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THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 3/27/84 Number: 168953CA Due By:

Subject: Cabinet Council on Economic Affairs - March 29, 1984 -

8:45 am - Roosevelt Room

TOPICS: Rpt on Trip to China, Japan, Korea
Regulation and Market Intervention

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	☐	☐	CEA	☒	☐
State	☒	☐	CEQ	☒	☐
Treasury	☒	☐	OSTP	☐	☐
Defense	☒	☐		☐	☐
Attorney General	☒	☒		☐	☐
Interior	☐	☒		☐	☐
Agriculture	☒	☒	Baker	☒	☐
Commerce	☒	☐	Deaver	☐	☒
Labor	☒	☐	Darman (For WH Staffing)	☒	☐
HHS	☒	☒	Jenkins	☐	☒
HUD	☒	☐	McFarlane	☐	☒
Transportation	☒	☐	Svahn	☒	☐
Energy	☐	☒		☐	☐
Education	☐	☒		☐	☐
Counsellor	☒	☐		☐	☐
OMB	☒	☐		☐	☐
CIA	☐	☒		☐	☐
UN	☐	☒		☐	☐
USTR	☒	☐		☐	☐
GSA	☐	☐	CCCT/Gunn	☐	☐
EPA	☐	☐	CCEA/Porter	☒	☐
OPM	☐	☐	CCFA/	☐	☐
VA	☐	☐	CCHR/Simmons	☐	☐
SBA	☐	☐	CCLP/Uhlmann	☐	☐
			CCMA/Bledsoe	☐	☐
			CCNRE/	☐	☐

REMARKS:

The Cabinet Council on Economic Affairs will meet on Thursday, March 29, 1984 at 8:45 am in the Roosevelt Room.

The agenda and background papers are attached.

*DR wants
Bush to wk out options
for strong trade action v. Jap.*

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☐ Katherine Anderson
☒ Tom Gibson

☐ Don Clarey
☐ Larry Herbolzheimer

Associate Director
Office of Cabinet Affairs
456-2800

THE WHITE HOUSE

WASHINGTON

March 27, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: ROGER B. PORTER *RBP*

SUBJECT: Agenda and Paper for the March 29 Meeting

The agenda and paper for the March 29 meeting of the Cabinet Council on Economic Affairs are attached. The meeting is scheduled for 8:45 a.m. in the Roosevelt Room.

The Council will consider two agenda items. Secretary Regan will briefly report on his recent trip to the People's Republic of China, Japan, and Korea. The Council will review the regulatory process proposal developed by the Working Group on Regulation.

At the Cabinet Council's February 10 meeting, the Council asked for a further examination and refinement of the regulatory process proposal. A memorandum, prepared by Chris DeMuth the Working Group chairman, reviewing the purpose of such a planning process, its proposed procedures, and the issue of an effective date, is attached.

Attachment

THE WHITE HOUSE

WASHINGTON

CABINET COUNCIL ON ECONOMIC AFFAIRS

March 29, 1984

8:45 a.m.

Roosevelt Room

AGENDA

1. Report on trip to China, Japan, and Korea
2. Report of the Working Group on Regulation and Market Intervention (CM # 413)



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

March 26, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: CHRISTOPHER DEMUTH *CDemuth*

SUBJECT: Regulatory Policy

My memorandum to the CCEA of February 7, 1984 proposed that the Administration establish a formal procedure for setting regulatory policy goals and priorities. The procedure is described in this earlier memorandum, which is attached. At the CCEA meeting of February 9, Secretary Regan asked Roger Porter and me to elaborate further on the proposal and answer certain questions that had been raised about it. In this memorandum we describe more fully the purpose of the regulatory planning process, its proposed procedures, and when we propose it commence.

1. THE PURPOSE OF THE REGULATORY PLANNING PROCESS

The immediate purpose is to strengthen the Administration's regulatory reform program and ensure that important rulemaking initiatives are furthering the policies of President Reagan. It will also establish a process to guarantee Secretarial input into regulatory priority setting--the absence of which has been noted at past CCEA meetings.

Since the disbanding of the Task Force on Regulatory Relief, the Administration has had no mechanism for formulating broad regulatory policy goals and advising the President on major issues. A few subjects have been addressed by the Cabinet Councils, but these have been primarily legislative--i.e., CAB sunset--rather than rulemaking issues. Regulatory policy can and should be adopted consciously, rather than through happenstance or the accretion of a thousand minute compromises. Progress in achieving policy objectives can and should be assessed periodically. The annual policy planning process is a critical vehicle for accomplishing this.

The planning process also will further the policies already set down in Executive Order 12291. The Order's review procedures operate at the final, retail level of regulatory production. Under these procedures, agency heads, OMB, and the White House are often surprised by the sudden appearance of regulatory

proposals and by decisions prompted by court or statutory deadlines. Other problems result from bureaucratic gamesmanship and lack of interagency coordination regarding regulatory proposals affecting the same industry. A planning process can flush out the difficult and important policy issues and inter-agency problems far earlier than is now the case--when the discretion of senior officials is greatest. All of us would be able to live up to the President's ambitions more often than we do now, and reviews of individual rules would proceed much more smoothly for all.

A regulatory planning process is crucial to improving the management of the Executive Branch in the President's second term and in future Administrations. An increasingly large part of Federal policymaking consists of writing and enforcing rules. The development of these rules is decentralized, and often prone to greater influence by interest groups and congressional staffs than by Cabinet members or the President. The budget process--the Executive Branch's only formal, prospective planning mechanism at present--has little effect on regulatory activity and its private-sector costs. Regulatory planning would make the rulemaking machinery more responsive to the objectives of the President and his top officials.

Admittedly, there are large political, bureaucratic, and statutory constraints on the rulemaking process, which limit the ability of any Administration to set regulatory policy unilaterally. These obstacles are reasons for, rather than against, policy planning, which aims to advance the Administration's policies within the given constraints. Regulatory statutes often give the Executive Branch broad policy discretion as a legal matter--but we all know of cases where relatively benign statutory programs have been badly perverted over the years through gradual administrative "evolution."

At present there are several "evolving" regulatory programs over which the Administration has considerable discretion, and which could go well or poorly over the next several years. Examples include regulation of deep seabed mining, biotechnology, medical devices, new communications technologies, and further "evolution" of the declining protection of confidential business information by regulatory agencies. It is vital that a regulatory planning program be put in place so that developments in these areas respond to the President's objectives to the maximum extent possible, and are not driven by the agendas of committee staffs, interest groups, or the courts.

2. REGULATORY PLANNING PROCEDURES

An effective regulatory policy planning process can be readily implemented without imposing any significant new demands on agency resources and without generating more paper. The regulatory planning process would build upon, and in effect serve

as a summary of, the major policy issues raised in the Regulatory Agendas already required by statute and Executive Order 12291. The only additional input required would be the attention of top-level agency management to analyze forthcoming regulatory proceedings and identify--for their own benefit and that of the President--the most important rules, their rough order of priority, and the major policy issues raised by the regulations. At the end of this process, the President and other Cabinet members would understand the most significant regulatory actions to be expected in the next several months, and whether they would affect any policies of government-wide interest.

An agency's final regulatory planning document should consist of a list of the most significant rulemakings to be conducted over the next year. The issues spelled out in such a document would include:

1. The goals the agency seeks to achieve.
2. The general subject matters covered.
3. The major policy issues presented by the rules.
4. Significant statutory limitations on the agency's discretion.
5. When publication of proposed and final rules is anticipated.
6. Other agencies likely to be interested in or affected by the rules.

As indicated, systematic collection and presentation of this information would be of critical value to many agency heads who now are often placed in a last-minute, reactive posture to regulatory deadlines and initiatives.

b3. EFFECTIVE DATE OF THE PLANNING PROCESS

While we could commence an initial, partial exercise this spring, I believe the best approach would be for a Cabinet Council working group to work out implementation details during the summer and fall, so that the process could begin on a government-wide basis next December and January. In the meantime, we would prepare a few selected papers on regulatory issues of immediate importance for the CCEA over the next few months.

Attachment



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

February 7, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM:

CHRISTOPHER DEMUTH

SUBJECT:

Regulatory Policy Initiative

As requested by the CCEA at its December 13 meeting, this memorandum sets forth a proposal for a regulatory policy planning process that could be established this year. Such a process would institutionalize our most successful regulatory reform efforts, and permit the President to establish specific regulatory policies and priorities on an Administration-wide basis.

Background:

The regulatory policy planning process would build upon the Administration's experience under four major initiatives:

- o Executive Order 12291 requires that agency rules be justified by a showing that their benefits will be worth their costs, and requires that all rules be reviewed by OMB before they are issued. The Order has been highly effective in curbing the proliferation of new regulations. However, the Order provides no systematic mechanism for reviewing the economic inefficiencies in the large mass of existing regulations.
- o The Task Force on Regulatory Relief targeted over 100 existing regulations for top-priority agency reconsideration, leading to a significant reordering of agency priorities towards revision or elimination of existing rules. However, many of these reviews were never completed, and many dubious regulatory policies were never touched. When the Task Force was ended, no comparable process was put in place for sustaining a high-level commitment to reforming existing regulatory policies.
- o The "paperwork budget" process has been established, setting annual paperwork-reduction goals for each agency. This process has led to unprecedented reductions in Federal paperwork in each of the past three years.

However, the "paperwork budget" covers only one part of the private costs of government regulation--the "burden hours" of complying with government paperwork requirements---that can be estimated with tolerable accuracy and comparability across programs.

- o The "regulatory agendas," published twice each year under E.O. 12291, describe planned and pending regulatory proceedings in each agency. However, in their current format, the agendas are little more than reference catalogues. They do not express Administration policy, nor do they provide a mechanism through which regulatory policy could be established. When the Task Force reviews were in full swing, the agendas documented a large number of serious reform initiatives. In contrast, the latest agendas (October 1983) are devoted largely to plans for issuing new regulations--and the "reform" or "deregulation" initiatives are mostly minor or technical.

A Regulatory Policy Planning Process:

The Administration is now in a good position to consolidate the best features of these initial efforts--through an annual planning process for setting affirmative, Administration-wide regulatory policy. Doing so would involve only incremental changes in current procedures for preparing the regulatory agendas, but would use these procedures explicitly for setting priorities and resolving major policy issues. In the short run, this process would give greater emphasis and direction to the President's regulatory reform program. In the longer run, it would lead to permanent improvements in the way regulatory policies are debated and decided in this and future administrations.

The regulatory policy planning process would consist of four steps:

- o First, each major regulatory agency would prepare a policy document setting forth:
 - general policy goals and priorities for the coming year;
 - the most significant reviews of existing rules to be undertaken during the year; and
 - the most significant new rules to be considered during the year.
- o Second, these policy documents would be reviewed by OMB. Reviews might suggest different or additional reform initiatives, identify interagency policy conflicts, or raise broader economic issues.

- o Third, each agency's policy plan would be presented to a senior Administration policy group (such as the CCEA) and to the President.
- o Fourth, final agency plans would be compiled and published as a single Administration policy document. This would be the regulatory equivalent of the President's annual budget document--setting forth major themes and initiatives--while the Regulatory Agenda would be the equivalent of the budget appendix, containing a large amount of routine information not appropriate for a general policy document.

Discussion:

A systematic procedure for taking stock and launching new initiatives seems a logical next step for the Administration's regulatory reform program. Establishing such a process this year would give new public emphasis to our resolve to exert firm discipline over the government's regulatory machinery. It is likely to be attacked only by Nadarites and other unapologetic advocates of unbridled regulatory growth, and by those in Congress and the bureaucracy who want to keep the rulemaking process decentralized and under their control. Individual initiatives growing out of this process could be politically controversial, but this has also been so of the Administration's other efforts to improve Federal management.

The regulatory policy planning process would not be a panacea for all of the problems of regulation. Statutory programs often leave Executive Branch officials little discretion whether to regulate or how that regulation must be accomplished. Moreover, the Task Force's experience showed that any regulatory changes worth making will be resisted by influential private groups, both before the agency and in court. As with spending programs, regulatory programs generate their own equilibriums of interest groups--including business groups--who develop a stake in the status quo and lobby heavily to maintain it. Every agency head understands that these groups have numerous ways of making their influence felt, not only in individual rulemaking proceedings, but on the general direction of the agency's policies and priorities over time.

The annual planning process would not abolish such regulatory politics, but could alter regulatory politics in the direction of sounder economic policy. It would not compromise the discretion of agency heads to initiate and decide notice-and-comment proceedings, and should increase that discretion as a practical matter--by strengthening the President's policy oversight and loosening the grip of the interest groups camped on agency doorsteps.

Finally, the policy-setting process would not supersede statutory requirements, but could bring about administrative reforms that would build momentum for eventual statutory change. The Executive Branch must be the entrepreneur in regulatory policy: Congress is institutionally averse to policy risks, and usually acts decisively only after agency initiatives have proven successful (as in the case of airline and financial services deregulation). A regulatory policy planning process, by giving our reform and deregulation efforts greater coherence within the Executive Branch, should give them greater influence in the Congress and the courts as well.

Timing:

At present, agency "regulatory agendas" are published each April and October, and this is a requirement of statute (the Regulatory Flexibility Act) as well as of E.O. 12291. The best time for the regulatory policy planning process would be January through March of each year, against the April deadline. This would come after most of the work in preparing the President's budget, and would permit consideration of regulatory policies in concert with major Administration legislative initiatives. The October agendas would still be issued (pending statutory change), but these would be routine "update" documents.

The preparation of the April 1984 regulatory agendas is already too far along to accommodate the planning process described in this paper. However, if the President approved such a process in February, it would be possible to prepare policy documents for several of the most important regulatory agencies by late April. The first planning exercise would focus on only the major regulatory agencies--Transportation, Labor, Interior, USDA, and EPA. From what we learn in this initial exercise, we can start early next Fall to "hit the ground running" with the first Regulatory Policy Plan of the President's second term.

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