm up for some textile mill products, especially fabrics used for home furnishings. Apparel manufacturers expect continued consumer resistance and soft consumer demand to continue to restrain prices and profit margins in 1997.

Chemicals

Industry analysts expect little pressure on chemical prices because of a strong dollar, a slowing U.S. economy, weak export growth, and global competition. Prices of some chemical products including industrial gases, plastic resins, and man-made fibers have risen recently and could rise further because of raw material price increases already in the pipeline. Several basic industrial organic chemicals appear to be weak and could decrease from current levels over the next few months.

Energy

Oil industry experts expect world oil prices to decline in the near term because of increased production. However, in the very short-term, the next several months, prices could remain relatively high and stable. Heating oil prices have increased recently, however, because early cold weather curtailed normal inventory accumulations. After January 1997, prices should begin to decline. Natural gas prices are also up over last year due to low autumn inventories and early winter weather. Assuming a normal winter, prices should begin to decline in February 1997. Competition and deregulation should hold coal and electricity prices in check over the next year. Industry experts expect gasoline prices to increase again over the winter as crude oil prices remain high. There could be a repeat of last year's gasoline price spike next spring if stocks are low coming out of the winter.

Metals

Copper prices are rebounding following a plunge related to the Sumitomo trading scandal. Price increases will be kept in check in the coming year, however, by an expected supply glut. Increasing demand and high, but shrinking global inventories should boost aluminum prices. Zinc supply shortages could decrease inventories to a level that will force prices up about 10 percent on average from 1996 to 1997. Future lead prices depend on global climate conditions; a cold winter would result in higher prices for lead as demand for replacement batteries for automobiles increases.

Large integrated steel mills are implementing price hikes for flat rolled steel beginning in the fourth quarter 1996. This has spurred a surge in imports in recent months, especially from Europe. In the coming year, the ability of U.S. mills to make price hikes stick hinges on European economic recovery.

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1. The consumer price index for all urban consumers (seasonally adjusted CPI-U) rose 0.3 percent in October 1996, the same as in September. Food prices increased, specifically prices of dairy products and fresh fruits and vegetables. In addition, energy prices also rose. In November, the producer price index for finished goods (seasonally adjusted PPI) rose 0.4 percent, following increases of 0.2 percent in September and 0.3 percent in August. The manufacturing PPI increased 0.5 percent in October, after minimal increases in September and August. The increase resulted from the rise in prices for transportation equipment, petroleum refining, and furniture and fixtures.

Table 1. Percent Changes in Consumer Price Index (CPI) For All Urban Consumers

Expenditure category	Changes from preceding month (Seasonally adjusted) Aug-96	Sep-96	Oct-96
ALL ITEMS	0.1	0.3	0.3
Food & beverages	0.3	0.5	0.6
Housing	0.2	0.2	0.3
Shelter	0.1	0.2	0.3
Apparel & upkeep	-1.4	0.5	0.5
Transportation	-0.2	0.5	0.1
New vehicles	0.1	0.6	-0.2
Medical care	0.2	0.2	0.2
Entertainment	0.2	0.1	0.1
Other goods & services	0.3	0.0	0.4
COMMODITIES & SERVICES			
All items	0.1	0.3	0.3
Commodities	-0.1	0.4	0.4
Durable goods	0.1	0.3	-0.1
Services	0.2	0.2	0.3

Source: Bureau of Labor Statistics.

Table 2. Percent Changes in the Producer Price Index (PPI) For Selected Commodity Groups

Expenditure category	Changes from preceding month (Seasonally adjusted) Aug-96	Sep-96	Oct-96
FINISHED GOODS			
Women's apparel 1/	-0.2	0.1	0.3
Men's & boys apparel	-0.2	0.0	0.2
Gasoline	0.9	0.9	5.5
Newspaper circulation	0.3	-0.2	1.0
Household furniture 1/	0.0	0.1	0.1
Household appliances 1/	0.1	-0.1	-0.2
Passenger cars	-0.2	1.2	-1.6
Capital equipment	-0.1	0.3	-0.4
INTERMEDIATE GOODS			
Synthetic fibers 1/	0.0	0.3	-1.5
Industrial chemicals 1/	0.5	0.4	-0.1
Plastic resins & materials 1/	1.6	1.8	0.9
Plywood 1/	2.0	5.7	-3.8
Woodpulp 1/	2.3	-0.3	0.3
Paper 1/	-0.3	-1.2	-0.8
Paperboard 1/	-0.1	-0.1	-1.0
Materials & components for construction	0.3	0.4	-0.3
Softwood lumber 1/	4.3	2.7	-5.1
Cement	0.2	0.4	0.3
Concrete products	0.0	0.4	0.1
Gypsum products 1/	3.7	1.1	1.8
Steel mill products 1/	0.6	0.3	-0.1
Primary nonferrous metals 1/	-9.9	-0.5	-1.6
Motor vehicle parts 1/	0.0	0.0	0.1
Aircraft parts & aux. equip., nec. 1/	0.0	0.1	0.1
CRUDE GOODS			
Raw cotton	6.5	-2.9	1.2
Cattle hides	5.1	-3.6	12.1
Natural gas (to pipelines) 1/	-1.2	-6.4	-3.2
Crude petroleum 1/	3.2	7.3	8.5
Logs, timber, etc. 1/	1.6	0.8	1.7
Wastepaper 1/	2.7	2.9	8.6
Iron & steel scrap 1/	0.0	0.4	-4.3
Copper base scrap 1/	-4.1	-1.3	0.1
Aluminum base scrap	0.6	1.7	-1.5
Construction sand, gravel, & crushed stone	0.1	0.0	0.1

1/ Not seasonally adjusted.

Source: Bureau of Labor Statistics.

Table 3.
A Recent History of Inflation Pressure By Industry Sector

(1)	(2)	(3)	(4)	(5)	(6)
Date	Sectors added	Percent of pvt. industry	Sectors dropped	Percent of pvt. industry	Cum. net total*
Dec 95	Sectors described below**				14.7
Jan 96	Hotels, lodging	0.9			
	Oil & gas extraction	1.2			16.8
Feb 96	Non-metallic minerals	0.1			
	Television and radio	0.7			17.6
Mar 96	Petroleum	0.5			18.1
Apr 96	Legal Services	1.5			19.6
May 96	Tobacco	0.4	Printing	-1.4	
			Personal care serv.	-0.4	18.2
Jun 96	Air transportation	0.9	Medical care serv.	-6.7	
	Lumber	0.5			12.9
Jul 96			Oil & gas extraction	-1.2	11.7
Aug 96			Non-metallic minerals	0.1	
			Entertainment serv.-	1.3	10.3
Oct 96			Petroleum	-0.5	
			Legal Services	-1.5	
			Farm products	-1.5	6.8

*For each month, previous cumulative net total plus sum of column (3) minus sum of column (5).

**As of December 1995, these sectors showed inflationary pressures (defined as price inflation above 3.5 percent at an annual rate over the previous six months): medical care services and insurance, education, printing, auto insurance, miscellaneous repair services, food and farm products, personal care services, and entertainment services.

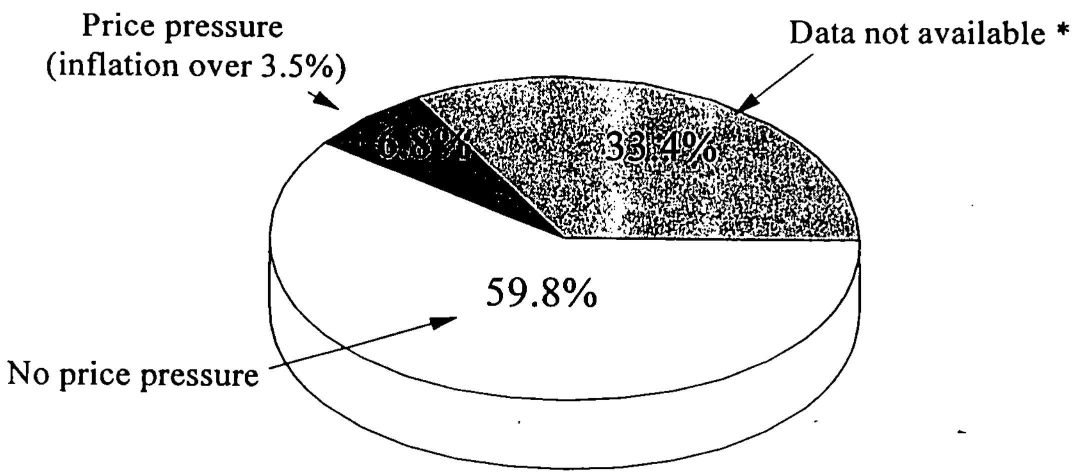
Notes:

The third and fifth columns of the table indicate the weight that each sector has in total private industry, while the sixth column shows the cumulative total of such sectors in a given month. Total does not include sectors for which data is unavailable: wholesale, retail, finance, and business and miscellaneous services sectors.

Remaining on list, end of October 1996: education, food, television and radio, hotels and lodging, auto insurance, air transportation, lumber, tobacco, and miscellaneous repair services.

Caution: Because small changes in inflationary pressure can cause large sectors to be added or subtracted from the list in any given month, monthly movements in the sector total may overstate the actual changes in monthly pressures.

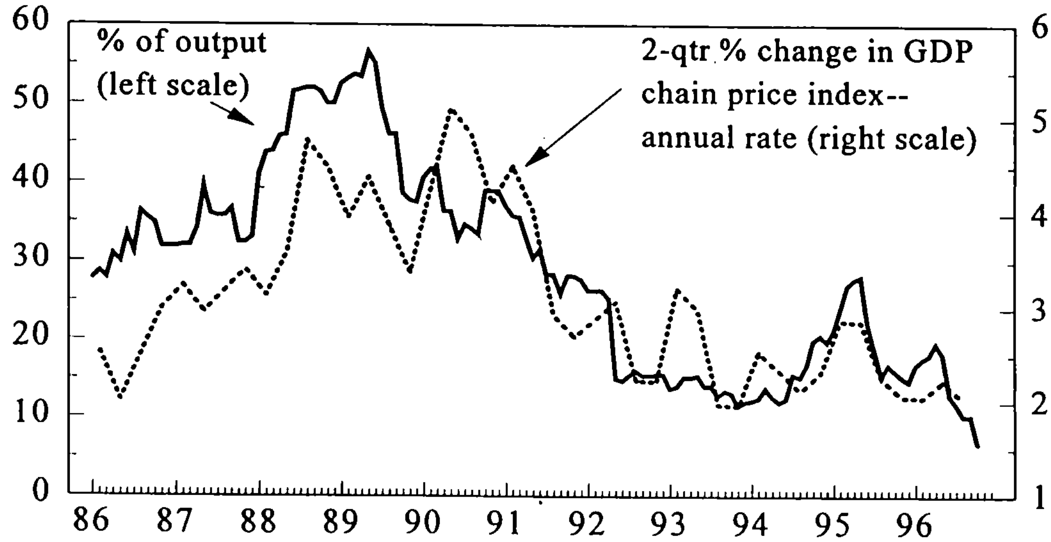
Figure 1.
Percentage of Private Industry Output Experiencing Price Pressure Over the Last 6 Months (Apr. '96 to Oct. '96)
Based on 1994 output share



* Data unavailable for the wholesale, retail, finance, and business and misc. services sectors.

Data sources are producer and consumer price indexes from the Bureau of Labor Statistics, plus a few national income account price deflators and trade association price series. Sector weights are determined by the gross product originating share of that sector in total private industry. GPO share data is from the Bureau of Economic Analysis.

Figure 2.
Share of Private Industry Output Experiencing Price Pressure*

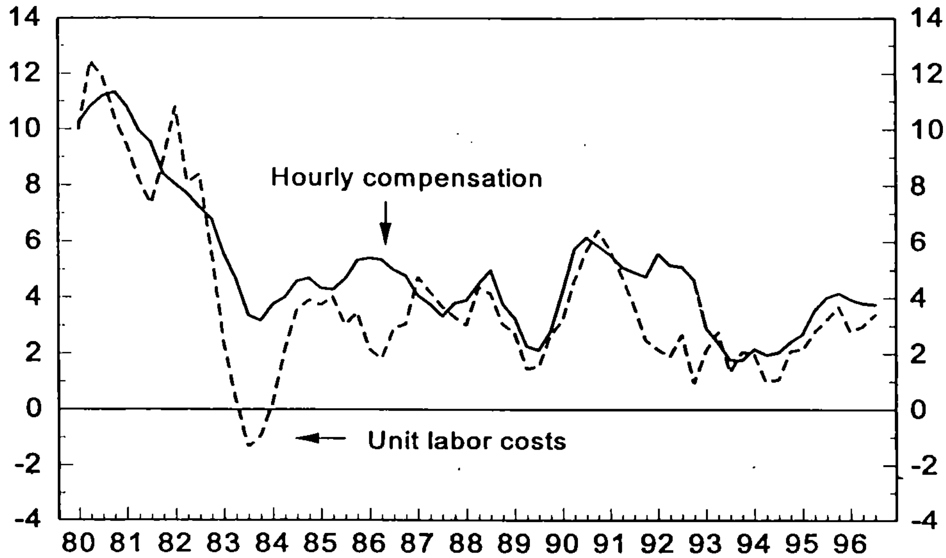


* "Price pressure" is defined as an annual inflation rate in that sector of more than 3.5 percent over the previous 6 months.

Figure 3.

Compensation and Unit Labor Costs in Non-farm Business

4 quarter percent change

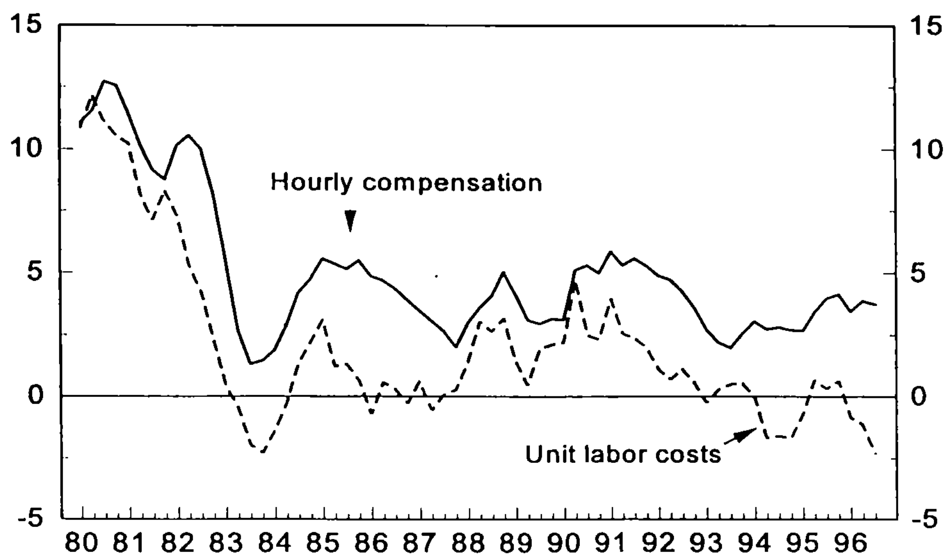


Source: Bureau of Labor Statistics.

Figure 4.

Compensation and Unit Labor Costs in Manufacturing

4 quarter percent change



Source: Bureau of Labor Statistics.

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THE WHITE HOUSE

WASHINGTON

February 18, 1997

MEMORANDUM FOR GENE SPERLING

FROM: ELGIE HOLSTEIN EH

RE: **Children's Environmental Health Executive Order**

Attached are two copies of a the most recent draft of the children's environmental health EO. The first is a clean copy. The second, showing suggested edits from some agencies, will give you a glimpse of some of the concerns that have been raised. Section 5 is key.

Agency Concerns

- **Litigation Risks:** Agencies are concerned that nothing in the EO give interested parties a basis on which to sue an agency for being insufficiently protective of children in the formulation of their rules. The EO explicitly addresses the issue, but agencies are still wary.

- **Damned If They Do -- Regulatory Burden:** Agencies worry that by elevating consideration of children's health in their rulemakings they will be forced to demand extensive new data from industry and to impose economically burdensome standards that are disproportionate to the actual risks posed to children.

- **Damned If They Don't -- Image:** If agencies choose not to adopt a standard fully protective of children's health, they fear they will be criticized by outside groups who will complain that they are defying the President's wishes and ignoring the needs of children.

- **Jurisdiction:** Agencies, such as the CPSC, feel they already look after children's health in the course of their rulemakings and are nervous about the creation of a new, unfamiliar set of requirements. They believe that such requirements could cause conflicts with their current procedures/missions. Other agencies want to be exempted entirely. For example, OSHA argues that since workplaces do not normally have children present, they need not be covered by an EO on this subject.

Next Steps

Interagency discussions are continuing. Bruce Reed had suggested that this EO might be appropriate for the upcoming WH conference on infant development. I anticipate making a recommendation to you later this week regarding the need for an NEC principals meeting.

DISCUSSION DRAFT -- DO NOT CITE OR RELEASE

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

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

- Children's neurological, immunological, digestive and other bodily systems are still developing, making them more susceptible to toxic pollutants and other environmental hazards;
- Children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults, and spend more time outside in play, so they may be more exposed to toxic pollutants and other environmental hazards;
- Children are less able than adults to recognize and to protect themselves from exposure to toxic pollutants and other environmental hazards;
- Children face potential exposures to toxic pollutants over their entire lifetime, with the possibility of more significant health impacts; and
- Children may be at increased risk due to differences in exposure pathways (e.g., greater hand-to-mouth contact, more frequent ingestion of non-food items).

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

- Children's size and weight can affect how well they are protected by safety features;

- Children have activity patterns that are different from those of adults, which may increase their exposure to health and safety risks; and

- Children are less able to protect themselves from risk, and are less responsive to warning regimes.

While Federal agencies typically consider the effect of their work on children, existing standards were derived in many instances principally from data on adults. We need to enhance our understanding of how environmental, health, and safety risks to children differ from the risks to adults. The array and complexity of environmental, health, and safety threats facing children today, and potential inadequacy of existing standards established principally to protect adults, pose a significant challenge to our ability to protect our children's health and safety.

The Federal government is responding vigorously to this challenge, acting to address threats to children's environmental health in the new Food Quality Protection Act, accounting for children in the development of new standards for passive restraints in cars, and taking administrative action to protect children from tobacco use, lead, food-borne illness, and other hazards. But we should do more.

The Federal government must establish a national policy to protect the health of American children from environmental, health, and safety hazards, and apply its resources, including its scientific research capabilities, in a coordinated and efficient manner to address these threats to children. A coordinated approach is necessary to avoid duplication, to ensure efficient assignment of tasks among agencies, and to promote decisions based on full information about the costs and benefits of particular agency actions.

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

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

Section 1. Policy.

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

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

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

2-201. Federal agency means any authority of the United States that is an agency under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies as defined in 44 U.S.C. 3502(10). Agencies not subject to this Executive order are encouraged to participate in its implementation and to conform their programs and activities to its provisions. For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-202. Covered regulatory action means any substantive regulatory action initiated after the date of this Executive order that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; and

(b) Concern an environmental, health, or safety hazard or risk that may disproportionately affect children.

Section 3. Children's Health IWG.

3-301. Within 60 days of the date of this order, there shall be established an interagency working group (IWG) on Children's Health, which shall implement and promote the purposes of this section.

3-302. The IWG shall be composed of representatives of Federal agencies and White House offices with responsibility for the regulation of risks from environmental, health, or safety hazards, or whose activities may substantially affect such hazards, or which conducts scientific or medical research related to such risks or hazards. Member agencies shall include, but are not limited to, the Consumer Product Safety Commission (CPSC); the Council on Environmental Quality (CEQ); the Department of Agriculture (USDA); the Department of Energy (DOE), Department of Health and Human Services (HHS), including, the Centers for

Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH); the Department of Housing and Urban Development (HUD); the Department of Justice (DOJ); the Department of Transportation; the Domestic Policy Council (DPC); the Environmental Protection Agency (EPA); the Office of Management and Budget (OMB); and the Office of Science and Technology Policy (OSTP).

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

(a) Statements of principles, general policy, and targeted annual priorities that will guide the Federal approach to achieving the goals of this order.

(b) A coordinated research agenda for the Federal government, including steps to implement the plan for the consolidated research database developed pursuant to section 4 of this order, and for a cross-cutting budget to accomplish this research.

(c) Recommendations for appropriate partnerships among Federal, State, and local governments and the private, academic, and non-profit sectors.

(d) Proposals to enhance public outreach and communication to assist families in evaluating risks to infants and children and in making informed consumer choices;

(e) An identification of high-priority initiatives for the Federal government to undertake in advancing protection of children's health and safety.

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

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

3-305. The IWG shall be composed of the Secretary or head of each of the member agencies, or their designees at the Assistant Secretary level or its equivalent.

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

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

Section 4. Research Coordination and Integration

4-401. Within six months of the date of this order, the White House Office of Science and Technology Policy and the National Science and Technology Committee shall present to the IWG a proposed plan for establishing, maintaining, and keeping current a consolidated research data base that lists and describes all research conducted or funded by the Federal government that is related to adverse health effects in children and infants resulting from exposure to environmental, health, or safety hazards. This plan shall include recommendations to ensure that the activities of the IWG and other requirements of this

Executive order are fully integrated with, and not duplicative of, other current or planned initiatives with respect to children's health and safety.

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

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

Section 5. Agency environmental, health, or safety regulations.

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

(a) An evaluation of the effects of the covered regulatory action on children;

(b) An assessment of potentially effective and reasonably feasible alternatives to the covered regulatory action that have been identified by the agency or the public and that may be more protective of children; and

(c) An explanation of why the covered regulatory action is preferable to the identified potential alternative(s).

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

5-503. The analysis required by this section shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public.

Section 6. General Provisions.

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

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

6-603. This order shall be effective immediately and shall continue to be in effect until revoked.

The White House

____________ __, 1997

first 2 pages are press release language which should not be in the EO EOs should not contain extraneous language that are subject to current or future challenge. The preamble should contain only the legal citations, and a clear brief justification for issuing the order.

DISCUSSION DRAFT – DO NOT CITE OR RELEASE

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

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

- Children's neurological, immunological, digestive and other bodily systems are still developing, making them more susceptible to toxic pollutants and other environmental hazards;
- Children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults, and spend more time outside in play, so they may be more exposed to toxic pollutants and other environmental hazards;
- Children are less able than adults to recognize and to protect themselves from exposure to toxic pollutants and other environmental hazards;
- Children face potential exposures to toxic pollutants over their entire lifetime, with the possibility of more significant health impacts; and
- Children may be at increased risk due to differences in exposure pathways (e.g., greater hand-to-mouth contact; more frequent ingestion of non-food items).
- Because children travel as passengers, pedestrians & byciclists, injury and death due to transportation related accidents are a principal source of concern

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

- Children's size and weight can affect how well they are protected by safety features;

- Children have activity patterns that are different from those of adults, which may increase their exposure to health and safety risks; and

- Children are less able to protect themselves from risk, and are less responsive to warning regimes.

move to 3rd bullet

While Federal agencies typically consider the effect of their ~~work~~ actions on children, existing standards were derived in many instances principally from data on adults. We need to enhance our understanding of how environmental, health, and safety risks to children differ from the risks to adults. The array and complexity of environmental, health, and safety threats facing children today, and potential inadequacy of scientific data & information ~~of existing standards~~ established principally ~~to protect~~ with reference to adults pose a significant challenge to our ability to protect our children's health and safety.

delete phrase - why say current standards are inadequate

The Federal government is responding vigorously to this challenge, acting to address threats to children's environmental health in the new Food Quality Protection Act, ~~accounting for~~ considering children in the development of new standards for ~~passive restraints~~ airbags in cars, and taking administrative action to protect children from tobacco use, lead poisoning, food-borne illness, and other hazards. But we should do more.

The Federal government must establish a national policy to protect the health of American children from environmental, health, and safety hazards, and apply its resources, including its scientific research capabilities, in a coordinated and efficient manner to address these threats to children. A coordinated approach is necessary to avoid duplication, to ensure efficient assignment of tasks among agencies, and to promote decisions based on fuller information about the costs and benefits of particular agency actions.

Only by tailoring governmental actions, including the setting of environmental, health, and safety standards, to recognize and address the often ~~greater~~ disproportionate impact that environmental pollutants and other health and safety hazards have upon the health and well-being of our children, can we ensure both more effective governance and more healthy and productive futures for our children. ~~The task before us is large -- developing the~~ ~~basic~~ complete ~~scientific knowledge of how toxic chemicals and other environmental, health, and safety hazards may differentially affect children may take years.~~ But the need to act, and to act promptly, to protect the future of our nation cannot be disregarded. this statement may hurt agencies in ongoing rulemakings

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

Section 1. Policy.

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

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

DOE suggests → 1-103 Each independent regulatory agency should participate in the implementation of this Executive Order and should comply with its provisions

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

2-201. Federal agency means any authority of the United States that is an agency

DOE suggestion

under 44 U.S.C. 3502(1), other than ~~those considered to be~~ an independent regulatory agency ~~ies as~~ ~~defined in 44 U.S.C. 3502(10)~~ (5). ~~Agencies not subject to this Executive order are encouraged to participate in its implementation and to conform their programs and activities to its provisions.~~ For purposes of this order, military departments, as defined in 5 U.S.C. 102, are covered under ~~the auspices of~~ the Department of Defense.

DoE → what does this mean? Why here?

DOE 2-202 Independent regulatory agency means any agency included 44 U.S.C. 3502 (10)

2-203 Covered regulatory action means any substantive regulatory action ~~initiated~~ for which a notice of proposed rulemaking is required by law & is published after the date of this Executive order that is likely to ~~result in a rule that may:~~

overbroad?

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; and

(b) Concern an environmental, health, or safety hazard or risk that ~~may~~ is expected to disproportionately affect children.

HHS suggests IWG have a more limited charter, at least for openers, e.g. coordination of a program initiative & development of a research agenda - rather than being sent into the regulatory arena as well

Section 3. Children's Health IWG.

3-301. Within 60 days of the date of this order, there shall be established ~~an~~ (OSTP) a Task Force ~~interagency working group (IWG)~~ on Children's Health and safety which shall implement this section and promote the purposes of this section.

3-302. The ~~IWG~~ TF shall be composed of representatives of Federal agencies and White House offices with responsibility for ensuring the health, safety, & well being of children ~~the regulation of risks from environmental, health, or safety hazards~~, or whose activities may substantially affect such hazards, or ~~which conducts~~ related scientific or medical research ~~related to such risks or hazards~~. Member agencies shall include, but are not limited to, the Consumer Product Safety Commission (CPSC); the Council on Environmental Quality (CEQ); the Department of Agriculture (USDA); the Department of Energy (DOE), Department of Health and Human Services (HHS), including, the ~~Centers for~~

just list HHS as a member agency & remove listing HHS Operating Divisions (NIH, FDA, CDC)

~~Disease Control and Prevention~~ (CDC), the ~~Food and Drug Administration (FDA),~~ and the ~~National Institutes of Health (NIH)~~; the Department of Housing and Urban Development (HUD); the Department of Justice (DOJ); the Department of Transportation; the Domestic Policy Council (DPC); the Environmental Protection Agency (EPA); the Office of Management and Budget (OMB); and the Office of Science and Technology Policy (OSTP), the Nuclear Regulatory Commission
National Science Foundation (NSF), Dept. of Ed., DoD.

3-303. The ~~IWG~~ TF shall develop a coordinated Federal strategy for Children's Health and Safety, and ~~to~~ include at least the following elements: to implement the policies and principles of the Executive Order

(a) Statements of more detailed principles, and policies concerning ~~general policy, and targeted annual priorities that will guide~~ the Federal approach to achieving the goals of this order.

b) specific regulatory actions pertaining to environmental, health & safety hazards.

~~(b)~~ (c) A coordinated children's research agenda for the Federal government, including ~~steps~~ recommendations to implement the plan for ~~the consolidated~~ a research database developed pursuant to section 4 of this order, and for a cross-cutting budget to accomplish this research. OMB responsibility DOT objects if the intent is to impose IWG priorities on agencies.

(d) Recommendations for appropriate partnerships among Federal, State, and local governments and the private, academic, and non-profit sectors.

(e) Proposals to enhance public outreach and communication to assist families in evaluating risks to infants and children and in making informed consumer choices;

(f) An identification of high-priority ~~initiatives~~ options identified by Federal agencies ~~for the Federal government~~ to be undertaken in advancing protection of children's health and safety, including potential new legislation that would accomplish this goal.

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

(DOT) - should be biennial

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

3-305. The IWG shall be composed of the Secretary or head of each of the member agencies, or their designees at the Assistant Secretary level or its equivalent.

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

insert 3-307 The White House Domestic Policy Council will facilitate decision making w/in the Administration on recommendations of the IWG

3-30~~7~~8. The IWG shall exist for a period of four years. At least six months prior to the expiration of that period, the member agencies shall assess the need for continuation of the IWG or its functions, and make appropriate recommendations to the President.

Section 4. Research Coordination and Integration

4-401. Within six months of the date of this order, the White House Office of Science and Technology Policy and the National Science and Technology Committee shall present to the IWG a proposed plan for establishing, maintaining, and keeping current a consolidated research data base that lists and describes all research conducted or funded by the Federal government that is related to adverse health effects in children and infants resulting from exposure to environmental, health, or safety hazards. This plan shall include recommendations to ensure that the activities of the IWG and other requirements of this

delete throughout always "children"

Executive order are fully integrated with, and not duplicative of, other current or planned initiatives with respect to children's health and safety.

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

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

Section 5. Agency environmental, health, or safety regulations.

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

(a) An evaluation of the ~~effects of~~ extent to which the covered regulatory action would create or mitigate a disproportionate hazard or risk on children;

(DOT) If the action is expected to dispropotionately affect children, the agency shall also provide;

(b) An assessment of potentially effective and reasonably feasible alternatives to the covered regulatory action that have been identified by the agency or the public and that ~~may be more protective of~~ may more effectively mitigate disproportionate effects of a hazard or risk on children; and

(c) An explanation of why the covered regulatory action is preferable to the identified potential alternative(s).

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

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

Section 6. General Provisions.

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

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

6-603 Executive Order No. 12606 of September 2, 1987 is revoked

6-60~~3~~4. This order shall be effective immediately and ~~shall continue to be in effect until revoked.~~

The White House

______________, 1997

Divider Title: **S**

Clinton Presidential Records
Digital Records Marker

Divider Title: **T**

THE WHITE HOUSE

WASHINGTON

February 18, 1997

MEMORANDUM FOR GENE SPERLING

FROM: ELGIE HOLSTEIN EH

RE: **Particulate Matter/Ozone**

Attached for your information is some additional background reading material on the PM/OZ issue.

AITKEN_S @ A1
02/13/97 09:11:00 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Chafee Suggests Compromise For Air Rules, Supports Commitmen

Chafee Suggests Compromise For Air Rules, Supports Commitment To Fine PM
Sen. John Chafee (R-RI), chairman of the Senate Environment and Public Works Committee, Feb. 12 threw his weight behind a proposed new air quality standard to regulate fine particulates, but urged the Environmental Protection Agency to delay setting the standard until more data is gathered.
In what has been characterized as a ``compromise'' on proposals to tighten regulations on ozone and PM, Chafee said EPA and lawmakers should commit to setting a new standard regulating particles 2.5 microns or less in diameter.
The proposal would set an annual standard of 15 micrograms per cubic meter (lg/m3) and a 24-hour standard of 50 (lg/m3).
Following a congressional hearing on the matter, Chafee told BNA that it appears substantial benefits could be gained from regulating these particles, although more time is needed to determine exactly where to set the standard.
Ozone, however, is a different matter, he said. Citing hospital data used by EPA in its ozone proposal, Chafee noted that only 120 hospital admissions in the New York area, out of more than 28,000, would be avoided each year under EPA's proposal. He questioned whether the substantial costs of the proposal would be justified by these results.
Browner Testifies
An aide to Chafee told BNA the proposed compromise included changing the existing one-hour ozone standard to an eight-hour standard, and setting it at a concentration level equivalent to the current standard. This level would be about 0.09 parts per million. The current one-hour standard is set at 0.12 ppm, while EPA has proposed an 8-hour standard set at 0.08 ppm.
Members of the Environment and Public Works Committee grilled EPA Administrator Carol M. Browner on the proposals for three hours during the Feb. 12 oversight hearing. Among other things, they questioned Browner about the science on which EPA relied for proposing the standards, potential costs of the proposals, and why EPA has not conducted impact analyses required under the Regulatory Flexibility Act, the Unfunded Mandates Act, and other statutes.
The hearing was the second in a series of oversight hearings on the proposals in both chambers of Congress. During a Feb. 5 hearing, members of the Environment and Public Works subcommittee on clean air looked into the state of the science behind ozone and PM.
EPA proposed new standards for ozone and particulate matter Dec. 13.
Bears And Barbecues
Browner attempted to dispel arguments raised by opponents of the standards that they will crimp the American lifestyle by requiring states to take actions such as banning the use of outdoor barbecues, lawn mowers, and fireworks on the Fourth of July. She said these arguments are baseless scare tactics that are designed to steer debate away from the public health impacts of the pollutants in question.

``It is not about backyard barbecues or lawn mowers,'' Browner said. Rather, she added, the standards are about ``whether a child can go outside on the Fourth of July'' to observe the fireworks.

Sen. Christopher S. (Kit) Bond (R-Mo) asked why EPA has not conducted impact analyses required by the Small Business Regulatory Enforcement Fairness Act and the Unfunded Mandates Act.

``I believe you are ignoring the letter of the law,'' Bond said. He said he does not accept EPA's argument that setting the standards does not impact businesses and other small entities, but rather the implementation of measures to meet the standards does. This, he said, is akin to a hunter shooting a bear and declaring that the bullet alone killed the animal, with no influence by the hunter's decision to aim the gun and pull the trigger. ``EPA is simply wrong,'' he said.

Browner countered that EPA had in fact conducted an impact analysis of the standards. Furthermore, she said, the analysis showed it is impossible to tell, before the standards are implemented, what the cost impacts will be on different sources. ``The problem, quite frankly, now is we don't know which bear . . . we have to analyze bear by bear,'' she said.

Democrats Defend EPA

Democrats on the committee defended EPA's proposals for the most part.

Sen. Joseph Lieberman (D-Conn) said EPA simply is doing the job Congress required it to do under the Clean Air Act by proposing standards based solely on protecting public health. The only question for Congress, he said, is whether EPA is fulfilling that responsibility ``in a reasonable manner.''

Sen. Max Baucus (D-Mont), ranking Democrat on the committee, urged the rest of the panel to ``keep an open mind'' about EPA's proposals. They are not final actions, he said, adding that Congress should attempt to answer remaining questions before arriving at any judgment.

On the other hand, Sen. James Inhofe (R-Okla) urged Browner to take more time to research the health impacts of ozone and PM-2.5 before proceeding with a final rule. He also questioned whether EPA is rushing to judgment in revising the standards as a result of a court-ordered deadline of July 19 for the final rules (American Lung Association v. EPA, DC Ariz, No. 93-643, 2/4/97).

Browner said the deadline was the result of a schedule worked out with the litigants over several years. ``In no way does our desire to abide by a federal judge's order imply that we did not do the kind of detailed analysis required by the Clean Air Act,'' she said.

OMB Review

The court-ordered deadline, however, has interfered with a full review of EPA's proposals by the White House Office of Management and Budget, according to Sally Katzen, administrator of OMB's Office of Information and Regulatory Affairs.

Katzen, the only other witness to testify before the committee, said OMB received the proposals Nov. 4 and had to release them before the Nov. 29 deadline set for their completion. She said the agency gave the proposals ``top priority'' over other responsibilities.

``We were able to identify a number of issues that require further work, and while the court-ordered deadline precluded full discussion and resolution of these issues with EPA, we have been advised by EPA that some of these issues will be analyzed as part of the economic analyses that will be provided to us as part of the package for our review of the final standards,'' Katzen said.

Chafee asked Katzen whether OMB conducted an assessment of the feasibility of the standards. She responded that OMB only reviews EPA's assessments, but added it did look at cost/benefit analyses the agency conducted. These analyses were based on using existing technologies, as EPA cannot foresee what types of more effective technologies or control strategies might emerge in the future, Katzen said.

She said these estimates are not very reliable. Moreover, she noted, estimating costs before an implementation strategy is developed ``could be potentially very misleading to the public.''

Senators Spar Over Impact

Chafee drew scathing remarks from a Democratic colleague for suggesting that EPA proposals to tighten air quality standards for ozone and particulate matter may undermine the public's support for the Clean Air Act.

Chafee said he feared the proposals may weigh too heavily on the public's will to accept clean air regulations because of their stringency.

``I think it is appropriate to ask whether the proposed standards . . . are the right measures or if they go too far--if they overload the Clean Air Act,'' Chafee said. ``Surely, we can find a way to work together to address the important public health concerns that the newest science indicates might be caused by air pollution without providing fuel for another round of attacks on our environmental laws,'' he told fellow members of the committee.

Sen. Joseph Lieberman (D-Conn), noting that he was ``very disappointed'' with Chafee's comments, said the Republican's observations are not believable. ``A revolt [against the Clean Air Act] by the American people based on the fact that we're trying to find a rational basis for protecting their health?'' he asked. ``I don't see it.''

Chafee, however, pointed out that several states had repealed inspection and maintenance programs for automobiles after receiving a substantial outcry from the public. ``When we talk about revolt, there is a perfect example,'' he said. ``If you push this thing too far too fast, there are going to be steps taken by the American public.''

-- By Alec Zacaroli

Agriculture

Message Sent To:

Donald R. Arbuckle
Michael A. Fitzpatrick
Jefferson B. Hill
Christopher D. Wolz
Randall W. Lutter

AITKEN_S @ A1
02/11/97 09:13:00 AM

Record Type: Record

To: Donald R. Arbuckle, Michael A. Fitzpatrick, Jefferson B. Hill, Randall W. Lutter

cc:
Subject: Federal Court Grants 3-Week Extension To EPA For Completion

Federal Court Grants 3-Week Extension To EPA For Completion Of Ozone, PM
A federal appeals court Feb. 10 gave the Environmental Protection Agency an additional three weeks to release a final decision on whether to revise the existing air quality standards for ozone and particulate matter (American Lung Association v. EPA, DC Ariz, No. 93-643, 2/10/97 </cite>).
Under the new schedule, EPA must release its final decisions by July 19.
The schedule also allows for an extension of the public comment period for the proposals by three weeks, setting a new deadline of March 12.
The court's action falls far short of EPA's hopes, however. The agency sought a 60-day extension from the court Feb. 4 after facing pressure from state governors and others to provide more time to comment on the proposals.
``Although we would have preferred more time, we will obviously comply with the court's order and complete the public comment period for proposed ozone and PM standards by March 12,'' EPA said in a Feb. 10 statement. ``The decision underscores the importance the court has placed on moving ahead in a timely manner to ensure that public health is protected.''
EPA had been under a court-ordered deadline of July 1 to release a decision on whether to revise the existing standards for ozone and particulates. The agency has proposed changing the existing ozone rule from a standard that sets a one-hour average concentration limit of 0.12 parts per million to one that sets an 8-hour limit of 0.08 ppm. EPA also has proposed setting a new standard regulating fine particles, or particles that are 2.5 microns or less in diameter.
Republican Warns EPA
Meanwhile, a House Republican warned EPA that its proposals will face both vigorous congressional oversight and judicial review unless the agency takes steps to comply with certain procedural requirements contained in recently enacted legislation.
Rep. David M. McIntosh (R-Ind) said Feb. 10 that EPA ``appears to have failed to comply'' with provisions of the Congressional Review Act and the Unfunded Mandates Act, which among other things require agencies to assess the economic impact of regulations on small businesses and state and local governments. As a result, he said, EPA Administrator Carol M. Browner is ``on a collision course with common sense and ultimately this Congress.''
McIntosh chairs the House Government Reform and Oversight Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, which has launched an inquiry into EPA's proposals. He made his comments during a meeting on the ozone and PM proposals sponsored by the American Enterprise Institute.
McIntosh told BNA following the meeting that his subcommittee will hold oversight hearings on whether EPA has met the procedural requirements of the Unfunded Mandates Act and the Congressional Review Act, which he called

Lester Lave, an economics professor at Carnegie Mellon University, criticized EPA's preliminary regulatory impact analyses on the rules for failing to consider their ecological benefits more thoroughly. ``Mortality drives everything,'' he said. Even accounting for ecological benefits, however, Lave agreed with EPA's estimates that the costs of a revised ozone standard will exceed its benefits, while the benefits of a new fine particulate matter standard will far outweigh its costs.

-- By Alec Zacaroli

Economic Policy

``right-to-know measures.'' The latter law allows Congress to review and possibly overturn major regulatory actions through fast-track legislation, although that legislation still would be subject to a presidential veto.

In an earlier speech at the meeting, Browner reiterated EPA's stance that economic impact questions raised under these and other laws governing the regulatory process do not come into play in the setting of science-based health standards. EPA is required by the Clean Air Act to consider environmental and health impacts, not cost, when setting the standards, she said.

``But that doesn't mean that there is no role for the practicalities of attaining these protections,'' Browner said. ``There is such a role when it comes to implementing the standards. In that case, it certainly is appropriate to consider costs.''

Clean Air Act Trumped?

McIntosh characterized the argument that the Clean Air Act prevents EPA from considering costs in setting health-based air quality standards as ``disingenuous.'' He noted that the laws he and other Republicans are urging EPA to follow were passed subsequent to the Clean Air Act. ``A later statutory provision will trump the earlier one,'' he said, adding, ``I am convinced the law requires them to do these measures.''

There are a number of measures Congress can take to address concerns over the economic impact of the ozone and PM proposals, McIntosh said. For instance, Congress could address the rules through the appropriations process, or through riders on other legislation. The review provisions of the Congressional Review Act are another vehicle opponents of the rules can use to block them.

These opponents, however, will have to forge a broad-based, well-funded coalition if they want to see the rules addressed by Congress, McIntosh said. In addition, they must put forth ``serious, constructive, free-market alternatives'' to the rules, he said. Without broad public support for legislative answers to concerns about the ozone and PM standard-setting process, Congress is not likely to act on the matter, he warned.

The courts, meanwhile, may provide a more favorable forum for opponents of the rule, McIntosh told BNA. He said congressional oversight of the rule-making process is likely to reveal EPA's failure to meet the requirements of the Unfunded Mandates Act, the Congressional Review Act, and other procedural requirements EPA must meet. EPA runs a serious risk of facing challenges under the Administrative Procedure Act if it continues to ``defy the law,'' he said. ``The agency should be aware of that,'' he said.

Other speakers at the event, meanwhile, also took the opportunity to attack EPA's efforts to conduct regulatory impact analyses of its proposals. Among other things, EPA's analysis of the benefits of setting a PM-2.5 rule do not account for the length of lives that would presumably be saved by the regulation, said Robert W. Crandall, a senior fellow with the Brookings Institution, a public policy and research group. For instance, he said, the agency's valuation of $4.8 million for each premature death avoided by the standard does not consider whether the person affected is elderly and ill or young and healthy.

Further, he said, EPA needs to engage in a ``risk/ risk'' comparison, under which it weighs the relative risk avoided through setting tighter standards against the risk that can be avoided by spending money in other areas, such as improving health care. McIntosh noted that EPA's preliminary cost estimate for the PM standard is $6 billion to $8 billion per year, and triple the cancer research budget of the National Institutes of Health.

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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

JAN 15 1997

The Honorable Thomas J. Bliley, Jr.
Chairman, Committee on Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman:

This is in response to your letter of December 16, 1996, regarding the Office of Information and Regulatory Affairs' (OIRA) review of the Environmental Protection Agency's (EPA) recently proposed revisions of the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter.

You asked for my response to four specific questions:

Question 1: According to section 6(b)(2)(B) of the Executive Order, the Office of Information and Regulatory Affairs (OIRA) is supposed to have up to 90 days to review "significant regulatory actions." This period of time is generally believed to be necessary to analyze complex draft regulations. Yet, it appears that OIRA had only about three weeks to review these very important rules despite advance knowledge of a judicial deadline of November 29, 1996 for Agency action.

a) **Please explain why these draft proposed regulations were not submitted to OIRA at a substantially earlier date in order to provide OIRA with a 90-day review period as contemplated in the Executive Order.**

Questions about the timing of EPA's submission of the proposed rules to OIRA can best be responded to by EPA.

b) **Please explain what efforts you made to ensure the submission of these proposed rules to OMB in time for a normal regulatory review as envisioned in the Executive Order.**

We originally expected EPA to submit the proposals in early September. As it became apparent that submittal of the proposals would slip, I made a number of requests to EPA to submit these proposals as soon as possible so as to provide OMB and other Federal agencies with time to properly review them.

c) **Given the short amount of time available to OIRA for review prior to the judicial deadline, please explain the extent to which OIRA was kept informed**

by EPA prior to formal submission of the various draft rules for OMB review, particularly with respect to (i) data, assumptions, models and analytic methods which were to be the foundation of the regulatory analysis; and (ii) the alternative standards under consideration.

A number of meetings were held over an extended period of time with EPA explaining in general terms the methodology it was using in its analysis of these two rules (e.g., data, assumptions, models, etc.). In addition, EPA and OIRA staff hosted a number of interagency meetings with EPA staff briefing other Federal agencies on the general issues surrounding EPA's review of the ozone and particulate matter NAAQS.

d) **The presence of an inflexible judicial deadline appears to have substantially curtailed OIRA's review of these important rules. Please explain whether, and to what extent, you believe that the judicial deadline adversely affected OIRA's ability to perform its regulatory review responsibilities under the Executive Order.**

During our discussions with EPA staff before the agency submitted the proposals, we identified a number of issues that were not resolved in the draft proposals submitted to OMB for review in early November. The abbreviated period of review required an intensified effort on our part and on the part of other agencies and EPA, and several issues were not able to be fully analyzed prior to publication of the proposals. We have been advised by EPA that these issues will be analyzed as a part of the Economic Analyses for the final rules.

Question 2: **Section 1(b) of the Executive Order sets forth a number of analytic and decision making principles that the Administration uses to guide regulatory decision making. Please explain the extent to which, in your view, these proposed regulations satisfied each of the principles set forth in this subsection of the Executive Order.**

Executive Order No. 12866 establishes twelve general "Principles of Regulation" that agencies should follow. (See the attached list of principles from the Executive Order.) A discussion of these principles as they apply to these proposals follows. We note that EPA will be preparing final Economic Analyses in response to comments on the proposals from the public and from other Federal agencies. These final Analyses will be available for Congress to refer to during its review process after promulgation of the standards.

(#1, 2, 12) EPA clearly identified the problem that it intends to address and the significance of this problem. Ozone and particulate matter air pollution is a problem of "market failure." Private markets fail to achieve optimal levels of pollution control because the benefits of pollution control do not primarily accrue to those who must pay the costs to control pollution. This classic economic problem of "externalities" is described clearly in the Economic Analyses

This problem is not caused by existing regulations. EPA clearly defined and described the proposed standards.

(#1,4,7) The Clean Air Act (CAA) requires EPA to review NAAQS every five years to ensure that they are protective of human health and the environment. As part of this process, EPA has completed comprehensive assessments of the peer-reviewed scientific literature on the public health and welfare (e.g., visibility and vegetation damage) effects of concern associated with these pollutants. These assessments were reviewed by the Clean Air Scientific Advisory Committee (CASAC), an independent review panel established by statute, with an opportunity for public comment during the Committee's review. While CASAC was concerned about scientific uncertainties that exist with regard to these effects and the lack of adequate research on fine particles, it concluded that EPA's assessments provide an adequate scientific basis for the Administrator to make policy decisions regarding revisions to the existing standards.

(#3, 5, 8, 11) NAAQS are set to protect public health with an adequate margin of safety and to protect public welfare from the adverse effects of the pollutants of concern. Under the law, EPA is not allowed to consider costs and other economic factors in setting health-based NAAQS. EPA and OMB are, of course, very concerned about the economic impacts of meeting any new standards and agree that Congress and the public should be fully informed as to the estimated costs and benefits that may result from their implementation. EPA's Economic Analyses were prepared under Executive Order No.12866 in order to inform the public about the expected benefits and costs of these standards as well as to guide implementation efforts to attain these standards in a cost-effective manner.

EPA has not proposed any specific compliance strategy or a specific set of control measures for complying with the new standards at this time; instead, it has indicated that it intends to propose an implementation strategy at a later date that incorporates recommendations from a subcommittee of the Clean Air Act Advisory Committee. The specific purpose of this subcommittee is to advise EPA on ways to develop innovative, flexible, practical, and cost-effective implementation standards to attain the proposed standard. Regarding distributional impacts, EPA has tailored the proposed standards to provide additional protection for sensitive subpopulations (e.g., outdoor exercising children, asthmatics, and the elderly). The analyses for these proposals did not address the distributional and equity effects of the rule.

(#9) EPA states in the preambles to both rules that the proposed revisions to the standards "will not in themselves impose any new expenditures on [state and local] governments" and thus EPA has not performed any analysis of effects on such governments. EPA recognizes that any corresponding revisions to associated State Implementation Plan requirements and air quality surveillance requirements may require additional expenditures. EPA has advised us that these effects will be addressed at the time such revisions are proposed and consultations with State and local governments will be conducted at that time.

(=6, 10) EPA has found it difficult to assess fully the costs and benefits of the proposed rules. Application of all known control measures would be insufficient to achieve compliance with the current ozone NAAQS in four metropolitan areas, and in 50 counties for the current PM NAAQS. The number of such "residual nonattainment areas" would increase significantly under the proposed standards. The cost estimates EPA presents in its Economic Analyses represent this "partial attainment" scenario based on currently identified measures with known costs that EPA considers likely to be implemented. EPA believes that new, cost-effective measures for reducing emissions of fine particles, NO_x, and VOCs will be developed in the future and will ultimately allow the residual nonattainment areas to come into compliance, but it has not estimated the costs of these as yet unknown measures. EPA also calculated benefits for the partial attainment scenario and found monetized benefits to be greater than costs for the proposed PM standard and less than costs for the proposed ozone standard.

There is also a potential overlap between control strategies to address ozone and particulates. For this reason, EPA intends to combine the implementation of the two standards to allow for efficient measures to reduce both particulates and ozone precursors simultaneously. However, EPA has not analyzed the extent to which the adoption of one of the two standards might reduce the benefits and costs of the other standard.

Question 3: Section 6(a)(3)(C) of the Executive Order sets forth certain requirements for the analysis of costs and benefits of "significant regulatory actions." On January 11, 1996, OMB published a guidance document entitled "Economic Analysis of Regulations Under Executive Order 12866," to guide agencies' fulfillment of these analytic requirements. This document describes the elements that agencies should include and the economic methods and practices that agencies should use in performing economic analyses under the Executive Order.

a) **Please explain whether, and to what extent, EPA's economic analysis meets or fails to meet each of the significant technical requirements for economic analysis set forth in OMB's guidance document, entitled "Economic Analysis of Federal Regulations Under Executive Order 12866."**

b) **Please identify any and all technical errors in EPA's economic analysis discovered during OIRA's review which had, or may yet have, a material effect on the public's complete and clear understanding of the risks, costs, and benefits of these proposed rules.**

The "Economic Analysis of Federal Regulations Under Executive Order No. 12866" lists three basic components of the prepublication "Best Practices" analysis of Federal regulations: a statement of need for the proposed action, an examination of alternative approaches, and an analysis of benefits and costs. The document includes a number of general principles and technical suggestions for each of these components; it is not intended to serve as a formulistic checklist.

Statement of Need for the Proposed Action

The Best Practices document suggests two general topics that should be discussed: the market failure, if any, that the regulation is designed to correct, and the appropriateness of solutions other than federal regulation, such as market mechanisms or state and local regulation. As discussed in response to question 2 above, EPA provided a discussion of the market failure which gives rise to the need for air quality standards. The CAA mandates Federal standards to address this problem and sets specific health-based criteria for standard-setting.

Examination of Alternative Approaches

The Best Practices document lists several different types of alternatives which should be considered where appropriate, including performance oriented standards, alternative levels of stringency, alternative effective dates of compliance, and informational measures.

Air quality standards are by their very nature performance standards. The Economic Analyses considered several different levels of stringency for both the ozone and PM proposals, but they did not evaluate some of the other types of alternatives listed above. For example, the current proposals do not include implementation schedules for attainment of the new standards; OMB has been advised that this issue will be addressed at the implementation stage. Finally, in the ozone proposal, EPA discussed the communication of public health information as a complement to the NAAQS, but did not consider or evaluate such an approach as an alternative to progressively more stringent NAAQS.

Analysis of Benefits and Costs

The agency conducted extensive analyses of the costs and benefits of the proposed standards. These included sophisticated modeling efforts based on inventories of known emissions sources in which the agency attempted to identify, locality by locality, the most efficient set of control measures to attain the standards, the costs of these measures, and the resulting air quality improvements. These projected improvements then served as the basis for an assessment of potential health benefits, which were monetized by assigning dollar values to each health outcome. While these analyses were consistent with the Best Practices document and produced much useful information, there were several areas where additional work would have been productive; EPA has advised us that these areas, noted below, will be addressed in the Economic Analyses accompanying the final rules.

EPA's analytic baseline is compliance with the current NAAQS in 2007. For the ozone NAAQS, EPA did not disaggregate the cost of the control measures to meet the baseline. For the particulate standard, the 2007 baseline control measures and the associated costs were not presented. Finally, neither standard included adoption of the other in its baseline, which could result in an overstatement of benefits and costs of both rules.

EPA evaluated several alternative standards of differing stringency in its analysis of both NAAQS. In its ozone analysis, however, EPA presented an analysis of two options that "bracket" its proposed option, but not the proposed option itself. EPA prepared no quantitative analysis of the projected costs and benefits of its proposed "SUM06" secondary standard.

EPA frankly acknowledged that there is substantial scientific uncertainty in the risk analyses on which the benefits estimates are based. However, the analyses did not fully reflect the ranges of uncertainties associated with various assumptions and ad hoc adjustments in the models. In the case of fine particles, for example, the uncertainty attributable to the lack of an identified biological mechanism for the health effects of concern and the possibility of a threshold concentration below which there are no adverse effects were not reflected in the range of estimated benefits. For analyses as complex as these, it is difficult to document fully all assumptions. Nevertheless, there are several areas where additional clarification and sensitivity analyses would be helpful. For example, a large share of the estimated benefits are due to -- and sensitive to -- assumptions about improvements in air quality during off-peak periods, the periods in which most cumulative low-level exposure occurs. For the ozone standard, the basis of this "rollback" assumption is not clear, nor has the agency performed a sensitivity analysis, as it did for the particulate matter rollback assumptions.

As suggested in the Best Practices document, the analyses discussed several categories of benefits that have not been quantified or monetized. These include prevention of various respiratory symptoms; benefits to ecosystems, including plants and sensitive water bodies; prevention of materials damage and visibility improvements. In addition to monetized costs, there were also costs that have not been monetized. These include the administrative costs to states and local governments to plan and implement air quality programs. Finally, the analyses were presented in terms of annual benefits and costs, and neither costs nor benefits are discounted.

Question 4: According to press accounts summarizing EPA's recent announcements, the proposed new standards will result in costs to society of approximately \$6.5 to \$8.5 billion per year and annual benefits to society of \$120 billion. Others have suggested that these figures may not be reliable. Based on OIRA's independent and objective analysis, please provide OIRA's best professional estimate of the expected costs and benefits of each of these proposed regulations presuming that each is fully implemented as proposed.

OIRA has not prepared its own estimate of the likely benefits and costs of attaining these proposals. We note, however, the following. As to costs, the estimate of approximately \$6.5 to \$8.5 billion per year is a combined estimate for both the ozone and particulate matter NAAQS. EPA estimated costs of \$0.6 billion to \$2.5 billion per year for the proposed ozone NAAQS and \$6 billion per year for the proposed particulate matter NAAQS. Each of these estimates is for partial attainment. EPA did not estimate the costs of full attainment because it is not possible to estimate the costs of the as yet unknown measures that will be required to allow residual nonattainment areas to come into compliance.

As to benefits, the estimate of the benefits to society of $120 billion per year is a combined estimate for both the ozone and particulate matter NAAQS. EPA estimated benefits for partial attainment of the ozone NAAQS of approximately $30 million per year, with a range from $10 million to $1,200 million per year, and it estimated benefits for partial attainment of the particulate matter NAAQS of $60 billion to $120 billion per year.

As reported in the Economic Analyses for the proposals, there are a variety of ways in which these estimates may overstate or understate the benefits and costs of these proposals, including factoring in nonquantifiable costs and benefits, uncertainties, and efficiencies.

I hope that this fully responds to the questions you have on our review of EPA's ozone and particulate matter NAAQS.

Sincerely,

Sally Katzen

Sally Katzen

Enclosure

cc: The Honorable John Dingell

Principles of Regulation
Executive Order No. 12866

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the avail-

of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

THE CLEAN AIR ACT SETS OUT A MODEL SCIENTIFIC PROCESS FOR REVIEWING AIR QUALITY STANDARDS

The Scientific Review for the NAAQS Proposal is Among the Most Thorough and Ambitious in EPA's History

- In reviewing the ozone and particulate matter standards, EPA started with a literature search of over 3,000 studies for each.
- Over a three-year process, the scientific process identified 185 human-health related studies of ozone, including controlled human studies, epidemiological studies and toxicological studies and 86 studies of links between particulate matter and human health, including epidemiological studies and toxicological studies
- These studies overwhelmingly indicated that neither the current ozone nor particulate matter standards adequately protect public health.

EPA Relies on Peer Reviewed Science and the Recommendation of Independent Scientists

- The Clean Air Act requires the Administrator of EPA to review and determine whether air quality standards are adequate to protect public health with an adequate margin of safety at least every five years.
- In reviewing the standards, the Act requires EPA to rely on the advice of an independent scientific review committee -- called the Clean Air Scientific Advisory Committee (CASAC).
- CASAC is made up of nationally recognized experts in many disciplines -- physicians, toxicologists, epidemiologists, atmospheric scientists -- from academia, industry and the states.
- EPA prepares two major documents for CASAC's consideration -- a criteria document that reviews the state of the science and a staff paper that attempts to interpret the science.
- The scientific review is extensively peer reviewed -- for a study to be considered for the criteria document, it must first appear in a peer review journal. National scientific experts peer review individual chapters of the criteria document before CASAC even considers them.
- CASAC peer reviews both the criteria document and the staff paper. Upon completion of its review, CASAC advises the Administrator as to whether the criteria document represents an adequate review of the available science and whether the staff paper constitutes an adequate basis for regulatory decisions.

The Scientific Review is a Public Process

- Drafts of the criteria document and the staff paper are made publicly available for review prior to the CASAC meetings where they are discussed.
- CASAC meetings are open to the public.
- EPA maintains a publicly available docket of all CASAC and standard-related proceedings. EPA also distributes this material through an extensive mailing list and over the Internet.

DH11 - 021

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL-4832-8]

Review of National Ambient Air Quality Standards for Ozone

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of review.

SUMMARY: This notice announces the EPA's plans to review and revise the Air Quality Criteria for Ozone and Other Photochemical Oxidants (Criteria Document) as rapidly as possible and to complete review of the national ambient air quality standards (NAAQS) for ozone (O_3) as soon as possible thereafter.

The Clean Air Act (Act) requires periodic review and, if appropriate, revision of the NAAQS and of the air quality criteria on which they are based. The EPA completed its last formal review of the air quality criteria for O_3 in 1989. Based on that review, the EPA announced a final decision on March 9, 1993 not to revise the existing O_3 NAAQS.

Since early 1989, however, a substantial number of new studies on the health and environmental effects of O_3 have appeared in the peer-reviewed literature. The EPA is moving as rapidly as possible to review them, consistent with assuring a sound, scientifically-supportable decision.

The review process includes: (1) Reviewing and revising the Criteria Document; (2) reviewing the NAAQS through development of a Staff Paper based on the revised Criteria Document; (3) external review of Criteria Document and Staff Paper drafts by the Clean Air Scientific Advisory Committee (CASAC) of the EPA's Science Advisory Board, an independent panel of scientific experts, and by the public; and (4) examining implementation ramifications of changes to the O_3 NAAQS. The EPA intends to adhere to strict schedules for external review of Criteria Document and Staff Paper drafts consistent with a full opportunity for thorough scientific and public review, and to deny any requests for extensions of the public comment periods specified in this notice.

During this NAAQS review, the EPA intends to continue implementing programs designed to meet the current standards and the requirements of the Clean Air Act Amendments of 1990 to ensure continued improvement in air quality. The EPA is also examining options for implementing alternative O_3 NAAQS to ensure a smooth transition if a decision is made to revise the existing NAAQS.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Martin, Air Quality Management Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541-5274.

SUPPLEMENTARY INFORMATION:

Background

Based on a Criteria Document issued by the Department of Health, Education and Welfare in 1970, the EPA promulgated the first NAAQS for photochemical oxidants under section 109 of the Act (36 FR 8186) in 1971. The primary and secondary NAAQS were both set at an hourly average of 0.08 parts per million (ppm) total photochemical oxidants not to be exceeded more than 1 hour per year.

In 1977, the EPA announced (42 FR 20493) the first review and updating of the 1970 Criteria Document in accordance with section 109(d)(1) of the Act. The EPA published a Criteria Document in 1978. Based on the revised Criteria Document and taking into account public comments on revisions proposed to the primary and secondary NAAQS in 1978 (43 FR 16962), the EPA announced revisions to the 1971 standards in 1979 (44 FR 8202). The primary standard was revised from 0.08 parts per million (ppm) to 0.12 ppm; the secondary standard was set identical to the primary standard; the chemical designation of the standards was changed from photochemical oxidants to O_3; and the form of the standards was revised from a deterministic form to a statistical form, which defines attainment of the standards as occurring when the expected number of days per calendar year with maximum hourly average concentrations greater than 0.12 ppm is equal to or less than one.

In 1982 (47 FR 11561), the EPA announced plans to revise the 1978 Criteria Document. In 1983, the EPA announced (48 FR 38009) that review of primary and secondary standards for O_3 had been initiated. The EPA subsequently provided a number of opportunities for public review and comment on drafts of the Criteria Document and associated Staff Paper (Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information—Office of Air Quality Planning and Standards Staff Paper). After reviewing the draft Criteria Document in 1985 and 1986, the CASAC sent the Administrator a "closure letter" outlining key issues and recommendations and indicating that it was satisfied with the final draft of the 1986 Criteria Document.

Following closure, a number of scientific articles and abstracts were published or accepted for publication that appeared to be of sufficient importance concerning potential health and welfare effects of O_3 to warrant preparation of a supplement to the Criteria Document (Supplement). The CASAC, having already reviewed two drafts of the Staff Paper in 1986 and 1987, concluded that sufficient new information existed to recommend incorporation of relevant new information into a third draft of the Staff Paper.

The CASAC held a public meeting in 1988 to review a draft Supplement and the third draft Staff Paper. Major issues included: The definition of adverse health effects of O_3; the significance of health studies suggesting that exercising individuals exposed for 6 to 8 hours to O_3 levels at or below 0.12 ppm may experience lung inflammation and transient decreases in pulmonary function; the possibility that chronic irreversible effects may result from long-term exposures to elevated levels of O_3; and, the importance of analyses indicating that agricultural crop damage may be better defined by a cumulative seasonal average than by a 1-hour peak level of O_3. In its "closure letter" of 1989, the CASAC indicated that the draft Supplement and draft Staff Paper "provide an adequate scientific basis for the EPA to retain or revise primary and secondary standards for ozone."

On October 22, 1991, the American Lung Association and other plaintiffs filed suit under section 304 of the Act to compel the EPA to complete its review of the criteria and standards for O_3 under section 109(d)(1) of the Act [*American Lung Association v. Reilly*, No. 91-cv-4114 (JRB) (E.D.N.Y.)]. The U.S. District Court for the Eastern District of New York subsequently issued an order requiring the EPA to sign a Federal Register notice announcing its proposed decision on whether to revise the standards for O_3 by August 1, 1992 and to sign a Federal Register notice announcing its final decision by March 1, 1993.

On August 10, 1992 (57 FR 35542), the EPA published a proposed decision under section 109(d)(1) that revisions to the existing primary and secondary standards were not appropriate at that time. The notice explained in some detail (see 57 FR 35546) that the proposed decision would complete the EPA's review of information on health and welfare effects of O_3 assembled over a 7-year period and contained in the 1986 Criteria Document and the 1989

Supplement. The notice made clear that the Administrator did not take into account more recent studies on the health and welfare effects of O_3 because these studies had not been assessed in the 1986–1989 Criteria Document/ Supplement, nor had they collectively undergone the rigorous, integrative review process (including CASAC review) required to incorporate them into a new criteria document. The proposed decision, therefore, was based on an evaluation of key studies published through early 1989 as contained in the 1986–89 Criteria Document/Supplement, the 1989 Staff Paper assessment of the most relevant information in these documents, and the advice and recommendations of the CASAC as presented both in the discussion of these documents at public meetings and in the CASAC's 1986 and 1989 "closure letters."

In view of the large number of recent scientific papers and ongoing research on the health and welfare effects of O_3, the August 10, 1992 notice also announced the EPA's intention to proceed as rapidly as possible with the next review of the air quality criteria and standards for O_3. On March 9, 1993 (58 FR 13008) the EPA published its final decision not to revise the current primary and secondary NAAQS for O_3. Because of the scientific and technical complexity of such assessments, the EPA had estimated that 2 to 3 years would be necessary to rigorously assess more than 1,000 new studies and incorporate key information into a revised criteria document, to evaluate the significance of the key information for decision-making purposes, to develop staff recommendations for the Administrator, and to provide appropriate opportunities for CASAC review and public comment. Given the potential importance of the new studies and the EPA's continuing concern about the health and welfare effects of O_3, the March 9, 1993 notice also indicated the Administrator's intention to move the review process ahead as quickly as possible and, if appropriate, to propose revisions of the standards at the earliest possible date.

Current Review Process/Schedule

Following publication of the March 9, 1993 decision, the Agency, in consultation with the CASAC and the Science Advisory Board, undertook a rigorous examination of the NAAQS review process designed to identify all measures that could be taken to accelerate its review of the criteria and standards for O_3 consistent with assuring a sound and scientifically-credible decision. As a result, the EPA has adopted a number of measures intended to accelerate the O_3 NAAQS review. These measures include: (1) Conducting review and revision of the Criteria Document and development of the Staff Paper and associated analyses (e.g., exposure analysis and health risk assessments) in a more concurrent fashion than in the previous NAAQS reviews; (2) adhering to strict schedules for external review of Criteria Document and Staff Paper drafts consistent with a full opportunity for thorough scientific and public review; (3) establishing a highly-expedited Agency review process with senior level management oversight and involvement throughout the process, as well as early discussion of possible options with other Federal agencies, including the Office of Management and Budget; and (4) reducing the volume of information included in the revised Criteria Document by focusing on the most important new studies and setting a date beyond which new studies will not be included.

The EPA's current O_3 NAAQS review schedule incorporates the measures cited above. The Agency's target date for completion of the Criteria Document and Staff Paper is mid-1995, with proposal of changes to the O_3 NAAQS, if appropriate, in mid-1996 and promulgation in mid-1997. Table 1 outlines key milestone dates for this accelerated schedule.

As indicated in Table 1, there are a number of opportunities for public comment throughout the process. The EPA encourages involvement of interested parties and is providing this advance notice to alert potential participants in the review that adhering to the schedule will require some departures from past practices.

TABLE 1

Major milestones	Tentative dates
CASAC Subcommittee Meeting on Exposure Assessment Methods.	December 1993.
CASAC and Public Comment Period for Criteria Document (CD) (90 days).	February to May 1994.[1]
CASAC Subcommittee Meeting on Risk Assessment Methods.	March 1994.
CASAC Meeting on CD.	July 1994.
Comment Period on Staff Paper (SP) (60 days).	September to October 1994.
CASAC Meeting on SP.	October 1994.
Public Comment Period on Revised CD and SP (90 days).	Early 1995.
CASAC Meeting on Revised CD and SP.	Mid-1995.
Agency Development of Regulatory Decision/Proposal Package Draft.	Mid-1995 to late 1995.
Office of Management and Budget Review of Proposal Package.	Early 1996.
Publication of Proposal in Federal Register.	Mid-1996.
Public Comment Period on Proposal (90 days).	Mid-1996.
CASAC Meeting to Review Proposal.	Late 1996.
Regulatory Decisions and Final Package Draft Completed.	Early 1997.
Office of Management and Budget Review of Promulgation Package.	Early 1997 to mid-1997.
Publication of Promulgation Notice in Federal Register.	Mid-1997.

[1] For a notice of availability of external review draft, see 59 FR 4278, January 31, 1994.

In particular, the EPA has often granted requests for extensions of public comment periods in previous reviews; in order to meet the accelerated schedule for the O_3 NAAQS review, however, the EPA intends not to grant such extensions during this review. Accordingly, potential participants in the review should take note of the process outlined in this notice and be prepared to respond promptly when opportunities to comment are offered.

Given the scientific and technical complexity of the issues likely to be involved in the O_3 review, the diversity of scientific opinion that has characterized previous reviews of the criteria and standards for O_3, and the need to ensure that its ultimate decision is soundly based, the EPA cannot, of course, provide any absolute assurance that it will meet all of the interim milestone dates indicated in Table 1. Completion of the necessary steps in a timely manner is also predicated upon the availability of adequate resources during the review process. However, the Administrator has emphasized a high priority on meeting the accelerated schedule outlined in this notice.

To that end, the review process is well under way. The EPA initiated action to update the air quality criteria for O_3 in August 1992 (57 FR 38832). It held two peer-review workshops on draft health effects chapters of a revised Criteria Document (58 FR 35454) in July 1993. Additional workshops on draft air quality and ecological effects chapters (58 FR 48063) were held in September 1993. Since then, the EPA has discussed the schedule and process outlined in this notice with the CASAC (58 FR 59034). The EPA is also conducting exposure and risk analyses. A subcommittee of the CASAC met on December 16, 1993 to review methodologies (58 FR 63345). A further subcommittee meeting on risk analysis is planned for spring 1994.

Implementation

It is important to stress that while conducting this review, the EPA remains committed to implementing the existing O_3 NAAQS in accordance with the Clean Air Act Amendments of 1990 (CAAA). During the review, the EPA will continue to work with States to implement emission control strategies required by the CAAA to meet the existing O_3 NAAQS. These efforts include State and Federal actions to reduce emissions of volatile organic compounds and nitrogen oxides, which act as precursors to O_3 formation in the troposphere. The EPA will make every effort to maintain implementation schedules consistent with requirements of the CAAA to ensure continued improvement in air quality.

As part of the review, the EPA is examining the ramifications of any changes to the NAAQS on current implementation efforts. If appropriate, new implementation rules and guidelines will be considered for alternative NAAQS. The EPA also is reviewing options to ensure a smooth transition for implementation of any new O_3 NAAQS in the event a decision is made to revise the current O_3 NAAQS.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: January 27, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94-2487 Filed 2-2-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 68

[CC Docket No. 93-268, RM-7815, RM-6147; FCC 93-484]

Connection of Customer-Provided Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend rules which regulate the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network. The proceeding was initiated by petitions for rulemaking filed by Southwestern Bell Telephone Company (SWB) and Ameritech Operating Companies (Ameritech) who ask that regulations governing switched digital services be added. The effect of the proposed rules would be to promote rapid exploitation of switched digital technology. We propose also to provide for a registration revocation procedure which should greatly enhance our ability to enforce applicable rules as well as the Telecommunications Trade Act of 1988; and we take this opportunity to propose clarifications to other rules.

DATES: Comments were to be submitted on or before January 13, 1994, and replies by January 28, 1994; however, those dates have been extended to February 10, 1994 for comments and February 25, 1994 for replies.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, with copy to William H. von Alven, FCC, Mail Stop 1600B2, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634-1833.

SUPPLEMENTARY INFORMATION: This summarizes the NPRM in CC Docket 93-268, RM-7815, and RM-6147 (FCC 93-484) adopted October 22, 1993 and released November 22, 1993, supplemented by an Errata, and Order Extending Comment Period released January 12, 1994 (DA 94-46). Persons affected by part 68 practice and procedure are urged to review the full texts of both the NPRM and Errata, and the supporting file, which are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC. Copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857-3800.

Paperwork Reduction Act

Reporting and recordkeeping activities needed to comply with the proposed rules are usual and customary.

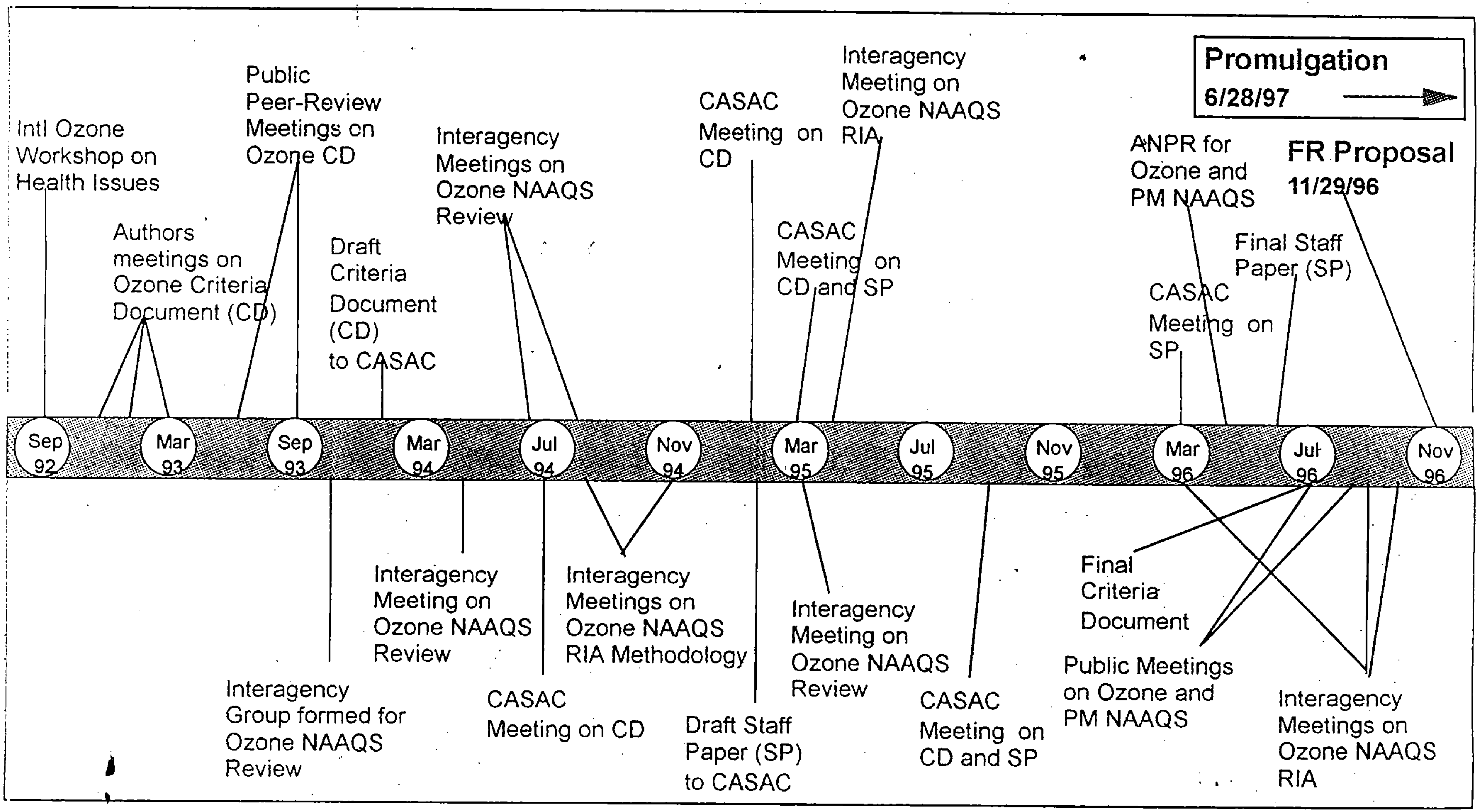
Analysis of Proceeding

1. By this NPRM we contemplate amending parts 2 and 68 of the rules, 47 CFR parts 2 and 68. A purpose of part 68 is to maintain uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring. This proceeding was initiated by two petitions for rulemaking; one filed by SWB (RM-7815) and the other by Ameritech (RM-6147).

2. SWB requests that part 68 be amended to include the regulation of terminal equipment connected to the two-wire Basic Rate Access (BRA) interface and to the Primary Rate Access (PRA) interface provided by Integrated Services Digital Network (ISDN) access technology. BRA consists of one or two 64 Kbps information channels with a 16 Kbps channel for dialing and network access information. The 1.544 Mbps PRA consists of 23 64 Kbps information channels and the 64 Kbps dialing and network access channel. ISDN is in a developmental phase, being deployed these last few years in an experimental mode. The Public Notice of SWB's petition elicited comments from eight parties and reply comments from three. There was overwhelming support for including this service in part 68 in order to promote, on a nationwide and worldwide basis, rapid exploitation of this technology with minimum mandatory criteria for connection of CPE (customer premises equipment). Thus, we propose for comment technical standards for including this service in part 68 in supplement to the existing standards for non-switched leased-line digital services which were added in 1985.

3. Commenting on SWB's petition, AT&T recommends (a) that part 68 rules covering PRA not be limited to the two-wire ISDN BRA service but also authorize terminal equipment connected to the 4-wire ISDN PRA (1.544 Mbps) interface pursuant to performance and compatibility standards adopted by ANSI (American National Standards Institute); (b) that amendments to part 68 provide equipment specifications for both PRA

History of Ozone NAAQS Review



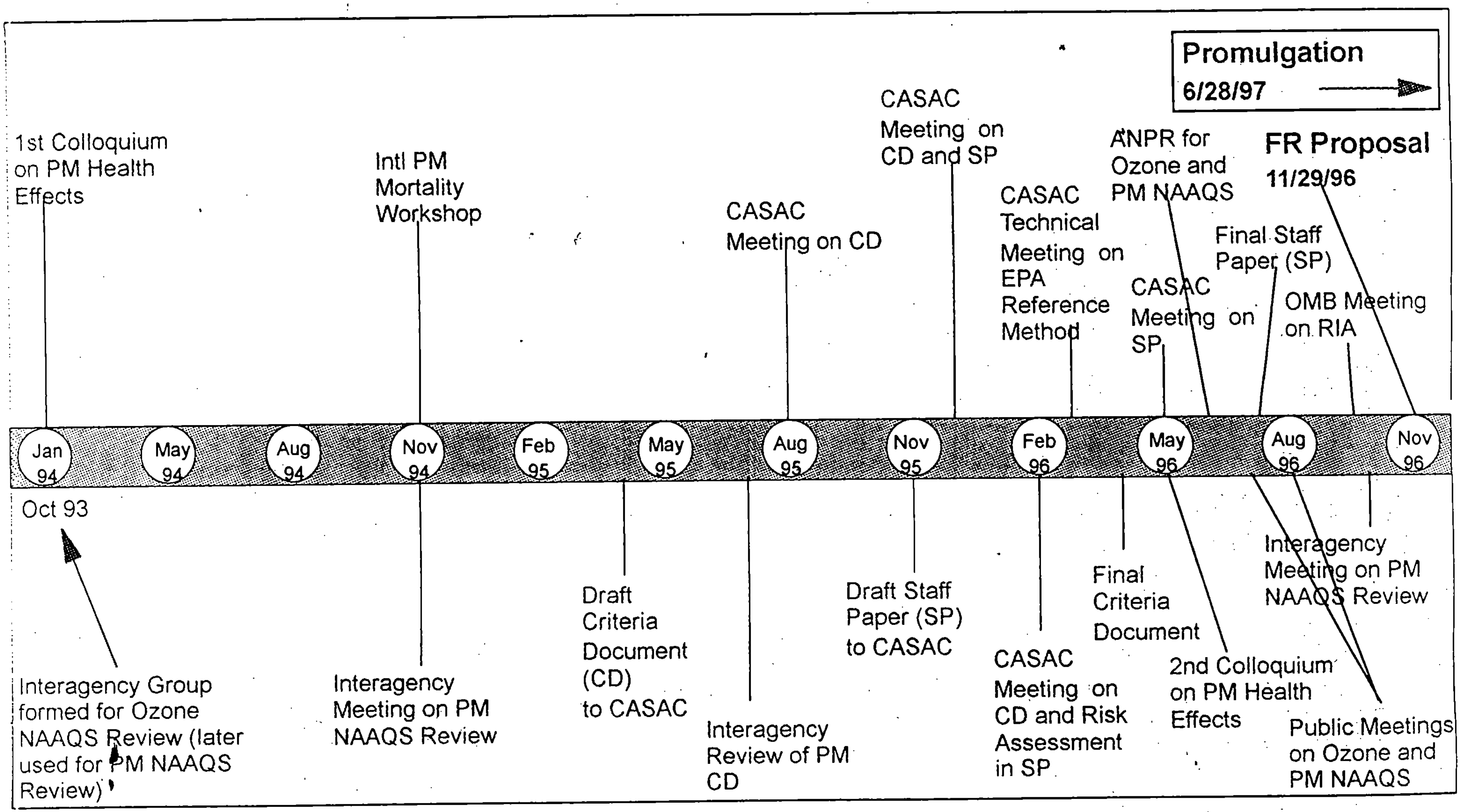
Blue Text: **Peer-review process with Clean Air Scientific Advisory Committee (CASAC)**

Red Text: Interagency Meetings

Black Text: Science Meetings

Green Text: **Public Meetings**

History of PM NAAQS Review



Blue Text: Peer-review process with Clean Air Scientific Advisory Committee (CASAC)

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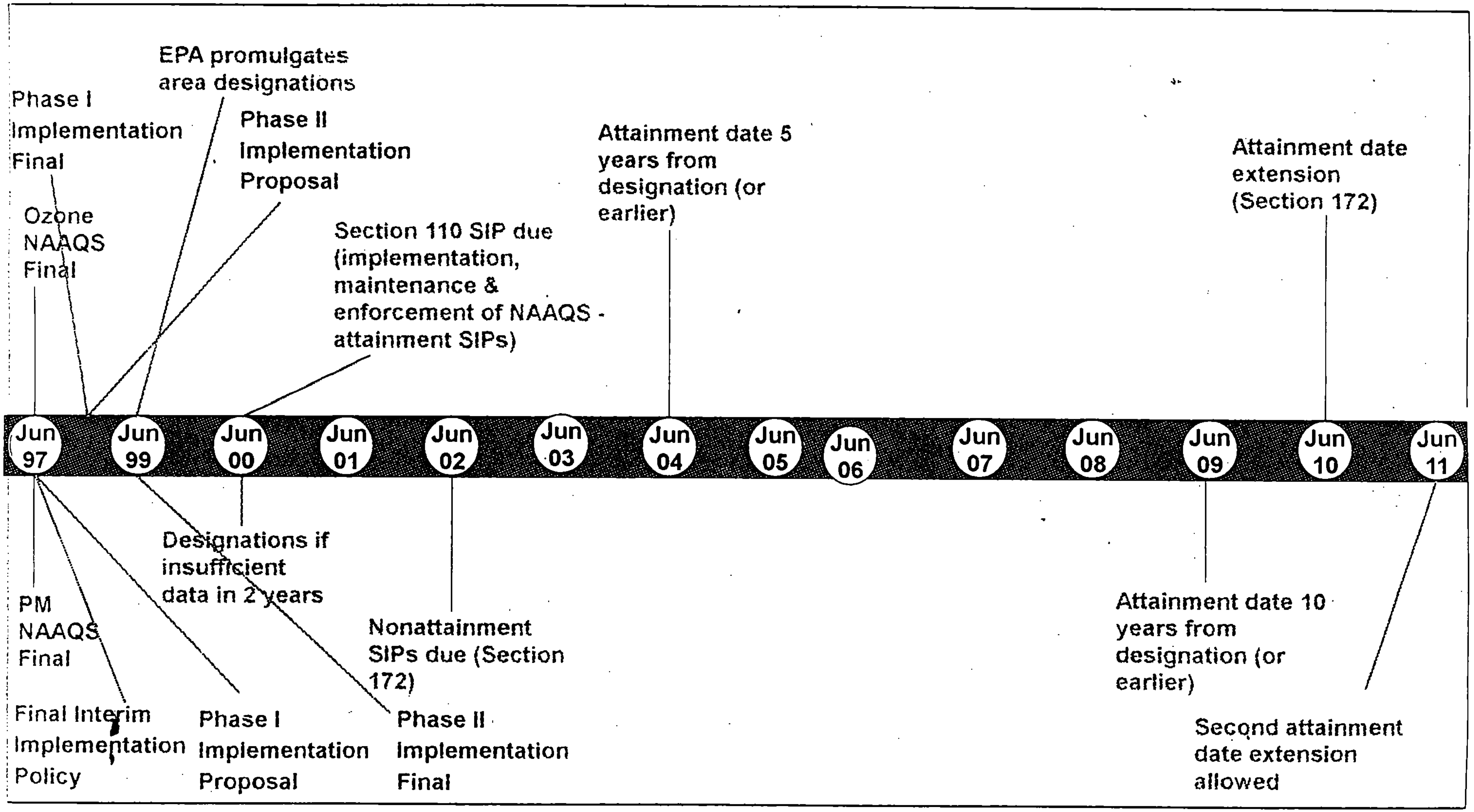
New NAAQS Timeline



Blue Text: EPA Policy or Rulemaking
Green Text: Statutory Requirements

Clinton Presidential Records
Digital Records Marker

Divider Title: U

FROM THE OFFICE OF THE CHIEF OF STAFF
Jason S. Goldberg

Doc Number

63

Author / Source

Cloherty, Patricia

Description

Personal letter and policy memo from Patricia M. Cloherty, President of Patricof & Co.

Send to 1	Send to 2	Send to 3	Send to 4	Send to 5
Sperling				

Send to Comments

EBB writes: "Ask Sperling's shop to review and respond."

Patricof & Co

January 21, 1997

Ask Sperling staff
to review & respond
Thx
E

Hon. Erskine Bowles
Chief of Staff
White House
Washington, DC 20500

Patricof & Co.
Ventures, Inc.
445 Park Avenue
New York, NY 10022
Tel 212-753-6300
Fax 212-319-6155

Dear Erskine:

First of all, congratulations on your new post. I can see that you are a glutton for punishment. But I also thought you were excellent and refreshingly direct on "Meet the Press" on Sunday morning.

Second, I thought you might be interested in the attached. It is a paper I prepared for the Center for Entrepreneurial Leadership, the major activity of the Kauffman Foundation of Kansas City, endowed by Ewing Kauffman, the now deceased founder of Marion Labs. The CEL Board is carrying out the entrepreneurial legacy of Mr. Kauffman in the non-profit environment, and as indicated herein, the BOD members asked me to set down my views of the policymaking process with respect of entrepreneurial business at the federal level.

I know you will be swamped, but if you or your staff have a chance to give me a reality check, I would appreciate it.

May I wish you every success in 1997.

Sincerely yours,

Pat

Patricia M. Cloherty
President

ANATOMY OF FEDERAL POLICY-MAKING RELATED TO ENTREPRENEURIAL BUSINESS

October 3, 1996
Kansas City
C.E.L. Board Meeting

By Patricia M. Cloherty

I was asked by my colleagues on the Board of the Center for Entrepreneurial Leadership to prepare a short briefing on how and through what organizations federal policies affecting entrepreneurial businesses in the United States are made.

Herewith that synopsis. Please note that this is intended as a thought paper based on my own and other colleagues' observations and experiences over several years in the policy process. It is not based on the sort of historical research and analysis one might do, given time, for example for publication.

"Entrepreneurial business" refers herein to that subset of 3% or 4% or less of the total universe of small companies in the country that seek rapid, sometimes explosive growth, based most frequently on achieving technological or other innovations aimed at producing substantial competitive advantage in an industry, often worldwide. It does not refer to the estimated 15 million small businesses, "the backbone of the economy", that may grow at around the rate of the economy generally and which tend to serve local or regional markets only.

"Federal policy-making" refers to the process at the federal level whereby the many statutes and regulations that affect the formation and growth of entrepreneurial enterprises and capital flows to them is shaped. It embraces the Executive and Legislative branches of Government, plus policy appendages related thereto.

My basic contentions in this paper are the following:

1) There presently is no "port of call" -- institutional or personal -- in the Federal Government empowered to establish or maintain a policy framework suitable for entrepreneurial growth.

2) Such policy framework as does exist is scattered throughout Executive Agencies and Congressional Committees and Sub-Committees whose primary missions and authorities focus tangentially, if at all, on the entrepreneurial sector of the economy.

3) Relevant policies and regulations thus end up being largely accidental, the consequence generally of negative reactions of trade groups to policies launched to address other, generally larger, issues and constituencies. It is the Law of Unintended Consequences at work.

4) The Small Business Administration, often assumed because of its name to address issues of the high-growth enterprise, in reality does not do so due to its particular

origins, statutory mandates, history, and political support. Nor, as a corollary, do the Small Business Committees of the House and Senate. However, Federal agencies presently tend to think of entrepreneurial business as being part of what SBA has responsibility for.

To individuals involved in founding, growing and financing dynamic companies, this lack in our policy-shaping apparatus seems anomalous, even stunning, especially in the midst of the 1996 general election in which both major candidates are touting economic growth. But in truth, it isn't strange. For one thing, the political constituency supporting entrepreneurial activities is both tiny and impotent in the scheme of things. Second, since politics fundamentally is "the art of who gets what, when, where and how," larger established interests and their political representatives are unwilling to cede ground to newcomers. (To this day, the Small Business Innovation Research Program, begun experimentally in 1975, is bitterly resisted by many academic researchers and public policymakers.) Finally, a central conundrum exists: how can the American public arrange for timely consideration of policies affecting the fastest-growing and most-rapidly changing segment of the economy within structures that are (for lots of good reasons) fundamentally slow-moving and bureaucratic?

Even the Standard Industrial Classifications (SIC Codes) used to describe and measure the U.S. economy is always five to ten years out-of-date due to its publication cycle. Thus it fails to capture emerging industries that are growing or may grow substantially more rapidly than the economy generally. Where is the Internet code, for example?

For public policy purposes, the emerging growth companies have traditionally been lumped into the category of "small business" and consequently also, into the programs of the SBA. This is partly out of lack of knowledge on the part of both the public and of public servants. Like all of us, they need a "pocket" to put things into, to organize their acts. But it is also out of lack of interest in the growth sector by elected officials due to the nominal political dividends it yields to its champions. "Small business", with the 500-600,000 member National Federation of Independent Business as its principal constituency, is simply more productive politically than is "growth enterprise", supported by such as the National Venture Capital Association (300 members), BIO (membership in the hundreds), and the American Entrepreneurs for Economic Growth (10,000 maximum).

In fairness, also, it should be noted that the political constituency comprised of venture capitalists and actual or aspiring entrepreneurs is largely uninformed, and therefore inactive, on issues affecting it. California's ballot initiative, Proposition 211, relating to securities fraud lawsuits, has momentarily galvanized this group into a level of political activity not seen since the capital gains tax debates of 1978-79. But this is rare. The Venture Capital Journal commented in October, 1996,

> ... Venture capitalists, not known for their political savvy or for leveraging their industry as a potent political machine, are entering new territory these days. Galvanized by a single issue -- a local one at that -- that has inspired a real and profound fear, the venture industry has been driven to mobilize itself... Proposition 211 is the ultimate price the venture industry could pay for not being better informed of political and other special interest issues.

Proposal: It may be timely for the C.E.L., pursuant to its educational mission, to launch a serious study of the federal policy framework that gives rise to an entrepreneurial economy in the U.S. As noted herein, such an effort would capitalize on emerging trends, both in the economy and in political circles. The mere elucidation of such issues would represent original work and could make a major contribution to citizens' thinking about, and shaping, policies conducive to economic growth.

To clarify today's policy "players", SBA's historical role and political base of support are described below. This is followed by a (contrasting) outline of the types of issues presently important to growth companies, together with a roadmap of governmental responsibility for those issues. Finally, I've recommended an action program that C.E.L. might consider to fill the "knowledge gap" in the policy framework relating to entrepreneurial business.

<u>Small Business and SBA</u>

Small business came on the federal radarscope in the early forties when Congressman Wright Patman used the war effort to push the Executive Branch under President Roosevelt, then President Truman, to form the Smaller War Plants Corporation. Its main purpose was to assure that the defense contracting efforts did not put small businesses out of business in the rush to mobilize using contracts to Big Auto, Big Steel and other "Bigs". A far lesser theme was technological innovation, though then, to a greater extent than now, universities were viewed as the true and probably only, producers of important intellectual property.

Congress set up Small Business Committees as Sub-Committees of the Banking Committees in the House and Senate, but without legislative authority, i.e. they could hold hearings and give speeches, but 'til the late 60's, they could not legislate.

The tools of the SWPC were three: government contracts, loans and loan guarantees, and materials supply. The first two have remained mainstays to this day.

The SWPC was abolished post-war and its authorities dispersed among other agencies ... until the Korean War re-mobilization effort came along. Again under Congressional fire, PresidentTruman established by Executive Order (not statute) the Small Defense Plants Administration.

President Eisenhower made the Agency permanent in 1953 after an experimental period, for political and other reasons. Politically, NFIB had organized small businesses (barber shops, retailers, restaurants, gas stations, and others) in large numbers in a group whose conservative views merged into those of the Republican Party at that time. Also, however, one of his advisers, Wendell Barnes, an Oklahoman with Wall Street experience, was seeing the beginnings of a new issues market and of a nascent venture capital business. He recommended that such an agency might be a way of putting a mammoth federal bureaucracy in touch with changes in the economy, which thinking eventually produced the Small Business Investment Company Act of 1958, supported by a Federal Reserve Board report on the lack of long-term capital, mainly debt, available to small enterprise.

Essentially each Administration since that of Eisenhower has tried either to abolish SBA or to move its authorities to other Agencies represented on the Cabinet, usually to Commerce. For most officials in the Executive Agencies, such as Defense and Commerce, small business is a nuisance that requires that they set aside contracts, R&D funds and other resources from their Agency budgets.

But Congress, whose Members fraternize with (and raise funds from) small businesspeople, has been adamant in maintaining it. Though it is in the Executive Branch, the Agency is really a creature of Congress, which, over time, has loaded various programs on the Agency, from disaster relief loans to crop loans. Because the Agency has a power unique to it, namely the ability to make loans directly to citizens, rather than going through States or Municipalities, it has had political potency.

In fact, in 1978, as a measure of the inter-branch conflict over small business jurisdiction, Congress created the post of Chief Counsel for Advocacy, reporting directly to it, while reporting also to the Agency Administrator appointed by the President ... a formula for continued conflict.

The Kennedy Administration had no interest in small business, growth-oriented or otherwise, so nothing happened. The Johnson Administration, however, joined the small business issue with the Great Society program when in 1968, under the War Powers Act, the same tools of sole-sourced contracts and loan guarantees were applied to re-building riot-torn Watts. President Nixon subsequently based his Black Capitalism Program on the Agency's ability to sole source contracts and to make loans directly to companies.

Social issues came to play a big role in Agency affairs, based on programs for "socially and economically disadvantaged" -- women, minorities, Indians, Aleuts, Eskimos, and Vietnam veterans -- a constituency that was quite distinct from the Agency's traditional small business base.

Through all this, little was able to emerge having to do with the Agency's attaining greater policy authority in any area, much less on the growth company issues, since it was always beset with claims from conflicting constituencies. As a further constituency matter, support groups of small business people have always been glad to be termed "entrepreneurs". The high growth entrepreneurial managers, however, resist the "small businessperson" designation:.

Two programmatic accomplishments over this time have affected growth companies positively -- the Small Business Investment Company (SBIC) program and the Small Business Innovation Research (SBIR) program. The first provided a "starter kit" to many of today's venture capitalists at a time when private capital was difficult to raise, and also today, when pension funds routinely don't back "first funds". The second program continues to provide seed capital for high risk technological projects of venture-backed and other companies. Both programs have had episodic political travails and related efforts, mainly from the Executive Branch, to dismantle. The National Institutes of Health, in particular, has never accepted unambiguously the "commercialization" goal embodied in the SBIR awards, and tends to lean therefore toward academic research.

That's the SBA story in a nutshell from my point of view. It serves the "smalls", which as one observer says, comprises "a spooky constituency that wakes up seldom, but when it does, and usually negatively, Congress listens." Certainly NFIB had a big hand in arresting the progress of the Clinton health care program. That battle, at the time, distracted an otherwise knowledgeable and able Administrator (who, for the first time, had a seat on the Council of Economic Advisors) from focusing on growth companies.

As for the Executive Branch broadly, there have been three White House Conferences on Small Business --- under Presidents Carter, Reagan and Clinton. The first ended up with a small number of recommendations, some of which were implemented. The second deteriorated into a dogfight about SBA's existence. The report from the third, whose convenors tried to introduce growth company policies as an agenda item, ultimately got "Christmas-treed" and diffused, though some follow-up is ongoing. Basically, though, these conferences have served as ventilators for views of interested parties that result in a re-allocation of resources of existing programs, rather than as producers of fresh policy approaches.

Assorted non-SBA efforts to assist growth companies at the policy level have taken place over the years. The White House occasionally appoints a "Technology Czar", but generally in connection with flirtations with an Industrial Policy, which generally raises ideological opposition from the high growth constituency. In the 1970's, Treasury created the post of Deputy Assistant

Secretary for Capital Markets to manage equity capital availability issues. But the post was filled once, then forgotten.

Finally, of course, the economy and the capital markets as relate to growth companies have changed and gained critical mass in recent years. The newly formed coalition among BIO, the NVCA, the AEEG, the Software Publishers Association, NASDAQ and The Council of Growing Companies is a political reflection of this shift in reality. Their Entrepreneurs' Agenda for 1996-1997, could be the political basis for fresh initiatives as relevant issues are elucidated and understood.

Conclusion: The issues that have faced or are facing growth companies are not ones in which SBA is generally either involved or asked to opine, certainly not within any formal delegations of authority among Executive agencies.

So what are the issues? And how might they be addressed?

Growth Company Issues / Authorities

A broad set of government policies, laws and regulations influence the growth of entrepreneurial enterprise and risk capital flows to it. In a profound way, when taken altogether, these policies, laws and regulations tend to express our view of ourselves as a nation, our attitudes toward such things as risk-taking, social mobility, and willingness to absorb economic newcomers among the already established interests. The "rags-to-riches" theme is embedded in our mythology. We admire the Bill Gates (Microsoft) and Fred Smiths (Federal Express) of the world. We write books on their economic feats. They're on TV ... and so forth.

As a consequence, our legal conventions tend generally to be enabling to entrepreneurship and risk capital across a broad, if uncodified, spectrum.

These policies range from those affecting pension fund investing, to securities laws and regulations, intellectual property rights, bankruptcy laws, tax matters, among others.

- <u>Pension fund rules</u> provide that a small fraction of these otherwise conservatively-managed, large pools of savings can be put at venture risk.

- <u>Securities laws and regulation</u> provide for the kinds of disclosures that give confidence to investors in buying shares of young companies in public markets.

- <u>Tax laws</u> provide for transparent treatment of venture capital partnerships so they're not taxed twice and provide, at present, a very narrow capital gains tax advantage for investors in small companies.

- <u>Intellectual property laws</u> afford protection for knowledge-based ventures through the patent and trademark systems and related court rulings.

- <u>Bankruptcy laws</u> provide a second chance for failed entrepreneurs through Chapter 11 proceeding, a rarity in the world.

Various reports in recent years have attempted to lay the groundwork for a broader view of the entrepreneurial policy issues and processes. Though nothing has come of these reports, the fact of their even being done signals an emerging sea change from historical patterns.

The most interesting of these, in my view, is a General Accounting Office report dated August 12, 1982, requested by Senator Lloyd Bentsen when he chaired the Joint Economic Committee. Entitled "Government-Industry Cooperation Can Enhance the Venture Capital Process", the report concludes that,

> ... Within the Government, many offices can potentially affect the venture capital process through their actions. Actions that affect the process can be the result of executive or congressional initiatives... Yet, no central point of coordination exists for [such] Government actions...

The report cites a series of tax, pension fund and labor promulgations that caught the venture industry by surprise, negatively.

A report published in 1986 is more typical of its genre, but also broke some new ground. Pursuant to the formation in 1985 of a bipartisan National Commission on Jobs and Small Business, a study team was formed, funded by the Charles Stewart Mott Foundation of Flint, Michigan, to recommend policies that would result in the formation of ten million new jobs. After 15 months of research and hearings from the various constituencies, the Commission came up with "soup-to-nuts" recommendations on small business that skirt most of the central issues affecting the growth companies, in particular. According to at least one participant in the study, its breadth plus its admittedly bipartisan, but still political, roots, defeated efforts to get beyond the current institutional framework of policies and programs.

Finally, in the early 1990s, the White House Office of Science and Technology Policy staff wrote a report entitled "A Profile of Small High Technology Business in the United States". The report is the first high-level analysis of how efficient the sector is in creating new jobs, new technologies, and consequently, productivity gains.

While it was never published, the central thrust of the White House report today has become widely known, i.e., that high growth, high tech companies are engines of economic growth, due primarily to press coverage of the sector in the recent years of large corporate downsizing. The policy underpinning of that growth, though, remains fuzzy and unarticulated.

As a "reality check" on what some of the detailed issues are, and on their scattered jurisdictional responsibility, I looked at the NVCA's issue list for the past few years. It is most notable that virtually all of the issues pursued by NVCA arose as a result of legislation or regulations that were proposed or passed to address matters having nothing to do with entrepreneurial business. The sector simply got caught in "the wake of the ship." It also is notable that the policy swath cuts very broadly across government, with no one unit having any central responsibility for growth companies.

Herewith the issues and jurisdictions.

1) **Tax Policy**

Executive Branch
Treasury
Council of Economic Advisors

Legislative Branch
House Ways and Means
Senate Finance

(Tax generally operates at full committee level.)

Recent Issues:

- Capital gains tax rate.
- Section 1202. Targeted capital gains, passed in 1993.
- Section 212. Deductibility of investment expenses in computing the AMT.
- Section 382. Loss of net operating losses on change of control.
- Anti abuse partnership tax regulations.
- Proposed tax on distributions in kind to partnerships at time of distribution.
- Proposed tax on foreign investors in U.S. venture capital partnerships.
- Proposed triggering of unrelated Business Taxable Income (UBTI) on foreign venture investments.
- Investment Company Act Revisions

2) **Securities Laws**

Executive Branch
Securities and Exchange Commission
Financial Accounting Standards Board (Independent)

Legislative Branch
House Commerce Committee,
Subcommittee on Telecommunications and Finance
Senate Banking Committee,
Securities Subcommittee

Recent Issues:

- Accounting treatment of stock options
- "Free rider" regulations
- Regulation D revisions
- Securities litigation reform
- Investment Company Act Revisions

3) **Pension Funds (ERISA)**

Executive Branch
Department of Labor

Legislative Branch
House Economic and Educational Opportunities Committee,
Subcommittee on Employer and Employee Relations
Senate Labor and Human Resources Committee (full committee)

Recent Issues:

- Change in prudent man rule to permit pension funds to invest in venture capital
- Definition of a "venture capital operating company"

- Emergence of 401(k)s and their possible ability to invest in private equity, i.e., defined benefit versus defined contribution plans

4) **Health Care Policy**

Executive Branch

Health and Human Services,
  Food and Drug Administration,
  National Institutes of Health

Legislative Branch

House Commerce Committee,
  Subcommittees on Health and Environment
Senate Labor and Human Resources Committee (full committee)

Recent Issues:

- Health care reform in general
- Proposed price controls on breakthrough drugs
- FDA reform
- FDA user fees
- NIH conflict of interest regulations
- CRADA pricing clause
- FDA financial disclosure regulations

5) **Intellectual Property**

Executive Branch

Patent and Trademark Office
U.S. Trade Representative

Legislative Branch

House Judiciary Committee,
Subcommittee on Courts and Intellectual Property
Senate Judiciary
Subcommittee on Anti-trust, Business Rights and Competition

N.B. Treaty-related matters go to full Senate.

Recent Issues:

- Patent policy changes contained in the General Agreement on Tariffs and Trade (GATT)

- Medical and biotechnology patent restrictions to assist doctors sued for product liability

Admittedly somewhat mind-numbing, this list still only partially reflects the pertinent policy matrix, from the capital provision side of the entrepreneurial equation only.

Conclusion and Recommendation

For a range of historical, political and economic reasons, there exists an important gap in our general understanding of which policies contribute to a flourishing entrepreneurial economy. That lack of understanding is matched by total lack of political institutional focus on the subject. Further, as the U.S. economy has matured, and growth companies have taken center stage, we at best have been lurching toward a clearer understanding of it, mainly through an accidental process whereby laws and statutes are proposed that affect the sector negatively, thereby galvanizing it episodically to defeat the challenge, to emerge scarred but somewhat wiser.

The few study efforts in recent years meant to elaborate this policy framework have served to signal direction, but they have not gotten far, due mainly to lack of political muscle behind them. In the end, it's self-fulfilling: they were all conceived and executed within a political environment that requires support of existing constituencies to propel forward motion. But constituencies don't form around inchoate ideas. It's a form of policy gridlock.

C.E.L. is in a unique position to take the bull by the horns and launch an independent effort to elucidate the policy underpinning of our entrepreneurial economy in the U.S. The very identification of such a "policy toolbox" would constitute important and original work, apart from any specific policy consequences the effort might have.

The study could take the form of a National Commission of finite life (X years) whose purpose would be to answer systematically the question "What public policies give rise to an entrepreneurial economy?" and to disseminate its finding appropriately. At a minimum, knowing such policies, the Commission could develop an annual scorecard for the federal government around the Mayor Koch-type question, "How're we doin'?". At a maximum, it could generate an important work on a par with those of the likes of Schumpeter, Veblen or Weber, that captures and explains a reality we know but never bothered to express, thus changing how people think and act.