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WASHINGTON, D.C. 20503

February 7, 1984

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

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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.